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, 4906-15, and 4906-17 of the Ohio Administrative Code.	))))))	Case No. 12-1981-GE-BRO

FINDING AND ORDER

The Board finds:

(1) R.C. 119.032 requires all state agencies 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. 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.

(2) On June 11, 2012, the governor of the state of Ohio signed into law Am. Sub. S.B. 315 (S.B. 315), which became effective on September 10, 2012. S.B. 315 amended provisions contained in R.C. 4906, which govern the rules and regulations promulgated by the Board contained in Ohio Adm.Code Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, 4906-15, and 4906-17. By Orders issued in this docket on September 4, 2012, and December 17, 2012, the Board established certain interim application processes that take into consideration the accelerated review provisions set forth in S.B. 315.

(3) R.C. 119.032(C) requires that Board to determine whether:

(a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;

(b) The rules need amendment or rescission to give more flexibility at the local level;

(c) The rules need amendment or rescission to eliminate unnecessary paperwork, or whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74, and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;

(d) The rules duplicate, overlap with, or conflict with other rules; and

(e) The rules have an adverse impact on businesses and whether any such adverse impact has been eliminated or reduced.

(4) 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 Board 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.

(5) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Board must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Board is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIAs.

(6) On August 13, 2012, a workshop was held to engage interested stakeholders regarding the 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.

(7) Staff evaluated the rules contained in Ohio Adm.Code Chapters 4906-1 through 4906-17, as well as the comments received at the August 13, 2012, and recommended reorganization and certain amendments to the rules.

(8) On May 1, 2013, the Board issued Staff's proposed reorganization and amendments to the rules and requested comments to assist in the review. Comments were filed by AEP Ohio Transmission Company (AEP Transco), the Ohio Gas Association (OGA), Leipsic Wind LLC (Leipsic), FirstEnergy Service Company (FirstEnergy), EverPower Wind Holdings, Inc. (EverPower), and the Environmental Law and Policy Center (ELPC) on June 3, 2013. Reply comments were filed by Leipsic, OGA, FirstEnergy, and the ELPC on June 18, 2013.

(9) Mindful of the requirements expressed in Findings (3) and (4), the Board has carefully reviewed the existing rules, the proposed Staff changes, and the comments filed by interested parties in reaching its decisions regarding the rules at issue. The Board will address the more relevant comments below. Any recommended change that is not discussed below or incorporated into the proposed rules should be considered denied.

Ohio Adm.Code Chapter 4906-1 - General Provisions for Filings and Proceedings before the Ohio Power Siting Board

Comments on Ohio Adm.Code 4906-1-01 - Definitions

(10) General

(a) Leipsic proposes placing other definitions found elsewhere in the Chapter in the definitions section, because a reader might mistakenly believe that the rule covers all definitions. Leipsic notes that "construction costs" are defined in Ohio Adm.Code 4906-3-12(G), and "open case," "closed case," "archived case," and "void case" are defined in Ohio Adm.Code 4906-2-02(E).

FirstEnergy concurs with Leipsic's proposal. (Leipsic at 2; FirstEnergy Reply at 11.)

The Board finds that proposed placement of definitions within the rules recommended by Leipsic should be denied. Because the definitions mentioned by these commenters from Ohio Adm.Code 4906-3-12(G) and 4906-2-02(E) are not mentioned in any other rules in this Chapter, the Board finds that there is no need to include them in the definition list in Ohio Adm.Code 4906-1-01.

(b) FirstEnergy believes that a definition for "transmission voltage switching substation" should be added to the rules. In order to avoid any confusion concerning the distinction between distribution substations, FirstEnergy requests the Board define "transmission voltage switching substation" as any substation with three or more connections to transmission lines operating at or above 125 kilovolts (kV). (FirstEnergy Att. at 9.)

The Board finds that FirstEnergy's proposed definition should be denied. We find that the definition of "associated facility" clearly distinguishes between transmission and distribution substations for purposes of these rules. Therefore, the Board believes that including a definition for "transmission voltage switching substation" is unnecessary.

(11) Paragraphs (A) and (B) - These paragraphs define "accelerated certificate application" and "accepted, complete application" for purposes of this Chapter.

FirstEnergy states that the rules should be reviewed to ensure that the phrases "standard certificate application" and "accelerated certificate application" are used consistently and correctly. Further, the phrase "accepted, complete application" should be changed to "accepted, complete, standard certificate application." FirstEnergy states that these changes are proposed in order to clarify that there are only two types of applications considered by the Board: "standard certificate

applications" and "accelerated certificate applications." Leipsic concurs with FirstEnergy's assessment. (FirstEnergy Att. at 5; Leipsic Reply at 1.)

The Board finds that the proposed revisions in the definitions submitted by FirstEnergy are reasonable and should be adopted. Accordingly, the Board has changed the name of the definition of "application" to "certificate application" and this change should be reflected throughout the rules. In addition, the matrix in Ohio Adm.Code 4906-01-01, under the second column heading, also has been changed from "certificate" to "standard." Finally, the Board has changed the definition of "Accepted, complete application" to reflect a "standard certificate application."

(12) Paragraph (L) - As proposed by Staff, this paragraph defines "commence to construct" for purposes of this Chapter.

AEP Transco asserts that the definition contained in subsection (L) for "commence to construct" should contain an exception for projects involving existing right-of-ways. Specifically, AEP Transco offers that an applicant should be able to engage in site preparation, as long as it is part of the applicant's normal right-of-way maintenance practices and procedures and may use the right-of-way to upgrade existing facilities. AEP Transco points out that the ability to utilize and maintain a right-of-way should not be impaired during the application process and the definition should be amended to allow for an exclusion of any clearing of land, as long as the project falls within existing the right-of-way. OGA concurs with AEP Transco's proposed definition for "commence to construct." (AEP Transco at 1; OGA Reply at 1.)

The Board finds that the proposed amendment to the definition submitted by AEP Transco should be denied. The Board notes that the definition for "commence to construct" comes directly from the Revised Code and applies only to construction activities undertaken for the purpose of building the proposed facility. Maintenance activities unrelated to the proposed project are not restricted in any way, regardless of whether the project is in an existing right-of-way. The clearing of land within an existing right-of-way for maintenance of existing facilities is permitted and does not relate to these rules. As

such, an exclusion for "any clearing of land" for the proposed project is not appropriate. However, for purposes of clarity, the Board finds that a sentence should be added to the definition explaining that such does not constitute a restriction on normal maintenance activities on any section of the proposed site or route that is located within an existing utility right-of-way. The attached rules have been revised accordingly.

(13) Paragraph (EE) - As proposed by Staff, this paragraph defines "potential disturbance area" for purposes of this Chapter.

FirstEnergy states that the proposed definition refers to areas that "may" be disturbed by the construction of the facility. FirstEnergy believes this definition is vague and suggests the definition be changed to "disturbance area" and that the "may" in the definition be changed to "will." (FirstEnergy Att. at 7; Leipsic Reply at 1.)

The Board finds that the proposed definition submitted by FirstEnergy should be denied. The Board notes that the use of "may" in this definition is purposeful, as it is up to the applicant to choose the "potential disturbance area" of its project. The current definition allows the applicant to define an area larger than the construction zone of the project, in order to allow for slight modifications to the project without additional field study; therefore, any additional changes to the definition are unnecessary.

(14) Paragraph (GG) - As proposed by Staff, this paragraph defines "project area" as all land within a contiguous geographic boundary that contains the facility, associated setbacks, and properties under lease or agreement.

(a) FirstEnergy states that the definitions in the proposed rules of "contiguous geographic boundary" and "associated setbacks" are vague and should be removed from the definition. FirstEnergy believes the best approach to identifying the "project area" is by reference to the property associated with the actual physical construction of a proposed major utility. According to FirstEnergy, this will allow the

applicant to identify a reasonable "project area" given the nature of the proposed project. Leipsic concurs with FirstEnergy's proposed definition. (FirstEnergy Att. at 7; Leipsic Reply at 1.)

The Board finds that the proposed revisions to the rule submitted by FirstEnergy should be denied. FirstEnergy offers no reasoning regarding why it believes the terms "contiguous geographic boundary" and "associated setbacks" are vague. The Board finds that the term "contiguous boundary" is appropriate because it enables us to ensure the applicant is providing a boundary map of leased property that shows a defined project area that includes all leased property and setbacks. This is necessary because it is not possible to enforce a requirement that the applicant provide information on a defined area for resources, e.g., cultural resources, without a defined reference boundary. Therefore, the Board finds that the terms "contiguous boundary" and "associated setbacks" should be maintained.

(b) EverPower states that the rule defines "project area" as including properties under lease or agreement. EverPower states that a wind farm may not have any facilities sited on some of its leased properties. Thus, including these properties in the definition will enlarge the project area and unnecessarily expand the study area for a project. To avoid this, EverPower recommends the project area definition be revised to provide that the project area means all land within a contiguous geographic boundary that contains the facility and associated setbacks. Leipsic concurs with EverPower's proposed definition. (EverPower at 1; Leipsic Reply at 1.)

The Board finds that the proposed definition submitted by EverPower has merit and should be adopted. The Board notes that it is important to include leased properties in the definition of "project area," especially for wind farms, because

> the property line setback is based on the edge of the leased property. As such, the Board will add the phrase "that contain any components of the facility."

(15) Paragraph (HH) - The current definition of "replacement of an existing facility with a like facility" means replacing an existing major utility facility with a major utility facility of equivalent rating and operating characteristics. As proposed by Staff, this definition was changed to state that it means:

> ***replacing an existing major utility facility with a major utility facility of equivalent size, rating and operating characteristics, and within the same right-of-way. If the existing facility includes material sizes and specifications that are no longer widely manufactured and available, replacement with the nearest equivalent material available that meets the needs of the project is considered a replacement with a like facility.

OGA states that narrowing the definition of like to equivalent is too restrictive for the circumstances that applicants face today. OGA also asserts that the phrase "no longer widely manufactured and available" is insufficient and unclear, because, for example, some natural gas companies have defined specifications for the pipe that cannot be met through its normal supply sources at specifically negotiated prices. In addition, OGA argues the above-referenced definition excludes replacing several smaller pipelines with a single larger pipeline. (OGA at 2-3.)

FirstEnergy agrees that the definition should be revised so that it can maintain the flexibility to replace existing facilities with similar facilities, even in situations where the existing materials are still available, but are not generally considered appropriate on the FirstEnergy system. FirstEnergy proposes the definition be rewritten to provide for instances where the material sizes and specifications are no longer generally used by the applicant. OGA concurs with FirstEnergy's proposed definition. (FirstEnergy Att. at 7-8; OGA Reply at 2.)

Contrary to OGA's assertion, the Board believes that Staff's proposal does not narrow the definition. In fact, we note that the term equivalent is included in the current definition of this term. However, we find the definition should be clarified to provide for situations where the materials are no longer used by the applicant and to require that replacements should be the nearest equivalent standard industry size. Therefore, the Board finds that the proposals by OGA and FirstEnergy should be adopted, in part, and the rule should be revised accordingly.

(16) Paragraph (KK) - This paragraph defines "standard certificate application" for purposes of this Chapter. FirstEnergy contends that this term is not used consistently throughout the rules (FirstEnergy Att. at 5). As indicated previously, the Board agrees with FirstEnergy and adopts this proposal. The Board has amended "application" to "certificate application" and "accepted, complete application" now means "standard certificate."

(17) Appendices A and B - These sections set forth the application requirement matrix for electric power transmission lines.

(a) In Appendix A, FirstEnergy proposes adding another section to the matrix only requiring a construction notice (CN) for lines greater than 0.2 miles and less than 2 miles in length located completely on property owned by or under easements granted to the applicant. FirstEnergy also proposes revising (1)(c) of Appendix A to include, for a letter of notification (LON), only lines greater than 0.2 miles in length, but not greater than 2 miles in length, where any portion is located on property not owned by or under easements granted to the applicant. Further, FirstEnergy suggests that section (1)(d)(i) be rewritten to include lines that are completely on property owned by a customer, or owned by, or under easements to, the applicant, and that section (1)(d)(ii) be rewritten to include any portion of lines on property owned by someone other than the specific customer or applicant. (FirstEnergy Att. at 8-9.)

The Board finds that FirstEnergy's proposed revisions to these sections should be denied. The Board notes that it would be difficult for Staff to verify the status of easements to determine eligibility for a CN filing under FirstEnergy's proposal. In addition, the acquisition of easements does not necessarily reduce the amount of review required for the project or the impacts to adjacent properties. The Board believes that it would be more appropriate for applicants to request a waiver of the notice requirements for projects where there is little or no impact to properties adjacent to the easement.

(b) FirstEnergy also suggests changing the word utility to applicant in Appendix A (1)(d)(ii) and (iii), and in Appendix B (FirstEnergy Att. at 8-9). The Board finds merit with this proposal and the Appendices should be revised where appropriate.

(c) In order to clarify whether language in Appendix B refers to the entire pipeline or just the segment of the pipeline that is the subject of a new construction project, OGA recommends each reference to pipelines in Appendix B be amended to read "pipelines or pipeline segments" (OGA at 4). The Board finds that OGA's proposed change is reasonable and should be adopted.

Ohio Adm.Code 4906-2 - Power Siting Procedural Provisions

Comments on Ohio Adm.Code 4906-2-02 – Filings of pleadings and other documents

(18) Paragraph (B) - This section sets forth the Board's requirements for paper filings and provides that, if the filer does not file the requisite number of copies or, in the alternative, 20 copies, the document may be stricken from the case file.

(a) FirstEnergy states that the Board should consider removing any rule reference that allows changes to the requirements for filing of documents that are made through guidance and/or web-based

publication of requirements by either the Board or the Board's Docketing Division. For example, FirstEnergy notes that the rule allows the Docketing Division to alter the number of copies required for filing without rulemaking. FirstEnergy requests that the Board remove and/or correct any proposed rule that relies on guidance or requirements outside of the rules to establish any requirement, procedural or otherwise. (FirstEnergy Att. at 11.)

The Board finds that FirstEnergy's suggestions are without merit and should be denied. All necessary and required docketing procedures are set forth in codified rules. However, it is essential that Staff and the Docketing Division are able to provide the necessary administrative instructions to filers on the day-to-day practical application of the rules. For example, technical specifications and requirements for the filing and electronic filing (e-filing) of documents are provided to filers in a guidance format so that they understand the perimeters of our docketing information system (DIS). Such open communication is imperative in order for the Docketing Division to operate effectively and efficiently. Moreover, applicants communicate with Staff and the Docketing Division to ensure that the necessary information in a filing is provided in the appropriate form and format, so that the application review and decision making process can be done in an efficient and timely manner. It is the Board's expectation that such mutual communication will continue with the adoption of these revised rules. The guidance documents assist in this regard.

(b) Leipsic points out that, if an applicant electronically files (e-files) a document, the filer is essentially only providing one copy of the document. Therefore, Leipsic argues that, if an applicant chooses to file paper copies, the threat of striking a document from the case file for

insufficient number of copies is too harsh. Leipsic proposes that, as long as the applicant has provided enough copies to convert onto the electronic system, 20 copies is unnecessary. (Leipsic at 2-3; Leipsic Reply at 2.) FirstEnergy agrees (FirstEnergy Reply at 11).

Initially, the Board notes that, in the current rules, applicants must file 25 paper copies of applications, and there is no provision for e-filing; however, Staff proposed that hard copies be reduced to 20. If an applicant chooses to e-file, Ohio Adm.Code 4906-02-2(D) contains basic guidelines for e-filing that, if followed, reduce the number of required paper copies to five. The disparity between the number of hard copies needed by the Board depends on the resolution of the documents provided. For example, if an applicant files a paper copy of an application or other document, the document is scanned into DIS in black and white, at a low resolution. Reproductions are hard to read, and maps or other images are typically illegible. As a result, many areas of the scanned paper filing that are available to Staff and the public are not useful. For this reason, paper filing requires a larger number of hard copies to be distributed among Staff. In comparison, typically, when an applicant e-files documents directly, with no need for scanning, the electronic version can be reproduced at very high quality; thus, eliminating the need for additional paper copies. In light of the potential disparity in the quality resolution in scanned documents versus e-filed documents, the Board finds that it is necessary to require a maximum of 20 hard copies as set forth in this rule; therefore, the recommendation by Leipsic should be denied. However, it is our expectation that Staff and the Docketing Division will continue to work with applicants to ensure the minimum number of paper copies are filed, not only to conserve resources, but also to save

applicants and the Docketing Division time and money.

(19) Paragraph (C)(3) - The paragraph sets forth the Board's facsimile transmission (fax) filing requirements and requires the filer of a fax document to notify the Docketing Division by 5:00 p.m. in order to have the faxed document accepted.

Leipsic argues that this section should be deleted because it may violate R.C. 4906.12 and 4901.10, which provide that filings may be made until 5:30 p.m. (Leipsic at 3).

While the Revised Code provides that the Board's offices will be open until 5:30 p.m., for administrative docketing purposes, it is necessary to ensure that any documents that are received via fax can be retrieved and date stamped prior to the end of the Board's office hours. This is an administrative docketing function that requires a period of time before the end of the offices hours for personnel to complete. Contrary to Leipsic's assertion, the Revised Code does not require that faxed documents be accepted for filing right up until 5:30 p.m.; therefore, this request should be denied.

(20) Paragraph (C)(5) - This paragraph provides that faxed documents cannot be more that 30 pages in length.

Leipsic states that this rule apparently is meant to ensure one filer does not prevent others from making filings. Leipsic, however, argues this section should be deleted because one can argue that the restriction violates R.C. 4901.10, which permits all filings of any length during the Board's business hours. (Leipsic at 3-4.)

The Board finds that Leipsic's proposal is without merit. There are several viable alternatives that parties may use to file documents other than via fax; fax is just one discretionary option that the Board offers. Should a party wish to submit a document that is longer than 30 pages, it may prevail itself of one of the other filing options offered by the Board. Therefore, Leipsic's request should be denied.

(21) Paragraph (C)(6) - This paragraph provides that any document that is received, in whole or in part, after 5:30 p.m., will be considered filed on the following business day.

Leipsic states that this rule should consider parts of a document received by 5:30 p.m. to be filed on that day, and those parts received after 5:30 p.m. to be filed the next day. Leipsic argues that this rule is overly harsh, and maintains that mechanical problems or insufficient equipment in the Docketing Division are not the fault of the filer and are unfair. Leipsic believes the rule should be amended to provide that the filer of a fax is only responsible for failures in transmission that are within the filer's control and that the portion of a faxed document received by 5:30 p.m. will be considered filed on the day the fax was sent. (Leipsic at 4.)

Initially, the Board emphasizes that it is the responsibility of the filer to confirm that all filings are made, through whatever method it chooses, in conformance with the rules. There are several methods a filer may choose for filing documents with the Board. The burden is on the filer to ensure that its filings are made properly and, if there are mechanical problems, the filer is responsible for choosing another method to achieve its filing. Moreover, as stated previously, there are justifiable administrative reasons for requiring the submission of faxed filings within a specified timeframe. Therefore, we find that the request by Leipsic is without merit and should be denied.

(22) Paragraph (D) - This paragraph sets forth the Board's requirements for e-filing.

FirstEnergy requests clarification with regard to the document formats that are acceptable and searchable for e-filing. Currently, FirstEnergy e-files documents in PDF, but some filings are not always text searchable. (FirstEnergy Att. at 12.)

Initially, the Board notes that we are not mandating a particular format; however, it is our expectation that filers will file documents that are searchable. However, we recognize that there may be some documents where the filer does not have access to the original document and it may not be possible to provide a searchable version. Notwithstanding this rare occasion, when possible, the Board is requiring the documents be e-filed in a searchable format.

(23) Paragraph (D)(1) - This paragraph provides that all documents e-filed must comply with the e-filing manual and the DIS

technical requirements, as well as any additional guidelines provided by the Board.

FirstEnergy argues that this paragraph allows the Board, Staff, and the Docketing Division to alter filing requirements through changes to a guidance manual. FirstEnergy believes it is inappropriate for the proposed rules to include nonspecific references to guidance documents. FirstEnergy argues that the Board is not permitted to adopt rules that allow it to alter filing requirements by guidance. FirstEnergy states that, to the extent the Board wishes to establish requirements for e-filing, it should do so through the adoption by reference in the rule to the current version of the e-filing manual and any other relevant documents. Further, if the requirements for e-filing need to be changed in the future, the Board should only do so through rulemaking.

As with our previous determination, the Board finds FirstEnergy's suggestions on this issue to be without merit and they should be denied. The Board disagrees with FirstEnergy's assessment that mere administrative adjustments in its e-filing day-to-day processes require that such adjustments be submitted to rulemaking procedures. All necessary and required docketing procedures are set forth in codified rules. However, it is essential that the Docketing Division maintain a guidance manual that assists filers with regard to the technological capabilities of DIS, as well as answers to frequently asked questions.

(24) Paragraph (D)(4) - This paragraph sets forth requirements for the e-filing of certificate applications.

FirstEnergy requests clarification regarding the requirement of filing a full electronic copy of the application. FirstEnergy believes the Board should not require the filing of any underlying data sets, geographic information systems (GIS) information or layers, and/or other technical information, including software used to compile, examine, and analyze the data that is ultimately presented in an application. FirstEnergy argues that the full electronic copy of the application should be limited to electronic copies of the hard paper copies filed with the Board. (FirstEnergy Att. at 13.)

Initially, the Board points out that the rules do not require the filing of software or licensed data, and the geographic data-filing paragraph in Ohio Adm.Code 4906-2-04(C)(6) contains a specific exclusion for licensed data obtained by the applicant under a licensing agreement which prohibits distribution. Notwithstanding this exclusion, it is essential that applicants e-file documents that permit the Board to review the underlying data information. In order to carryout our responsibilities under R.C. 4906.10, in reviewing proposed facility applications and performing field investigations, it is essential that as much detailed information as possible is provided to the Board. The provision of the underlying information enables the Board to more efficiently review and consider applications. Therefore, we find that FirstEnergy's request should be denied.

(25) Paragraph (D)(5) - This paragraph requires that any e-filed document must be received by 5:30 p.m. or it shall be considered filed the next business day. The rule also provides that the Docketing Division may reject any filing that does not comply with the e-filing manual and technical requirements.

(a) Leipsic's objections to this paragraph are the same as its previous objections for the rule pertaining to faxes. This rule states that, if the last page of an e-filing was not received by 5:30 p.m., the entire document will be considered to have been filed the next day. Leipsic argues that the part of a document that is received by 5:30 p.m. should be considered docketed. (Leipsic at 4-5.)

As with the Board's previous determination, there are justifiable administrative reasons for requiring e-filed documents to be fully filed before the document can be date stamped as filed. We reiterate that it is the responsibility of the filer to confirm that all filings are fully made, through whatever method it chooses, in conformance with the rules. Accordingly, we find that Leipsic's argument is without merit and should be denied.

(b) FirstEnergy argues that this proposed rule allows the Docketing Division to reject a filing for noncompliance with an e-filing manual and that

the Board is not permitted to adopt rules that allow it to alter filing requirements by guidance. FirstEnergy repeats its contention that, in establishing requirements for e-filing, the Board should do so through the adoption by reference in the rule to the current version of the e-filing manual or, if the requirements for e-filing need to be changed in the future, the Board should only do so through rulemaking. (FirstEnergy Att. at 12.)

The Board has previously addressed FirstEnergy's arguments on this issue and we continue to find that they are without merit and should be denied. The technical and process manuals are essential for the day-to-day provision, and operation and maintenance of the e-filing system. FirstEnergy's inference that these manuals go beyond the scope of the Board's codified rules is unfounded.

(26) Paragraph (D)(6) - This paragraph provides that, if an e-filed document is accepted, then notice, via the Docketing Division's e-filing system will be sent those who have electronically subscribed to the case. The last two sentences of this rule provide that the e-mail notice constitutes service of the e-filed document on those who are electronically subscribed to the case and, upon receiving the e-mail notice that the e-filed document was accepted by the Docketing Division, the filer is to serve copies of the document on those that are not subscribed to electronic service.

EverPower notes that proposed Ohio Adm.Code 4906-2-05(B) repeats this rule and states that a filer must review the service notice for the case and list in the certificate of service all parties subscribed to the case. However, EverPower argues that, because service notices are typically repetitive, lawyers should be able to list all parties and the method served, rather than having to monitor the service notice and case subscription list. EverPower, therefore, argues that the last two sentences of paragraph (D)(6) should be deleted and all of Ohio Adm.Code 4906-2-05(B), with the exception of the last sentence, should be deleted. (EverPower at 1-2.)

The Board notes that the e-filing system, and the e-mail service provided by the Docketing Division on those persons that are signed up for e-filing service, is a benefit to filers that is not required by statute. The fact that the e-filing system can accommodate this added benefit in no way should alleviate the requirement that the filer has the responsibility to ensure that those persons on the service list that are not subscribed to e-filing service are served a copy of the filed document. Therefore, the Board finds that EverPower's suggestion should be denied.

(27) Paragraph (D)(8) - This paragraph provides that a person making an e-filing bears all the risk of transmitting a document.

Leipsic states that this provision is unfair and that, assuming the filer has complied with the e-filing manual and technical requirements of the Docketing Division, the filer should not be penalized for problems that occur on the receiver's end. Leipsic argues that this paragraph should be amended to state that the person e-filing bear the risk for failures over which the filer has control. Further, if e-filing cannot be accomplished, Leipsic recommends that this paragraph be replaced with language that permits additional time for the party to file paper copies and computer disks; if such a filing can be made, Leipsic recommends that paper and disk copies be accepted as filed on the day the e-filing could not be made. (Leipsic at 3; Leipsic Reply at 3.)

As stated previously, the burden to ensure filing rests with the filer and not the Board or its Docketing Division. Therefore, the Board finds that the request should be denied. However, the Board finds value in Leipsic's recommendation in its reply comments and, therefore, has amended the rule to include the proposed language. The only exception is that, in such a circumstance, the Board will require the filing of 15, rather than 10, disks in order to fulfill the needs of the Board and its Staff.

(28) Paragraph (E) - This paragraph sets forth the five different case status designations used by the Docketing Division. Leipsic contends that these definitions should be placed with the other definitions in Ohio Adm.Code 4906-1-01. The Board finds that Leipsic's proposed placement of the definitions in this paragraph should be denied. These terms are provided in

this paragraph in an effort to explain the designation codes used by the Docketing Division. Such designations are not referred to in other parts of the rules. Therefore, this paragraph is the appropriate location for these designations.

Comments on Ohio Adm.Code 4906-2-04 – Form and general content requirements for certificate applications

(29) Paragraph (C)(1) - This paragraph requires applicants for certificates to quantify and provide support for the costs and benefits of the decisions, direct and indirect, of siting decisions.

AEP Transco argues, and Leipsic and FirstEnergy concur, that this paragraph is too broad and vague and that it might have unknown consequences. AEP Transco states that applicants already provide the need for the project, the costs of alternatives, and the economic and environmental effects of the alternatives. AEP Transco argues that this rule is redundant and should be better defined. FirstEnergy agrees that this rule is redundant to the extent it requires the quantification of the cost of alternatives for a proposed project, and vague to the extent it seeks quantification of costs of siting decisions outside of the economic evaluation of project alternatives. (AEP Transco at 2; Leipsic Reply at 3; FirstEnergy Reply at 3-4.)

The Board finds that the comments of AEP Transco, Leipsic, and FirstEnergy are without merit and should be denied. The Board notes that this is not a proposed change and that this rule is currently contained in Ohio Adm.Code 4906-5-03(D). The Board interprets the phrase "direct and indirect effects of siting decisions" in the rule to have the same meaning as "economic and environmental effects of the alternatives," which, as AEP Transco asserts, the applicant already provides. The rule also states that effects shall be expressed in monetary and quantitative terms whenever practicable. The Board is aware that it is not always practical to provide cost-benefit analysis for every type of impact. This rule is merely a guideline for the type of information that is preferred. The Board does not find this rule to be redundant.

(30) Paragraph (C)(2) - This paragraph states that information filed in response to the requirements in one section of the

application requirements shall not be deemed responses to any other section of the certificate application requirements.

Leipsic indicates this rule seems to prohibit references to other parts of the application; however, when the information is the same, the inability to provide such references would promote repetition. Leipsic requests clarification of the rule and proposes that the phrase "without a clear reference to the information that was given in a prior section" be inserted into the paragraph. (Leipsic at 6.)

The Board agrees with Leipsic and finds that the proposed clarifying language should be adopted.

(31) Paragraph (C)(4) - This rule states that information shall be derived from onsite surveys and the best available, most current, reference materials.

EverPower states, and Leipsic concurs, that, in order to avoid disputes over the contents of an application, any dispute of the quality of the information presented in the application should be left to the evidentiary hearing process. EverPower argues that the proposed rule should be deleted or, in the alternative, the phrase "accurate and acceptable reference materials" should replace the phrase "best available, most current reference materials." (EverPower at 2; Leipsic Reply at 2.)

The Board finds that EverPower's recommendation should be denied. The Board notes that the requirement to use onsite surveys would only apply to information that requires field surveys in order to properly evaluate the project. Delaying all questions about the quality of information in the application to the evidentiary hearing would limit the ability of Staff to conduct its investigation. The Board notes that the evaluation of the quality of information begins as soon as the application is filed and is taken into consideration when determining completeness of the application. Further, this paragraph provides basic guidance for the quality of information expected. While the phrase "best available, most current" may be open to debate, the Board believes that the suggestion offered of "accurate and acceptable" does not provide clarity. However, the Board finds that the rule should be revised to insert the words "as needed" into the rule.

(32) Paragraph (C)(6) - This rule requires the applicant to supply digital geographic data that was used in the preparation of any maps submitted to Staff.

AEP Transco asserts that this paragraph may be problematic because the applicant may not own the rights to the data and some of the data may be proprietary and confidential. AEP Transco further explains that it is opposed to providing digital information that could be edited or reproduced in formats that are out of its control and may essentially result in an applicant being forced to provide data support to Staff along with data updates. However, AEP Transco supports providing data for field delineated streams and wetlands, and data that Staff would find useful for conducting site visits. (AEP Transco at 2-3.) Leipsic and FirstEnergy agree with AEP Transco concerning geographic digital data used in preparing an applicant's maps. FirstEnergy states that this information, which is used in map preparation as part of an application, is generally unnecessary for a review of an application. FirstEnergy argues the electronic data used to prepare the maps introduces the possibility of confusion and complexity into siting matters. Further, electronic data submittal should be limited only to that information necessary to assist the Board in review of the physical location of a proposed project. (Leipsic Reply at 3; FirstEnergy Reply at 4.)

The Board finds that the recommendations of AEP Transco, Leipsic, and FirstEnergy should be denied. This requirement has been in place for the past five years, since the last rule review (*See* Ohio Adm.Code 4906-13-01(C), 4906-15-01(C), and 4906-17-02(C)). During the time in which the rule has been in place, the Board has not been aware of any concerns from applicants. Additionally, regarding licensed data, the Board notes that the rule contains an exclusion for data obtained by the applicant under a licensing agreement which prohibits distribution. In regard to data sensitivity, when such a situation arises, the Board and Staff work with applicants in protecting sensitive data and/or granting appropriate waivers. Moreover, the Board notes that sharing mapping data should only improve the accuracy of the interpretations and representations of the application. Also, regarding data updates, the Board must be informed about changes to any

type of information in the application; mapping data is not unique in this regard.

(33) Paragraph (C)(7) - This rule sets forth requirements for map scale, format, and content.

AEP Transco states that this paragraph is arbitrary, unnecessary, and should be removed, as it would be preferable to require an applicant to submit legible maps with reasonably differentiated patterns and colors. AEP Transco asserts that it is in the applicant's best interest to prepare and submit clear, legible maps. (AEP Transco at 3). FirstEnergy agrees that specifics regarding the maps should be left to the discretion of the applicant, stating that attempting to prescribe requirements for map scale, format, and content limits the ability of applicants to provide information in the most useful and informative forms. FirstEnergy argues that the requirement should be for legible maps. Moreover, FirstEnergy argues that applicants should be afforded the ability to consolidate mapping requirements, if appropriate, and provide any additional information requested by the Board, during the review process. (FirstEnergy Reply at 5.)

Initially, the Board emphasizes that we are under a statutory mandate to investigate applications for certification to ensure compliance with all requirements in R.C. Chapter 4906. As such, it is necessary for our Staff to conduct field investigations of the proposed sites. Noting that the burden to support the application and its conformance with the statutory requirements is on the applicant, we would expect that the applicant would want to file all necessary documents, including applicable maps, in the docket. The Board believes this rule is necessary because applications frequently contain maps that are not legible due to scale, numerous overlapping and conflicting features, and an unreasonable number of differentiated patterns and colors. It is the intent of this rule to provide appropriate guidance on what constitutes legible maps with reasonable differentiated patterns and colors. Moreover, we find that dictating the scale will minimize the production of illegible maps thereby reducing data requests for new maps, which by extension, speeds up the application process and leads to greater overall efficiency in the power siting process. The Board notes that nothing in the rules precludes the

applicant from referring to a common map or maps, so long as the maps remain legible. The Board finds that AEP Transco's and FirstEnergy's recommendations should be denied. However, in an effort to clarify this point, the Board will revise the rule to make the intent more evident. The Board will further clarify this point by adding the words, "at least" before all mapping scale requirements. This would allow the applicant to provide maps at a larger scale where needed for legibility.

Comments on Ohio Adm.Code 4906-2-05 - Service of pleadings and other papers

(34) Paragraph (B) - This paragraph provides that notice, via the Docketing Division's e-mail notice, is adequate for service on the parties listed in the case record. As summarized previously, EverPower states that lawyers should be able to list all parties and the method served, rather than having to monitor the service notice and case subscription list. EverPower, therefore, argues that all but the last sentence of this paragraph should be deleted. (EverPower at 1-2.) Again, the functionality of the Board's e-filing system does not alleviate the requirement that the filer has the responsibility to ensure that those persons on the service list, who are not subscribed to e-filing service, are served a copy of the filed document. Therefore, EverPower's request should be denied.

Comments on Ohio Adm.Code 4906-2-08 - Signing of pleadings

(35) Paragraph (A) - This rule states that persons who e-file documents shall use "/s/" followed by their name to indicate a signature where applicable. Leipsic contends that the rule is too limiting; therefore, it should be amended to allow for the use of electronic signatures (Leipsic at 6). The Board agrees with Leipsic and finds that Leipsic's proposed language should be adopted.

(36) Paragraph (B) - This paragraph states that each application for a certificate shall include a statement, signed by the chief executive officer, concerning the truth and correctness of the information in the application.

Leipsic states that this rule is too burdensome, as the chief executive officer of a company may be far removed from the

actual development of the application. Leipsic recommends the rule state that the particular person signing the affidavit must be authorized by the applicant and qualified to state that the application is true and correct. (Leipsic at 6.) FirstEnergy concurs, stating that the signatory requirement for applications should be broadened to include other responsible corporate officials (FirstEnergy Reply at 11; FirstEnergy Att. at 13). OGA and Leipsic agree with FirstEnergy's proposed language (OGA Reply at 2; Leipsic Reply at 3).

The Board finds that these recommendations have merit and should be adopted. Therefore, the rule should be revised as suggested by FirstEnergy.

Comments on Ohio Adm.Code 4906-2-09 – Hearings

(37) Paragraph (C) - This paragraph provides that members of the public offering testimony at a hearing shall be sworn in or affirmed.

Leipsic states that this rule takes away the ability of a person to provide unsworn testimony. Leipsic notes that sometimes those who are sworn must be subject to cross-examination in order to correct the record; however, some witnesses may just want to give their opinions without feeling intimidated. Leipsic recommends, and FirstEnergy concurs, that the rule be revised to provide that members of the public to offer testimony at the portion or session of the hearing designated for the taking of public testimony "may" be sworn in or affirm that their statements are true to the best of their abilities. (Leipsic at 7 -8; FirstEnergy Reply at 11.)

The purpose of the transcribed local hearings is to receive sworn testimony from those individuals affected by the application and provide parties and opportunity to cross-examine such witnesses if they so choose. The Board believes it is important that witnesses understand that only sworn testimony will be used by the Board in its consideration and review of an application. Should an individual wish to provide an unsworn statement, he/she will be permitted to do so; however, the statement will be considered a comment in the proceeding and not a part of the record for consideration of the application. Therefore, the Board finds that Leipsic's

recommendation should be denied and sworn testimony should continue to be offered at public hearings.

Comments on Ohio Adm.Code 4906-2-21 - Motions for protective orders

(38) General - This rule sets forth the requirements for the filing of motions for protective orders.

(a) FirstEnergy requests that the Board include language in the rule allowing for at least a 30-day notice to any party that has obtained a protective order prior to disclosure of any confidential information, regardless of whether the order has expired (FirstEnergy Att. at 14). The Board finds that FirstEnergy's request should be denied. If a protective order is due to expire, it is the responsibility of an applicant, not the Board, to keep track of the expiration date and act accordingly.

(b) FirstEnergy notes that this rule does not identify critical energy infrastructure information (CEII) as a category of information that can be protected from disclosure. FirstEnergy recommends that the Board develop a clear and specific set of procedural rules related to the submittal, management, and disclosure of CEII in all Board proceedings that is separate from the general rules related to the protection of other forms of confidential information. FirstEnergy asserts that CEII warrants specific protection because protective orders are subject to an automatic sunset provision under proposed Ohio Adm.Code 4906-2-21(F). Specifically, FirstEnergy suggests: CEII be defined as any information considered CEII under federal law; CEII not be subject to disclosure during or after a Board proceeding; to the extend any party seeks CEII during any Board proceeding, that party should be subject to Board orders prohibiting the dissemination and use of the information except as reasonably necessary for its case; and CEII

should be returned and/or destroyed following the conclusion of a Board proceeding. (FirstEnergy Att. at 11.)

Initially, the Board notes that motions for protective treatment are considered on a case-by-case basis and the burden is on the movant to support its request for protection. This process applies to all types of information, including CEII. The Board believes that there are adequate provisions in the administrative rules for the protection of confidential information that has been filed under a protective order, including CEII. Accordingly, we find that FirstEnergy's recommendation should be denied.

(39) Paragraph (F) - This rule provides that any order prohibiting public disclosure shall expire after 24 months. As stated in our Entry calling for comments on these rules, these rules have been examined to assure that they conformed to the procedural rules utilized by the Public Utilities Commission of Ohio (Commission). By Finding and Order issued by the Commission on January 22, 2014, in *In re the Commission's Review of Rules of Practice and Procedures*, Case No. 11-776-AU-ORD, the Commission adopted a revision to this paragraph clarifying that, if within the 24-month period provided for in this rule there is an application for rehearing filed or a public records request, the Commission may reexamine the need for protection issue de novo. At this time, the Board finds that it is appropriate to likewise make that clarification in this paragraph; therefore, the paragraph has been revised to include this provision.

Comments on Ohio Adm.Code 4906-2-24 – Stipulations

(40) Paragraph (B) - This paragraph requires stipulations to be filed 24 hours prior to a hearing.

FirstEnergy notes that stipulations are often completed just before or during hearing. Therefore, FirstEnergy proposes that the rule be redrafted to allow the administrative law judge (ALJ) to accept stipulations at any time in a proceedings, provided submittal of the stipulations is not prejudicial to

conducting a fair hearing on an application. (FirstEnergy Att. at 15.)

The Board is sensitive to the need for parties to have time to complete settlement discussions and stipulations. However, it is essential that some guidelines be provided in the rule that permit all parties, both stipulating and nonstipulating, as well as the ALJ, time to review a stipulation in order to prepare for the hearing. Should the parties need more time, they can request that the hearing be rescheduled to a later time. Therefore, the Board finds that FirstEnergy's proposal should be denied.

Comments on Ohio Adm.Code 4906-2-32 - Applications for rehearing

(41) Paragraph (A) - This paragraph sets forth the requirements for filing an application for rehearing before the Board.

FirstEnergy states that the rule impermissibly expands the statutory authority authorizing an application for rehearing from "any affected person, firm, or corporation" to file an application for rehearing. However, R. C. 4903.10, which establishes the criteria for seeking rehearing, limits the ability to request rehearing to parties who have "entered an appearance in person or by counsel in the proceeding." FirstEnergy argues that the Board may not expand the class of parties entitled to seek rehearing, which is limited by statute and that the proposed rule should be changed to reflect the specific language of the applicable statute. (FirstEnergy Att. at 15.) Leipsic supports FirstEnergy's comments with respect to the less-than-statutory standard contemplated by the rule for an application for rehearing (Leipsic Reply at 4).

The Board finds the arguments of FirstEnergy and Leipsic to be without merit. This paragraph does not supersede the statutory requirements set forth in R.C. 4903.10; rather, the rule appropriately paraphrases the two relevant parts of the statute contained in the statute's first two paragraphs. Accordingly, the commenters' proposal should be denied.

Ohio Adm.Code Chapter 4906-3 - Procedural requirements for standard certificate applications

(42) General - These rules set forth the procedural requirements for standard certificate applications.

FirstEnergy proposes requirements of its own devising with respect to a public information/public participation process. FirstEnergy states that, although these requirements will increase the amount of time and effort that is required to provide notice to potentially affected property owners along and near major utilities, it believes its approach will be more fair and efficient than the approach included in the proposed rules. (FirstEnergy Att. at 21-23.) EverPower states that, given the difficulty of mass mailings, the Board's current Ohio Adm.Code 4906-5-08(D), which provided for the possibility of the applicant's inability or inadvertent failure to notify certain persons, should be maintained in Chapter 4906-3 as a general statement (EverPower at 4).

The Board disagrees with FirstEnergy and agrees with EverPower's contention that reasonable efforts at notification are not always successful. The Board, therefore, finds that EverPower's recommendation should be adopted as a general statement for this rule. Therefore, the Board finds that EverPower's suggested language should be adopted and inserted into paragraph (B)(2), under Ohio Adm.Code 4906-03-03.

Comments on Ohio Adm.Code Chapter 4906-3-01 - Purpose and scope

(43) General - This rule defines the purpose and scope of this section of the rules.

(a) FirstEnergy recommends that clarifying language be added to this rule that limits all the provisions of proposed Ohio Adm.Code Chapter 4906-03 to standard certificate applications only (FirstEnergy Att. at 6). The Board finds that this chapter heading clearly denotes that the provisions therein address standard certificate application;

therefore, no further clarification is needed. FirstEnergy's proposal should be denied.

(b) FirstEnergy states that language, similar to the language in proposed Ohio Adm.Code 4906-3-10 (C), should be added, in a new proposed Ohio Adm.Code 4906-3-01(C), amending the language in this rule, so the Board can ensure that it has the authority to correct the inadvertent failure of service or notice of the myriad of public information requirements, in the appropriate circumstance, including all notices, service requirements and other forms of public information concerning the siting process (FirstEnergy Att. at 22-23). As noted previously, the Board finds that this recommendation should be adopted and paragraph (B)(2) has been included under Ohio Adm.Code 4906-03-03.

Comments on Ohio Adm.Code 4906-3-03 - Public information program

(44) Paragraph (B) - This paragraph requires that, no more than 60 days prior to submitting a standard certificate application, the applicant conduct at least one public informational meeting in the project area.

AEP Transco states that it has made modifications to its application based on public input in the past and sometimes that can take time. AEP Transco argues that the 60-day time period is too short and that requiring an application be submitted within 60 days after the public informational meeting could force the applicant to ask for a waiver of this rule. (AEP Transco at 4.) OGA and Leipsic agree that the 60-day time period is not adequate (OGA Reply at 2; Leipsic Reply at 4).

FirstEnergy agrees that the 60-day time period is inadequate if the purpose of the public informational meeting is to encourage members of the public to provide the applicant with information concerning potential routes/sites that might not be generally available. FirstEnergy believes this timeframe is too short to receive information from the public meeting and

incorporate it into the application; thus, applicants would likely be limited to presenting only the final routing options at the public informational meeting. FirstEnergy contends that, if the purpose of the public informational meeting is to secure information related to the selection of routes for these types of major projects, a more appropriate timeframe would be no more than 270 days before the filing of a standard certificate application. FirstEnergy argues that the proposed written notice requirement for public informational meetings and rules, which will allow applicants to describe project alternatives early on in the siting process, would fully address these concerns. Moreover, FirstEnergy asserts that there are substantial differences between generation facilities and transmission line projects, and encourages the Board to avoid a one-size-fits-all approach to the critical issue of public participation in siting projects. FirstEnergy notes that property rights often are obtained through negotiations with property owners before generation facilities are proposed to the Board, whereas the property rights for transmission facilities, due to the necessity of providing the Board with routing options, are generally obtained, either through negotiations or eminent domain, after the Board issues a certificate. FirstEnergy states that this significant difference between generation and transmission projects highlights the different value the public informational meeting process may serve in the different types of projects and that the current proposal will reduce or eliminate the value of the public informational meeting process to transmission projects. FirstEnergy states that it utilizes the flexibility in the current rules to conduct public meetings early in the siting process, in order to engage the community in open dialogue about a project before a final route is proposed to the Board. FirstEnergy also notes that, while the proposed rules do not preclude applicants from hosting more than one meeting, this would significantly increase costs and the dedication of employee time. FirstEnergy states that, although it appears to be an unintended consequence, the 60-day requirement in the proposed rules either forces the applicant to hold expensive and duplicative meetings or, by limiting public input to a single meeting late in the process, it eliminates meaningful public participation before routing options are submitted in an application. (FirstEnergy Att. at 17-18; FirstEnergy Reply at 6-7).

EverPower argues that there is no benefit to putting a time requirement on the public informational meeting. EverPower argues that design changes could occur after the public informational meeting, or delays in study completions could occur and that design changes or study delays could exceed 60 days after the informational meeting forcing another public informational meeting to take place in order to file the application. (EverPower at 2-3.)

The Board observes that the rule requires an applicant to hold a public informational meeting no more than 60 days prior to a filing. However, the rule does not prohibit the applicant from discussing plans with landowners or holding other community meetings prior to the public informational meeting. In fact, applicants are encouraged to engage the public much earlier, so that the project that is presented at the public informational meeting is as close as possible to what will be presented in the application. The applicant does not need to wait for its public informational meeting in order to obtain property owner permission to conduct field studies. The purpose of the public informational meeting is to inform affected property owners and the surrounding community of the project that will be presented to the Board. These public meetings are an opportunity for the public to ask the applicant questions and determine what level of interest they might have in the project, and to learn how to follow the project through the Board process if they desire. With this purpose in mind, the meeting could be held as late as the week the application is filed because the applicant would have collected all the public information they needed to complete the application. However, if the meeting is held too early and the project is still in the planning stages, attendees of the public information meeting may decide the project does not affect them, only to find out later that the project has changed and will affect them, but at a time when it is too late for them to be involved in a meaningful way. The Board believes there are many benefits to requiring the public informational meeting be held closer to the filing of the application. Therefore, we find that the proposals submitted by the commenters should be denied.

(45) Paragraph (B)(1) - This paragraph sets forth the requirements for the newspaper publication of notice of the informational meeting.

FirstEnergy requests that the Board more accurately define the size of the required newspaper public notice. FirstEnergy notes that provisions in the proposed rule reference a "standard newspaper page." However, many of the newspapers that it would publish in are no longer "standard size" newspapers. For instance, the *Columbus Dispatch* has recently significantly reduced the size of its pages. FirstEnergy states that the Board should consider a more defined size standard or the proposed rules should be changed to provide sufficient flexibility to ensure publication. (FirstEnergy Att. at 22.)

The Board finds merit in FirstEnergy's recommendation and the rules should be revised to provided that the requirement is at least one-fourth of the newspaper's standard newspaper page.

(46) Paragraph (B)(2) - This paragraph sets forth the requirements for sending notification letters 21 days before the informational meeting to each property owner and affected tenant.

(a) AEP Transco asserts that the rule should be modified to provide that an applicant should make a reasonable effort to send letters to each property owner and affected tenant. In support of its position, AEP Transco explains that it checks tax records and other property owner information in order to provide notice, but that information could be out of date. Further, AEP Transco points out that an applicant must still prepare newspaper notice regarding the time and place of the informational meeting. (AEP Transco at 5.)

The Board agrees that reasonable notification efforts are not always 100 percent successful and, as stated previously in this Order, this paragraph should be revised to provide for the potential of an applicant's inability or inadvertent failure to notify the requisite persons.

(b) Leipsic states that, since many of the abutting properties within a wind farm will be vacant agricultural fields with no recognized physical

mailing address on the property that could reach the tenant, this requirement to notify the "tenant" should only apply to occupied residential structures. Leipsic argues that, as evidenced by the lack of objections in most Board cases, where the notice is given later in the process, this additional step does not seem justified and the provision should be deleted or modified to be limited to occupied residential structures with identified physical mailing addresses. (Leipsic at 9.)

Initially, the Board notes that this rule applies to all types of applications, not just those that affect agricultural property. We believe the rule, as proposed, adequately sets forth our intent, which is that notice be served on the property owners, as well as those tenants with physical mailing addresses that are located on the affected property. Therefore, we find that Leipsic's request should be denied.

(c) FirstEnergy states that it is unsure how it can identify the correct group of property owners to receive a notice letter before a public information meeting. FirstEnergy notes that the proposed rule fails to state which property owners are entitled to this type of notice. FirstEnergy states that the process of providing written notice prior to the public informational meeting, when no routing or siting decisions have been finalized, creates the possibility for increased confusion and could have the unintended consequence of encouraging FirstEnergy and other applicants to significantly "over-notice." FirstEnergy, therefore, proposes the written notice be limited to the owners of properties crossed by any identified routes or sites that will be presented by the applicant at the public informational meeting. Further, FirstEnergy argues that the proposed rules also need to clarify that an applicant that uses its best efforts to identify property owners that may be potentially impacted by a proposed

project has met public notice requirements for the public information meeting. FirstEnergy states that, otherwise, unless the routes or sites are firmly established before the public information meeting, there is no reasonable way to limit the scope of the property owners receiving notice of the public informational meeting. (FirstEnergy Att. at 18-20.)

The Board notes that the paragraph at issue goes on to define "property owners and affected tenants" clearly, in subparagraphs (a) through (d). The written notice is indeed limited to properties owners affected by the applicant's proposed routes, again in subparagraphs (a) through (d). Therefore, we conclude that FirstEnergy's request is without merit and should be denied.

(d) EverPower states that mass mailings for wind farm projects are very time intensive and that, rather than adopt another mass mailing requirement at the very beginning of the application process, the Board should maintain its current rule of one mass mailing at least 30 days prior to the public hearing (EverPower at 3).

Again the Board emphasizes that this notification requirement is not an addition; only the timing of it has been changed. Moreover, the property owner notification requirement prior to the public hearing has been removed, except to notify any newly affected property owners that were not notified of the public informational meeting because they were not affected by the project at that time. Therefore, we find that EverPower's request should be denied.

(47) Paragraph (B)(2)(a) - This rule requires that the notification letter be sent to each property owner or affected tenant within the planned site or along the preferred or alternate routes of the proposed facility. AEP Transco recommends, and FirstEnergy concurs, that the words "preferred route" and "alternate route"

be changed to "proposed route options for the facility," as at the time of the informational meeting, an applicant may not have determined which routes will be labeled the preferred or the alternate (AEP Transco at 5; FirstEnergy Reply at 5). The Board finds that this proposal is reasonable and should be adopted.

(48) Paragraph (B)(4) - This rule requires that written comments be included in a certificate application and that the applicant address the comments.

EverPower states that including all written comments in an application, with a description of how comments were addressed, is not practical. EverPower argues that many written comments, such as comments stating opposition to a project or asking for larger setbacks, cannot be addressed, add little value to the process, and will not assist the Board in addressing an application. (EverPower at 4.)

The Board finds merit in EverPower's proposal and, therefore, this rule should be revised to require the applicant to summarize, in its certificate application, how many and what types of comments were receive at the public informational meeting. Additionally, in order to ensure consistency in the different chapters of our rules, the Board will also make this change to Ohio Adm.Code 4906-4-04(B)(3) and 4906-5-04(C).

Comments on Ohio Adm.Code 4906-3-04 - Combined standard and accelerated certificate applications

(49) This rule requires that all associated major facilities of a project entitled to accelerated review and approval may be included in the accelerated certificate application for the project. Further, electric generation plants and associated transmission lines and gas pipelines that do not qualify for accelerated review shall be filed in separate standard certificate applications.

FirstEnergy states that, in general, if part of a project requires an accelerated certificate application, a combined project should also be permitted to proceed under the accelerated certificate application process. FirstEnergy contends that all associated transmission and gas lines should also be subject to the accelerated review process, even in cases where those lines would be filed as a standard certificate application, if they were

stand alone projects. FirstEnergy requests that the Board include two new paragraphs reflecting that all associated facilities are subject to accelerated review. (FirstEnergy Att. at 23-24.)

The Board notes that the purpose of the proposed rule is to reduce the number of filings for associated projects. The Board believes that FirstEnergy's proposal may serve to qualify additional projects for accelerated review. We believe that S.B. 315 is clear on what types of projects qualify and the proposed is consistent with S.B. 315. Therefore, FirstEnergy's proposal should be denied.

Comments on Ohio Adm.Code 4906-3-05 - Alternatives in standard certificate applications

(50) This rule states that all standard certificate applications shall include fully-developed information on two sites/routes.

FirstEnergy requests that the rule be modified to allow for the submittal of more than the minimum number of sites and/or routes in a standard certificate application. FirstEnergy believes it may be appropriate to submit a preferred and one or more fully-developed alternate routes for electric transmission lines under certain circumstances and that the rules should reflect this possibility. Further, FirstEnergy believes that the reference to "two or more" sites should be "one or more," as there is no requirement to provide fully-developed information on an alternate site for a new generation facility. (FirstEnergy Att. at 24.)

Initially, the Board notes that the statute requires the applicant to delineate alternatives for the proposed sites/routes. Understanding that an applicant may review various alternatives before choosing its proposed preferred route, the requisite information for the best alternative route has been reviewed and considered. In order for the Board to effectively and efficiently review and consider an application in a timely manner, it is essential that all information, including information pertaining to the best alternative be provided at the time the application is filed. While there are cases in which an alternative routes/sites are not realistic alternatives, the Board has typically granted a waiver of this requirement once

the applicant has explained the particular circumstances. The Board believes that this information is essential in order for us to appropriately consider an application; therefore, we find that FirstEnergy's suggestion is without merit and should be denied.

Comments on Ohio Adm.Code 4906-3-07 - Service and public distribution of accepted, complete standard certificate applications

(51) General - This rule sets forth the applicant's service and publication requirements once notification has been received from the Board's chairman that the application is complete. FirstEnergy requests that, in order to save money, rather than serving a copy of the accepted application on public officials, applicants be allowed to provide a compact disc containing a copy of the application, with the understanding that, should the public official request a hard copy, one would be provided (FirstEnergy Att. at 25). The Board finds this request reasonable and, therefore, the rule should be revised accordingly.

(52) Paragraph (A)(1) - This paragraph specifies service of the accepted, complete application. FirstEnergy notes that the proposed rule refers to the "accepted, complete standard certificate application," which is not a defined term (FirstEnergy Att. at 6). The Board finds that this observation is well-made; therefore, the wording in this rule should be revised and the words "standard certificate" should be deleted. For consistency, this change will also be made throughout this chapter.

Comments on Ohio Adm.Code 4906-3-08 - Scheduling for complete standard certificate applications and the effective date of filing

(53) This rule sets the procedures for indicating the date upon which the application is deemed filed, fixing the date of the public hearing, and notifying the parties.

(a) FirstEnergy requests that the effective date of filing for purposes of scheduling the proceedings for an accepted complete standard certificate application should be the date of the initial procedural order issued by the ALJ. FirstEnergy states that, by setting the "deemed filed" date as

the date of the issuance of the initial scheduling order, all parties will have an understanding of the requirements and the ALJ will be able to initiate the proceedings in a predictable fashion. (FirstEnergy Att. at 25-26.)

The Board finds that the proposed rule is appropriate for purposes of establishing the procedural schedule in a proceeding; therefore, FirstEnergy's request should be denied.

(b) Leipsic states that this rule does not set a time frame within which the Board or ALJ shall issue an entry after the applicant has complied with the filing and distribution requirements. Because it has taken some time for the entry to be issued in the past, and because the hearing date is critical to the applicant's schedule, Leipsic requests that the word immediately be added to both paragraphs of the rule. Citing R.C. 4906.06(C), Leipsic notes that the hearing date is contemplated as being known immediately after the filing, so the proposed rule should be amended to include an immediate entry that sets the deemed filing date and sets the hearing. (Leipsic at 10-11.)

The Board disagrees with Leipsic's assertions. Prior to issuing the entry setting forth the schedule there are various administrative responsibilities that must be completed, including the process of securing and contracting for a facility for the public hearing. The Board is confident that the entries are being issued as expeditiously as possible. Therefore, the Board finds that Leipsic's request is without merit and should be denied.

Comments on Ohio Adm.Code 4906-3-09 - Public notice of accepted, complete standard certificate applications

(54) Paragraph (A)(1) - This rule sets forth the requirements for the initial public notice of a certificate application.

FirstEnergy states that, instead of the first public notice required in this rule, applicants should provide a written notice to each owner of property crossed by preferred and alternate routes for transmission lines, or adjacent to a new generation site, within 15 days of the filing of the accepted application. Further, FirstEnergy states that notice letters generally should include the same information as provided in proposed Ohio Adm.Code 4906-3-09(A)(1)(a)-(h). (FirstEnergy Att. at 21.)

The Board agrees with FirstEnergy and finds that the recommended changes should be adopted. The Board, however, will further amend the rule to specify that the mailing should also be sent to adjacent property owners and tenants.

Comments on Ohio Adm.Code 4906-3-10 - Proof of publication

(55) Paragraphs (A) and (B) - This rule sets forth the requirements for filing proof of newspaper publications of the application. Paragraph (A) states that proof of the first public notice shall be filed with the Board within 14 days of publication. Paragraph (B) states that proof of the second public notice shall be filed with the Board at least three days before the public hearing.

(a) AEP Transco argues that the time period for filing the second proof of publication is too short. AEP Transco states that some of the smaller periodicals only publish every other week and that it often takes several weeks to receive the necessary documentation from the publication. AEP Transco contends that it needs at least two weeks to gather the necessary documentation to docket its proof of publication. (AEP Transco at 5.) Similarly, Leipsic states that that it is nearly impossible to obtain a timely proof of publication from some newspapers. Because the newspapers require payment for the notice before it is published, there is no leverage to persuade the personnel to provide the proof of publication. According to Leipsic, many newspapers are not familiar with the need for proofs for notices that are not published in the legal section of the newspaper. Leipsic, therefore, argues that there is a need for some additional time to accomplish

the filing of the first publication proof and that, since there is nothing in the processing of the application that depends upon the proof being filed in a certain amount of time, there is no real reason not to permit more time. Leipsic suggests that the time period for filing proof of the first public notice be 30 days. (Leipsic at 11.) FirstEnergy proposes that a proof of publication of any newspaper notice be filed within 14 days of its receipt by the applicant rather than timing the filing of the proof of publication to any other date in the proceedings (FirstEnergy Att. at 26).

Initially, the Board notes that the rule allows for the filing of a copy of the notice from the newspaper(s) as proof of publication. No other documentation is required. As such, the Board disagrees with the commenters regarding the need for additional time. The contention that it would take the applicant two weeks to obtain a published newspaper for proof of the second public notice lacks merit. Depending on the date of publication, the applicant would have anywhere from four to 18 days to obtain the publication. Accordingly, the Board finds that this recommendation should be denied.

(b) With regard to filing the second public notice, Leipsic suggests that an applicant be allowed to file either the proof of publication or the entire newspaper. (Leipsic at 11.)

While the Board finds merit in Leipsic's suggestion, we believe that it may be challenging to have an entire newspaper filed. Therefore, this rule should be revised to permit the filing of either a copy of the entire date-marked newspaper "page" that contains the actual notice or a copy of the proof of publication from the newspaper in which the notice was published. Furthermore, for consistency, the last sentence of Ohio Adm.Code 4906-3-03(B)(1) should include this same requirement.

(56) Paragraph (C) - This rule states that inadvertent failure of service may be cured pursuant to an order of the Board or ALJ, and the Board or ALJ may require service on other persons.

> FirstEnergy requests that the language found in the proposed rule related to the inadvertent failure of service on, or notice to, any person entitled to receive service under these rules, be clarified to ensure that the ability of the Board to correct inadvertent errors covers all aspects of the public information program for standard certificate applications (FirstEnergy Att. at 22).
>
> The Board finds that this request is well-made. Therefore, we find that a paragraph should be added to Ohio Adm.Code 4906-3-01(C), which reflects that this rule applies to any aspect of the public information program, including all notices, service requirements, and other forms of public information.

Comments on Ohio Adm.Code 4906-3-11 - Amendments of accepted, complete standard certificate applications and of certificates

(57) Paragraph (A)(4) - This paragraph states that the Board or ALJ may require such additional action as determined necessary to inform the general public of the proposed amendment.

> (a) Leipsic states that, under the proposed rule, there is no standard for when the ALJ orders a hearing when the amendment is for a pending application that has been deemed complete. Leipsic notes that, in contrast, both the current and proposed rules set a standard for the ALJ's ordering of a hearing when the amendment is for a certificate that has already been issued. Leipsic contends that the standard for setting a hearing should be the same in both instances, where the amendment would result in any significant adverse environmental impact of the to-be certified facility/certified facility or where there is a substantial change in the location of all or a

portion of the to-be certified facility/certified facility. (Leipsic at 12.)

The Board notes that, if an amendment is made to a pending application, after the application is deemed complete, but prior to the issuance of a certificate, the determination of whether a hearing is required is dictated by the process for that particular case, as well as the applicable statutory requirements. Therefore, it is unnecessary to provide a specific standard as requested by Leipsic and the request should be denied.

(b) Leipsic states that, in the case of a pending accepted complete standard certificate application, the postponing of the hearings on the application for up to 90 days is a significant delay to a wind applicant because it wreaks havoc on the construction schedule and may cause significant extra expense in terms of various financial arrangements that the applicant has entered into. Leipsic argues that 30 days is a sufficient time period in which to set and hold a hearing. (Leipsic at 12-13.)

Initially, the Board notes that the 90-day time frame set forth in the rule represents the maximum amount of time that a proceeding may be postponed. The Board believes there are justifiable administrative reasons for requiring the 90-day time period, if it is necessary. Staff may well need the time to review the application, coordinate the parties' schedules, and prepare for hearing. Therefore, we find that this request by Leipsic is without merit and should be denied. However, we have inserted language into this rule to clarify our intent.

(58) Paragraph (B) - This paragraph sets forth the requirements for filing amendments to applications and certificates, as well as the notice requirements for such applications.

FirstEnergy states that public notice requirements for amendments to a certificated major utility facility should be designed to ensure that property owners who are impacted by the proposed amendment receive notice of the proposal, and are afforded an opportunity to meaningfully participate in any decisions regarding a change to a previously certificated route or major utility site. FirstEnergy proposes different filing requirements for additions or significant modifications to major utilities that have been issued a certificate, depending on whether or not a notice of commercial operation has been submitted to the Board. FirstEnergy believes the Board should also consider developing a rule that allows applicants who have received certificates to make changes to approved major utilities when small route changes are needed to further minimize impacts or when the changes are specifically requested by property owners. In addition, FirstEnergy proposes that the rule include a paragraph that requires applicants to serve notice of the application for an amendment to a certificate on the property owners along the new route. FirstEnergy states that, without such a provision in the proposed rule, property owners along a proposed amendment to a route may not receive notice of the proposed amendment. (FirstEnergy Att. at 26-28.)

The Board finds that FirstEnergy's proposal regarding clarifying the rule to reflect the appropriate filing and notice requirements is without merit and should be denied. The statute sets forth the necessary process for the filing of an amendment to a certificate and the Board finds that the current process implement by the Board is appropriate and consistent with those requirements. Likewise, with regard to FirstEnergy's proposal permitting small route change without Board approval, the Board finds that any changes must be weighed against the amendment requirements mandated in R.C. 4906.07; therefore, FirstEnergy's proposal should be denied. However, we agree with FirstEnergy's proposal that the property owners along a proposed amendment to a route should receive notice of the proposed amendment and the rule should be revised to provide for such notice.

Comments on Ohio Adm.Code 4906-3-12 - Application filing fees and board expenses

(59) Paragraph (C)(4) - This paragraph provides that, if an associated transmission substation is included in the application, the fee for the substation shall be calculated separately and added to the fee for the transmission line.

FirstEnergy believes it is unclear what application fee is associated with a standard certificate application that includes an associated transmission substation. FirstEnergy states that, under the proposed rules, transmission substations are not subject to the standard certificate application process generally, and would not, therefore, have a separate application fee that could be added to the application fee for an electric transmission line. FirstEnergy proposes this provision be removed and the application fee for a standard certificate application be calculated based on the total costs of the project, including any associated transmission substations. Leipsic agrees. (FirstEnergy Att. at 27; Leipsic Reply at 4.)

The Board finds that the request is without merit and should be denied. The Board believes it is necessary to maintain the breakdown in the fee structure and the fees for associated substations in order to effectively calculate and monitor the filing fees for applications. Moreover, the Board also notes that these fees have not been increased in over 20 years. With the increased workload, and in order to ensure there are sufficient funds so that the Board can continue to effectively and efficiently process applications, it is necessary for the fees to be adjusted. However, the Board has reviewed Staff's proposed increase on the fees and finds that a more modest fee increase is appropriate at this time; therefore, paragraph (C)(1) should be revised.

(60) Paragraph (G) - This rule defines "construction costs." Leipsic argues this definition should be in Ohio Adm.Code 4906-1-01 (Leipsic at 2). As stated previously in this Order, the Board finds that the proposed placement of definitions within the rules recommended by Leipsic should be denied. This paragraph is the appropriate location for this definition and there is no need to include the definition in the general definition list in Ohio Adm.Code 4906-1-01.

Comments on Ohio Adm.Code 4906-3-13 - Construction and operation requirements

(61) General - FirstEnergy believes, and Leipsic and OGA agree, it is not clear whether or not the construction and operation provisions apply to projects that are subject to the accelerated certificate application process. FirstEnergy requests that the Board include a provision that specifically limits the applicability of the rule to standard certificate applications and certificates issued by the Board based on standard certificate applications. (FirstEnergy Att. at 29; Leipsic Reply at 5; OGA Reply at 2.)

The Board finds that the commenters' suggestion is unnecessary and should be denied. The scope of this chapter is clearly outlined in the chapter title and 4906-3-01, "Purpose and scope," both of which specifically state that the chapter sets forth requirements for standard certificate applications.

(62) Paragraph (B) - This paragraph specifies that the applicant shall notify the Board of the dates for the beginning and completion of construction, and the beginning of commercial operation. FirstEnergy contends that it is impractical to provide the Board with prior notice of the date commercial operation will begin and that providing the Board with notice of the date that commercial operation actually began is more practical and appropriate (FirstEnergy Att. at 29). The Board finds that FirstEnergy's suggestion is reasonable and the paragraph should be amended accordingly.

(63) Paragraph (C) - This rule states that all associated electric transmission facilities must be approved before construction begins.

FirstEnergy contends that, given the difficulties associated with construction of major utility facilities, it is impractical to require construction of new generation to wait on the approval of associated transmission and gas facilities by the Board. FirstEnergy submits that, if an electric generation facility is proposed and constructed without the necessary transmission facilities being approved, that decision is a business decision of the entity constructing the facility. Further, if the Board determines that construction of the proposed generation must

wait until the Board approves the necessary transmission facilities, the Board can capture this requirement for the specific project in a condition of its certificate for the generation project. (FirstEnergy Att. at 29.)

The Board finds merit in this comment and, therefore, this provision should be deleted from the rule.

(64) Paragraph (E) - This paragraph states that changes to the project within "environmentally sensitive areas" are subject to Staff review and acceptance prior to construction in those areas.

AEP Transco argues, and Leipsic and FirstEnergy agree, that "environmentally sensitive area" must be defined in Ohio Adm.Code 4906-1-01. FirstEnergy requests that the term be limited to those areas that are otherwise subject to regulatory programs or are recognized public areas, such as surface waters, wetlands, parks, recreational facilities, and identified cultural resources. FirstEnergy states that the term should not include nonpublic resources or areas that are not subject to regulation. (AEP Transco at 6; Leipsic Reply at 5; FirstEnergy Reply at 8-9.)

Initially, the Board notes that R.C. 4906.10 sets forth the eight criterion the Board must determine in order for a certificate to be issued. Specifically, regarding our consideration of environmentally sensitive areas, the Board focuses on the first two criteria set forth in R.C. 4906.10, the basis of need and the nature of the probable environmental impact. The Board notes that "environmentally sensitive areas" can be defined by a number of agencies, including the Board, the Ohio Environmental Protection Agency (EPA), the United States (U.S.) EPA, the Ohio Historic Preservation Office, the Ohio Department of Natural Resources (ODNR), the U.S. Fish and Wildlife Service, the National Park Service, and the U.S. Army Corps of Engineers. The Board further notes that, typically, applicants know what is considered an environmentally sensitive area through coordination efforts with these various agencies and that these coordination efforts can be done by the applicant prior to the submission of an application. The Board observes that each agency uses different criteria to determine what is considered an environmentally sensitive area. This determination is based on each agency's jurisdiction, goals, and

objectives. Further, these areas may include resources such as: cultural resources, streams, wetlands, ponds, lakes, reservoirs, state and federal threatened and endangered species habitats, and mussel beds. The Board also notes that this rule is intended to provide additional flexibility to applicants when making engineering adjustments during construction. Previously, all such adjustments have been subject to Staff review. This rule, however, allows for adjustments without Staff review, unless the change is in an environmentally sensitive area. Consequently, the Board finds that the recommendations of AEP Transco, Leipsic, and FirstEnergy should be denied.

(65) Paragraph (F) - This paragraph states that the applicant shall submit as-built drawings for an entire facility within 60 days of beginning commercial operations.

FirstEnergy requests that the deadline be extended to one year from the date of commercial operation. FirstEnergy argues that 60 days is not sufficient time to complete "as-built" drawings for these types of facilities and that one year from the date of commercial operation is more reasonable and consistent with the current practice of FirstEnergy and Staff for current projects. (FirstEnergy Att. at 30.)

The Board believes that one year is too long for the submission of as-built drawings. Assuming the project is complete at the time of operation, the as-built drawings should be complete and available for copying for Staff to review. Any remaining items should be identified in the filing and subject to Staff compliance inspections. As such, the Board will make no further changes to this provision. Therefore, FirstEnergy's request should be denied.

(66) Paragraph (G) - This paragraph provides that, within six months of the beginning of operations, the applicant shall register the locations of underground electric and gas lines with protection services for Ohio utilities and submit confirmation to the Board.

(a) AEP Transco argues that this rule is unnecessary and should be eliminated. AEP Transco states that it is in the operator's best interest to register

its facilities with the Ohio Utilities Protection Service (OUPS), as it is the best way to protect the buried facility from accidental dig-ins. (AEP Transco at 6.) The Board notes that some nonutility applicants, such as independent developers of generating facilities that have related underground electric lines, are not as familiar with OUPS and this requirement has been needed in several cases. The Board, therefore, finds that AEP Transco's argument that this rule be eliminated should be denied.

(b) FirstEnergy argues that the rule should be rewritten to include a reference only to underground electric transmission lines or gas pipelines, and that registration only be required with OUPS. FirstEnergy states that, as written, the rule could be interpreted as applying to electric distribution circuits associated with a major utility facility. (FirstEnergy Att. at 30.) The Board agrees that this provision should be clarified to reflect that it only applies to the project in the application and the paragraph should be revised accordingly.

Comments on Ohio Adm.Code 4906-3-14 - Preconstruction requirements

(67) Paragraph (C) - This paragraph sets forth the requirement for an applicant to submit engineering drawings prior to the preconstruction conference.

FirstEnergy requests that this requirement be amended to require the submittal of only such drawings as needed to confirm that the facility is in compliance with the issued certificate from the Board. FirstEnergy argues that the language, as proposed, is far more detailed than Staff requires in order to confirm construction in accordance with the certificate. Further, information provided in detailed construction drawings could include proprietary, trade secret, confidential business information, and CEII. (FirstEnergy Att. at 30.)

The Board finds merit in FirstEnergy's suggestion and, therefore, the paragraph should be revised accordingly.

(68) Paragraph (D) - This paragraph states that an applicant shall provide Staff with verification of an interconnection service agreement for a transmission line project.

AEP Transco and FirstEnergy contend that this rule is unnecessary and should be removed because most transmission line projects do not have interconnection agreements. FirstEnergy further argues that, as an alternative, applicants could be required to submit interconnection service agreements, if such an agreement is required. (AEP Transco at 6, FirstEnergy Att. at 31.)

The Board finds merit in the commenters arguments and agrees this rule should not apply to transmission line projects. As such, the paragraph should be revised to clarify that the rule applies to construction of generation projects.

Ohio Adm.Code Chapter 4906-4 - Standard certificate applications for electric generation facilities

(69) General - This chapter pertains to the rules for applications requesting certification for of electric generating facilities.

FirstEnergy believes that the proposed changes to this chapter represent a significant increase in the type and amount of information required for a standard certificate application. FirstEnergy argues these changes are likely to cause confusion, add significant costs, and unnecessarily duplicate other reviews. FirstEnergy requests that the Board conduct a further review of the standard certificate application rules to determine whether or not each of these increased requirements is necessary and proper for the Board to carry out its statutory obligations. Leipsic agrees with FirstEnergy and argues that the proposed rules encompass issues that are not within the statutory authority of the Board. (FirstEnergy Att. at 32; Leipsic Reply at 5.)

The Board disagrees that there is a significant increase in the type and amount of information required. Overall, the application requirements are largely the same as the existing rules. The new requirements incorporate information that is

commonly needed by Staff to complete its investigation. By including these standard requests for information into the rules applicants are aware of them up-front; therefore, responses can be included in the application, rather than being requested by Staff later in the process, which could result in a delay in processing the application. The Board finds that the information required in this chapter is necessary, appropriate, and consistent with our obligations under R.C. Chapter 4906. Moreover, the Board notes that the comments do not dispute that the information is relevant for the Board's review of the applications in accordance with our statutory mandate. Accordingly, the requests by FirstEnergy and Leipsic should be denied.

Comments on Ohio Adm.Code 4906-4-02 - Project summary and applicant information

(70) Paragraph (B)(2) - This paragraph requires an applicant to provide a description of its plans for any other generation facilities in the region and the maximum electric capacity anticipated for the facilities.

FirstEnergy states that this requirement does not define the term "region" nor does it limit the timeframe of applicant's plans for any other generation facilities. Further, given that electric generation has undergone economic deregulation in Ohio, it is unclear what relevance the information would have to the Board's consideration of a certificate for a new electric generation facility. FirstEnergy also states that R.C. 4906.10 does not permit the Board to consider the need for an electric generation facility; therefore, FirstEnergy requests that the rule be deleted. Leipsic agrees with FirstEnergy that plans for other generation facilities, including wind farms, are not germane to a specific application before the Board and should be deleted. (FirstEnergy Att. at 33; Leipsic Reply at 5.)

The Board notes that this requirement was incorporated into the generation facility chapter from the previous wind farm application requirements in Ohio Adm.Code Chapter 4906-17. The Board, however, finds that this requirement should not apply to other types of generation projects and does not need to be in the rules. Therefore, the Board finds that the comments are well-made and this provision should be deleted.

Comments on Ohio Adm.Code 4906-4-06 - Economic impact and public interaction

(71) Paragraph (A) - This paragraph states that the applicant shall provide a general description of lease agreements with property owners in the project area. EverPower states that lease terms are generally subject to confidentiality terms between the developer and the landowner and that requiring a description of lease terms in an application could result in a breach of the lease and a loss of confidentiality. EverPower argues that this provision of the rule should be deleted. (EverPower at 5.) The Board finds that this comment is well-made; therefore the last sentence of the paragraph should be deleted.

(72) Paragraph (F)(3) - This paragraph requires that the applicant submit road use plans that incorporate pre- and post-construction surveys, an objective standard of repair, and a timetable for posting a bond.

FirstEnergy argues that this rule imposes new requirements on the applicant without any explanation for why these new requirements are necessary, or why the Board, rather than an agency such as the Ohio Department of Transportation (ODOT), is imposing them. FirstEnergy also argues that it is unclear why such requirements would apply to standard certificate applications for electric generation facilities and not other types of major utility facilities that will require the use of heavy equipment. FirstEnergy states that this proposed rule also appears to exceed the Board's authority and requests that it be deleted. (FirstEnergy Att. at 33.) Leipsic agrees with FirstEnergy. Leipsic notes that R.C. 5727.75(F)(4) sets forth the requirements for a road agreement, which covers repairs between the developer covered by the statute and by the county engineer; therefore, the agreement is beyond the purview of the Board. (Leipsic Reply at 5.) EverPower argues that a road use plan can be part of a certificate condition, but a road use plan with the details set forth in the proposed rule is something that should be resolved prior to construction and in consultation with the appropriate county and/or township officials, and not in the application. EverPower argues that the language "[r]oad use plans" through "heavy equipment on public roads or bridges" should be deleted. (EverPower at 5.)

The Board finds merit in the comments and agrees it would be more appropriate to apply the specifics of this requirement on a case-by-case basis and not include such specifics in this rule. Therefore, this paragraph should be revised to delete the language after "[r]oad use plans."

Comments on Ohio Adm.Code 4906-4-07 - Compliance with air, water, solid waste, and aviation regulations

(73) General - This rule requires an applicant to submit information on the facility's compliance with air, water, and aviation regulations.

FirstEnergy and Leipsic do not believe there is sufficient justification for these increased requirements, nor do the increased requirements appear consistent with the Board's authority (FirstEnergy Att. at 33: Leipsic Reply at 6).

The Board notes that, contrary to the commenters' assertions, these requirements are not new and were previously included in Ohio Adm.Code 4906-13-04(C)(2). Moreover, R.C. 4906.10 prohibits the Board from issuing a certificate unless it determines that the eight criterion set forth in the statute are met. Specifically, with regard to the requirements set forth in this rule, the Board is mandated by R.C. 4906.10(A)(5) to conduct an investigation to determine an applicant's compliance with statutory provisions regarding air, water, solid waste, and aviation regulations. As such, the Board finds that the proposal should be denied and the proposed rule should be maintained without further change.

(74) Paragraph (B)(1)(b) - This paragraph requires the applicant to describe air pollution control equipment for the proposed facility.

FirstEnergy believes it is unclear what the language in the rule requires by referencing "tabulations" and requesting a description of the "reliability" of the air pollution control equipment. FirstEnergy states that, to the extent this information is relevant, and to the extent it exists, this information is likely in the possession of the Ohio EPA or U.S. EPA. FirstEnergy states that the request for information to describe the "reduction in efficiency for partial failure" is also ambiguous and phrased in a manner that prevents meaningful

response. FirstEnergy argues that, to the extent the Board believes it has the authority to consider information related to the operational characteristics of pollution control equipment, it should amend this rule to require the submittal of information from the actual manufacturers of the pollution control equipment. FirstEnergy does not believe that this information is required for the Board to meet its statutory obligations regarding pollution controls, and it should be removed from the proposed rules. (FirstEnergy Att. at 35-36.)

The Board notes that these requirements are not new and were previously included in Ohio Adm.Code 4906-13-04(C)(2). Moreover, as stated previously, the Board is mandated by R.C. 4906.10(A)(5) to conduct an investigation to determine an applicant's compliance with statutory provisions regarding air, water, and solid waste regulations. Therefore, the Board, finds that this information is necessary for our investigation and consideration of the certificate application and, therefore, FirstEnergy's recommendation should be denied.

(75) Paragraph (C) - This paragraph requires the applicant to provide information on compliance with water quality regulations.

Leipsic contends that, because there are no water impacts for wind facilities, these provisions should contain an exception for wind farms. Leipsic states that it agrees with FirstEnergy's comments concerning water requirements. (Leipsic at 13; Leipsic Reply at 6.)

Initially, the Board notes that the Board is mandated by R.C. 4906.10(A)(5) to conduct an investigation to determine an applicant's compliance with water quality regulations. Therefore, while these requirements have not been applicable in every past wind farm application, all of these requirements could apply to wind farms depending on construction methods and the need for waste water treatment. Applicable requirements in Ohio are largely dependent on the types of water quality permits required for the facility, which vary for each case. The Board believes that it would be more efficient for the applicant to briefly explain why the requirement does not apply in its application, if that is the case, and request a waiver of the requirement. Therefore, the Board finds that

Leipsic's suggestion should be denied and that the current proposed language should be maintained.

(76) Paragraph (C)(1)(d) - This paragraph requires the applicant to describe the existing water quality of the receiving stream based on at least one year of monitoring data, using appropriate Ohio EPA reporting requirements.

FirstEnergy states that this requirement appears to require an applicant to provide new monitoring data for any receiving stream for which a discharge would be proposed. FirstEnergy argues that, if an applicant were to fully comply with this requirement, any application for a new electric generation facility would be delayed a minimum of one year while such data was compiled. Moreover, it is unclear what frequency of sampling is required, i.e., one sample or more frequent samples during the one-year period referenced in the rule. FirstEnergy submits that there is no basis for the Board to require the submittal of this information, because water discharges would be regulated by the Ohio EPA and it is adequate for the Board to require the submittal of only such information on water quality as is generally available as part of an application. Finally, FirstEnergy states that requiring the collection and submittal of background water quality data is not consistent with the statute and should be removed from the proposed rules. (FirstEnergy Att. at 36-37.)

The Board notes that these requirements are not new and were previously included in Ohio Adm.Code 4906-13-06(C)(1)(d). As stated previously, ensuring compliance with water pollution laws is one of the eight criteria for the Board's decision, as outlined in the Revised Code, including in R.C. 4906.10(A)(2), (3), and (5). As FirstEnergy points out, the information is only required if it is relevant to the project. Therefore, the Board finds that FirstEnergy's recommendation should be denied.

(77) Paragraph (E)(1) - This rule requires an applicant to list all public and private airports, helicopter pads, and landing strips within 20 miles of the project area. In addition, an applicant must notify owners of all airports about the proposed facility and list impacts on airport operations.

FirstEnergy believes it is unclear why such a new requirement is necessary, and why a 20-mile reporting radius has been selected and that no explanation or rationale is offered for this requirement. FirstEnergy states that, absent a clear rationale why such additional information is required, this proposed requirement should be deleted. In addition, FirstEnergy asserts that the identification of these facilities should be limited to, and focus on, all public and private airports, helicopter pads, and landing strips registered with the Federal Aviation Administration (FAA), ODOT, or similar federal or Ohio agencies. (FirstEnergy Att. at 37-38.) EverPower states that this proposed rule is broad and could apply to private-use grass strips, as well as publicly open airports. EverPower argues that having to contact every owner of an airport, grass strip, or helicopter pad within a 20-mile radius of a wind farm will take a considerable amount of time and effort. Further, private-use grass strips may not be registered and an applicant might have a difficult time locating those strips. EverPower argues that the proposed rule should not be adopted or, in the alternative, it should be limited to public-use (privately-owned or publicly-owned) airports, strips, and helicopter pads. (EverPower at 6.) Leipsic agrees that the aviation requirements of this paragraph are onerous, because they refer to airports that are not licensed with the FAA, and that many of the requirements in the rule are beyond the statutory objectives of the Board (Leipsic Reply at 5-6).

Initially, the Board notes that R.C. 4906.10 prohibits the Board from issuing a certificate unless it determines that the eight criterion set forth in the statute are met. Specifically, with regard to the requirements set forth in this rule, the Board is mandated by R.C. 4906.10(A)(5) to conduct an investigation to determine an applicant's compliance with statutory provisions regarding aviation regulations. Therefore, with regard to the overall concerns of this rules, the commenters requests should be denied. However, the Board finds that there is merit to the suggestions submitted by these commenters as they pertain to private-use airports and air strips. Therefore, the Board finds that the paragraph should be revised to require a list of all public-use airports, helicopter pads, and landing strips within five miles of the project area, and all known private-use airports, helicopter pads, and landing strips on property within or adjacent to the project area.

Comments on Ohio Adm.Code 4906-4-08 - Health and safety, land use and ecological information

(78) Paragraph (A)(1)(b) - This rule requires the applicant, in providing information on health and safety, to describe the reliability of the equipment.

FirstEnergy believes the rule is not clear about the requirement to provide information regarding the reliability of the equipment. FirstEnergy states that, to the extent information is required concerning the operation and reliability of equipment, the Board should limit such information to that which is readily available from the manufacturer of the equipment, and should be more specific about the types of equipment covered by this requirement. (FirstEnergy Att. at 38.)

The Board notes that there are numerous types of technologies and infrastructure associated with the applications presented to the Board. There is no one size fits all solution to the types of equipment involved; thus, it is necessary for there to be flexibility for the applicant to work with Staff in order to ensure the necessary and appropriate information and documentation is provided to support the applicant's proposal. Moreover, the Board notes that this is not a new requirement. To date, this provision has proven effective for the applications that have been filed and FirstEnergy does not present evidence to the contrary. Although FirstEnergy contends that the proposed rule does nothing to address the confusing organization found in the former rule, FirstEnergy offers no reasonable alternative. Therefore, the Board finds that FirstEnergy's suggestion should be denied.

(79) Paragraph (A)(3) - This paragraph requires the applicant to provide information about noise from the construction and operation of the facility.

Leipsic states that, because today's practice for providing noise information is that noise should be measured from locations where noise would be disturbing, the term "property boundary" be replaced with "noise sensitive receptors" (Leipsic at 13-14). FirstEnergy states that it is not aware of the basis for these increased requirements and requests that the Board provide additional information related to the purpose

behind them. FirstEnergy also requests clarification as the applicability of these provisions to electric generation facilities that are not wind turbines. (FirstEnergy Att. at 38-39.)

Initially, the Board states that this provision clearly refers to wind facilities and not other types of generation facilities. We also note that noise levels at noise sensitive receptors are required separately in paragraph (A)(3)(c) of this rule. The noise level at the nearest property boundary is an indication of the maximum noise level that would be experienced by persons traveling around the facility during construction and operation, and when residents adjacent to the facility are outside of their homes. However, the Board agrees that it does not need operational noise levels at the property boundary from each individual turbine. Therefore, we find that Leipsic's proposal is reasonable and the paragraph in the attached rules has been revised accordingly.

(80) Paragraph (A)(3)(b) - This paragraph requires the applicant to describe operational noise levels expected at the nearest property boundary.

FirstEnergy believes the phrasing of this rule makes it unclear whether the requirements in this subsection apply only to wind turbines or to all electric generation facilities (FirstEnergy at 38).

Initially, the Board notes that these requirements are nearly identical to the current rules. The only added requirements are to extend the noise modeling to estimate operational noise levels at sensitive receptors within one mile, rather than just at the property boundary, and to submit a preconstruction background noise study. This information is frequently required by Staff to conduct its investigation on noise impacts. The Board believes that no additional clarification is needed for what applies to wind farms only.

(81) Paragraph (A)(3)(f) - Should site specific conditions warrant blasting, this paragraph requires the applicant to submit a blasting plan. EverPower states that, in the past, the Board has treated the blasting plan as a condition and that the practice should be continued to avoid having to incur the cost and time to develop detailed plans for construction prior to certificate

approval. EverPower argues that the proposed rule should not be adopted. (EverPower at 6.) The Board finds that EverPower's recommendation is reasonable and, therefore, this provision should be deleted.

(82) Paragraph (A)(4) - This paragraph requires the applicant to provide information regarding water impacts.

Leipsic states that there was an exception for wind farms in the original wind rules, because there are no water impacts for wind facilities. The applications filed to date prove that fact. Leipsic states that the proposed provisions should contain a similar exception. (Leipsic at 13.)

Initially, the Board notes that R.C. 4906.10 prohibits us from issuing a certificate unless we determine that the eight criterion set forth in the statute are met. Specifically, with regard to the requirements set forth in this rule, the Board is mandated by R.C. 4906.10(A)(2)(3) to conduct an investigation to determine the basis of need and the nature of the probable environmental impact of the project. Moreover, the Board points out that the requirements of this rule have always been applicable to wind farms due to potential surface water impacts during construction. Therefore, the Board finds that Leipsic's suggestion should be denied and the current proposed language should be maintained.

(83) Paragraph (A)(6) - This paragraph requires the applicant to provide an analysis of the prospect of high winds for the area of a proposed facility and describe plans to mitigate any likely adverse consequences.

FirstEnergy states that it appears that the requirements of proposed Ohio Adm.Code 4906-4-08(A)(6)-(9) may apply only to wind turbines, but this is not clear from the proposed rule. FirstEnergy suggests that all such information requirements for wind turbine projects be listed in one rule or subsection, rather than commingling information requirements for wind turbines in provisions related to generation facility applications generally. (FirstEnergy at 39.)

The Board notes that it considered this approach, but the wind-specific section would have been quite short and would have made wind applications awkward and disorganized.

Therefore, the Board finds that FirstEnergy's recommendation should be denied.

(84) Paragraph (A)(10) - This paragraph requires the applicant to evaluate and describe the potential impact of the proposed facility on radio and television reception and describe measures that will be taken to minimize interference.

FirstEnergy states that this paragraph, and the following Ohio Adm.Code 4906-4-08(A)(11) and (12), which deal with a proposed facility's impact on radar systems and microwave communications, contain new requirements, and it is unclear what rationale exists to suggest that an electric generation facility affects any of these types of facilities. FirstEnergy requests that the Board articulate some basis for the proposed rule, including some documentation that would support these information requirements. (FirstEnergy at 39.)

As noted previously, the Board is prohibited, under R.C. 4906.10, from issuing a certificate unless it determines that the eight criterion set forth in the statute are met. Specifically, with regard to the requirements set forth in this rule, the Board is mandated by R.C. 4906.10(A)(2) and (3) to conduct an investigation to determine the basis of need and the probable environmental impact of the facility. The Board also notes that, while these requirements are typically only relevant to wind farms, they could be relevant to other types of facilities with tall structures. Therefore, the Board finds that FirstEnergy's recommendation is without merit and should be denied.

(85) Paragraph (B)(2)(a) - This paragraph requires the applicant to provide information on potential impacts to ecological resources during construction, including the proposed crossing methodology of any stream or wetland that would be crossed by any part of the facility or construction equipment.

FirstEnergy states that the phrasing of this rule appears more appropriate to transmission lines, since an electric generation facility normally would not "cross" an ecological resource. FirstEnergy requests that this proposed rule be rephrased to require a description of any ecological resource which will be permanently disturbed by construction only. (FirstEnergy at 40.)

The Board observes that an electric generation facility often has associated facilities such as short transmission lines or access roads that might cross ecological resources. Therefore, the Board finds that FirstEnergy's recommendation should be denied. The Board, however, will add the phrase "crossed by or within the footprint of" to clarify this section.

(86) Paragraph (C)(2)(c) - This paragraph requires the applicant to include on a map the setbacks for wind turbine structures. The setbacks shall be no less than 1.1 times the turbine height to electric transmission lines, gas pipelines, hazardous liquid pipelines, or state or federal highways.

EverPower argues that no such setbacks exist in the Revised Code, because of the extremely low risk that a turbine collapse could rupture a line. EverPower states that, rather than mandating a setback through rule, the Board should rely on the application process and evidence at hearing to determine what setbacks are appropriate for underground features such as gas pipelines and hazardous liquid pipelines. (EverPower at 6-7.)

The Board notes that this rule seeks to clarify and outline current practice in Ohio. This setback, which is applicable to electric transmission lines, gas pipelines, hazardous liquid pipelines, state highways, and federal highways, is similar to the property line setback prescribed in R.C. 4906.20(B)(2). Regarding electric transmission lines, it is common industry practice to locate wind turbines at least 1.1 times the turbine height from these transmission lines. In Ohio, the current setback of 1.1 times the turbine height has also been commonly applied to state and federal highways. The Board believes that the possibility that a turbine would collapse is rare, but a turbine structure may collapse. If the turbine were to collapse and cause damage to a pipeline, there could be serious environmental damage, hazards to human health, and disruption of utility services for the population served by the damaged pipeline. Therefore, the proximity of wind turbine structures to existing above and below ground utilities should continue to be a consideration when siting a wind farm.

Initially, the Board again emphasizes that R.C. 4906.10 prohibits the Board from issuing a certificate unless it determines that the criterion set forth in the statute are met.

Specifically, the Board is mandated by R.C. 4906.10(A)(6) to ensure that the facility will serve the public interest, convenience, and necessity. In this rule, the focus is on public safety. The Board further notes that the proposed rule for gas pipelines and hazardous liquid pipelines has been adopted by the Board as a condition on wind farm construction since at least August 2011. The current proposal refines this requirement and seeks to consistently apply this safety consideration for siting all wind farms in Ohio. This proposed rule would make the regulation transparent, fair, and consistent throughout Ohio. Therefore, the Board finds that EverPower's recommendation should be denied.

(87) Paragraph (D)(2) - This paragraph requires the applicant to provide an evaluation of the impact of the proposed facility on landmarks and develop a cultural resource avoidance and mitigation plan in consultation with the Ohio Historical Society.

EverPower states that this type of requirement, historically, has been imposed by the Board through a certificate condition and should not be added to the rules or mandated as part of an application submittal. EverPower argues that, rather than go through the extra work of developing a plan at the beginning of the application process, the plan should be post-certificate issuance and in coordination with the project's final engineering drawings. EverPower, therefore, recommends that the last three sentences of the proposed rule be deleted. (EverPower at 7.)

The Board finds this proposal reasonable and, therefore, the paragraph should be revised accordingly.

(88) Paragraph (D)(4) - This paragraph requires the applicant to evaluate the visual impact of the proposed facility within at least a five-mile radius of the project area.

FirstEnergy states that there does not appear to be any justification for the radius of this evaluation. FirstEnergy believes the rule is subjective and there is potential for misuse and misinterpretation, therefore, the Board should attempt to insure that any visual impact be as impartial and limited as possible. FirstEnergy argues that these types of information

requirements for standard certificate applications add to the time and expense of preparing an application. Further, the requirement to coordinate the preparation of this information with local officials and historic preservation groups, which is a vague and undefined term and it is ripe for abuse by groups that are likely opposed to the project. FirstEnergy requests that the Board limit the information requirements for applications and, rather than impose vague burdens on the applications for major electric generation facilities, require those who have objections to quantify those objections during the review process. (FirstEnergy at 40-41.) EverPower states that coordinating with local public officials and historic preservation groups is not a practical requirement, given the number groups that may be in the footprint of a wind farm. EverPower argues that, rather than complicate the process, the applicant should be allowed to select the public vantage points for presentation in its application and provide justification for the selection. EverPower states that the last sentence of the proposed rule should be deleted. (EverPower at 8.) Leipsic agrees with the other parties' comments and, in particular, argues that the coordination with local officials to determine vantage points for photographic simulations or artists sketches of the proposed facility is impractical and inappropriate (Leipsic Reply at 6).

As emphasized previously, R.C. 4906.10 prohibits the Board from issuing a certificate unless it determines that the eight criterion set forth in the statute are met. In addition, R.C. 4906.20(B)(2), in part, requires the Board to consider the aesthetics of the project. Therefore, we note that, while many of the environmental impacts of major utility facilities have subjective components, we are required to consider environmental impacts, and visual impacts are often high on the list of public concerns. A full assessment, using common industry practices, is needed to properly evaluate this environmental impact. The visual impact assessment is an area where applicants take a wide variety of approaches. The Board has found that some approaches have been very effective, while others have produced little value. Upon review of past applications and industry best practices for visual impact assessments, we find that some of the approaches should be incorporated into the rules in order to get a more consistent approach. Accordingly, the commenters' requests should be

denied. However, to provide additional flexibility, the Board finds that the paragraph should be revised to require the applicant to "explain its selection of vantage points, including any coordination."

Ohio Adm.Code 4906-5 - Standard certificate applications for electric transmission facilities and gas pipelines

(89) General - FirstEnergy requests that the Board consider its comments to this chapter of the rules as being applicable to similar requirements and provisions found in Ohio Adm.Code 4906-4. FirstEnergy states that, as a general matter, the Board should only require the submittal of information needed for the Board to carry out its statutory duties and it should not duplicate the review conducted by other agencies, including the Ohio EPA. FirstEnergy does not believe that the Board should require the submittal of any information related to permitting or approval decisions that are outside the Board's authority, including air permitting pursuant to R.C. Chapter 3704 or water permitting pursuant to R.C. Chapter 6111. FirstEnergy argues that such submittal requirements are duplicative of the requirements imposed by the Ohio EPA, costly, and generally irrelevant to the Board's review and approval. (FirstEnergy Att. at 42.)

As the Board stated previously, R.C. 4906.10 prohibits the Board from issuing a certificate unless it determines that the eight criterion set forth in the statute are met. Specifically, with regard to the requirements set forth in this rule, the Board is mandated by R.C. 4906.10(A)(5) to conduct an investigation to determine an applicant's compliance with statutory provisions regarding air, water, solid waste, and aviation regulations. Therefore, contrary to FirstEnergy's assertions, ensuring compliance with R.C. 3704 and 6111 is one of the eight criteria for the Board's decision contained in R.C. 4906.10(A)(5). Moreover, we note that this requirement is not new. Accordingly, the Board finds that FirstEnergy's request should be denied.

Comments on Ohio Adm.Code 4906-5-03 - Review of need and schedule

(90) General - This rule requires the applicant to submit information on the need for a project and the project schedule. FirstEnergy states that this rule should include the necessary information to determine whether a particular project will meet the public interest, convenience, and necessity. FirstEnergy believes that, although R.C. 4906.10(A) has separate provisions related to the need for a particular project, the public interest, convenience and necessity is most closely related to the need for a project. (FirstEnergy Att. at 42.) The Board disagrees with the concept of limiting the discussion of public interest, convenience, and necessity to the need of the project, as they are separate criteria in the Revised Code. Therefore, the Board finds that FirstEnergy's recommendation should be denied.

(91) Paragraph (D) - This paragraph requires the applicant to submit an analysis of the options considered which would eliminate the need for the construction of an electric power transmission line.

FirstEnergy believes the elements of the proposed rule related to consideration of alternatives to electric transmission projects should not include consideration of generation alternatives. FirstEnergy believes the rule should simply require a description of alternatives without dictating which alternatives are considered. (FirstEnergy Att. at 43.)

In its reply, ELPC argues that the Board should reject FirstEnergy's request and continue to require applications to include analyses of nontransmission alternatives. ELPC states that it is impossible for the Board to properly evaluate the need for a project without exploring nontransmission alternatives. (ELPC Reply at 3.)

R.C. 4906.10(A)(1) prohibits the Board from issuing a certificate unless it determines the basis of need for the transmission facility. Our consideration of the analyses of nontransmission alternatives is essential in order for the Board to evaluate and determine the need for a project. Therefore, the Board finds that FirstEnergy's recommendation is without merit and should be denied.

(92) Paragraph (E) - This paragraph requires the applicant to describe how the proposed facility was selected to meet the projected need. FirstEnergy states that Paragraph (D)(5), which references public interest, convenience, and necessity, should be removed from proposed Ohio Adm.Code 4906-5-06 and incorporated into this paragraph (FirstEnergy Att. 43). The Board finds FirstEnergy's specific proposal to move Ohio Adm.Code 4906-5-06(D)(5) to this paragraph to be reasonable and should be adopted. However, the concept of limiting the discussion of public interest, convenience, and necessity to the need for the project is without merit and should be denied, because, as we stated previously, they are separate criteria in the Revised Code.

Comments on Ohio Adm.Code 4906-5-04 - Route alternatives analysis

(93) Paragraph (A)(5) - Ohio Adm.Code 4906-5-04 requires the applicant to conduct a site and route selection study prior to submitting an application for an electric power transmission line or gas pipeline, and associated facilities. This paragraph of the rule requires the applicant to provide a description of the process by which the siting criteria were utilized to determine the preferred and alternate routes and sites.

FirstEnergy notes that the rule, as written, does not require the submittal in a standard certificate application for an electric transmission line or gas pipeline of a route selection study, rather it requires only a description of the process used by the applicant and the criteria used. FirstEnergy believes that, to the extent a route selection study is conducted, the study should be included in the application or as a standalone section. (FirstEnergy Att. at 43.)

The Board notes that Ohio Adm.Code 4906-2-04(C)(5) allows the applicant to provide a copy of a study as an attachment in response to any specific requirement. This would apply to the route selection study or any other study conducted for the applicant. Because it would be redundant to reproduce this paragraph in every rule, the Board will make no further changes to the proposed rules. Therefore, FirstEnergy's recommendation should be denied.

Comments on Ohio Adm.Code 4906-5-05 - Project description

(94) Paragraph (A)(1) - Ohio Adm.Code 4906-5-05 requires the applicant to provide a description of the project area. This paragraph states that the applicant also shall provide a map of not less than 1:24,000 scale with various features. AEP Transco states that the rules should allow for common mapping requirements, and suggests that a table be included with these common requirements as an appendix to the rules. AEP Transco proposes that, in such a table, at 1:24,000 scale, 1 inch should equal 2,000 feet. (AEP Transco at 10.) The Board agrees that one inch equals 2,000 feet at a scale of 1:24,000; however, we find that an appendix is not necessary. Therefore, the Board finds that AEP Transco's recommendation should be adopted, in part, and the rules should be revised to be consistent with this finding.

(95) Paragraph (A)(1)(d) - This paragraph requires the applicant to include major institutions, parks, and recreational areas as features on its submitted map. FirstEnergy states that none of these terms are defined and are subject to interpretation. FirstEnergy requests that all of these terms be either defined or otherwise limited to public institutions, e.g., hospitals, schools, and publicly-identified, publicly-owned, and publicly-operated parks and recreation areas. FirstEnergy argues that an application should not include information on a private land use that is not established in the public record or that is the result of private use of private property. (FirstEnergy Att. at 45.) The Board finds that FirstEnergy's interpretation of the meanings of these terms is reasonable and, therefore, this paragraph should be revised accordingly.

(96) Paragraph (A)(2) - This paragraph requires the applicant to provide the area of the proposed right-of-way of the facility, the length of the transmission line or pipeline, and the number of properties crossed by the facility.

FirstEnergy believes this type of information standing alone does not provide relevant or useful information for determining the impacts of a particular electric transmission line. FirstEnergy, therefore, suggests that the entire paragraph be stricken and that these types of "sound-bite" data points be

removed from standard certificate applications. (FirstEnergy Att. at 46.)

The Board disagrees with FirstEnergy's characterization of this basic information about a project's size. This information is part of the land use assessment in the application and is used for our review of land use impacts. R.C. 4906.10(A)(2) and (3) prohibit the Board from issuing a certificate unless it determines the basis of the need for the facility and the facility's probable environmental impact. The information required by this rule is essential for the Board to make this statutorily mandated determination. Therefore, FirstEnergy's recommendation should be denied.

(97) Paragraph (B)(2)(a) - This paragraph requires an applicant to provide a map of the layout of the facilities at 1:12,000 scale. Similar to its comment above, AEP Transco states that the rules should allow for a table with mapping requirements to be included as an appendix to the rules. AEP Transco proposes that, in such a table, at 1:12,000 scale, 1 inch should equal 1,000 feet. (AEP Transco at 10.) The Board agrees that one inch equals 2,000 feet at a scale of 1:24,000; however, we find that an appendix is unnecessary. Therefore, AEP Transco's recommendation should be adopted, in part, and the rules should be revised consistent with this finding.

Comments on Ohio Adm.Code 4906-5-06 - Economic impact and public interaction

(98) Paragraph (A) - Ohio Adm.Code 4906-5-06 requires the applicant to submit information on the ownership status of the proposed facility, the cost estimates of various components of facility alternatives, public interaction, and the economic impact for each site/route alternative. This paragraph states that the information regarding the ownership status of the proposed facility shall include the type of ownership and a general description of lease agreements with property owners in the project area.

EverPower states that lease terms are generally subject to confidentiality terms between the developer and the landowner and that requiring a description of lease terms in an application could result in a breach of the lease and a loss of

confidentiality. EverPower, therefore, argues that the last sentence of the proposed rule should be deleted. (EverPower at 5.)

The Board find that EverPower's recommendation is reasonable and should be adopted.

(99) Paragraph (D)(5) - This paragraph requires the applicant to describe how the facility will serve the public convenience and necessity. FirstEnergy believes that public interest, convenience, and necessity are closely related to the need for a project. Therefore, FirstEnergy recommends that this paragraph be moved to proposed rule Ohio Adm.Code 4906-5-03. (FirstEnergy Att. at 43.) The Board finds that FirstEnergy's proposal is reasonable; however, as we noted previously in this Order, public interest, convenience, and necessity and the need for the project are separate criteria in the Revised Code. Therefore, subject to this condition, the Board finds that FirstEnergy's recommendation should be adopted.

Comments on Ohio Adm.Code 4906-5-07 - Health and safety, land use, and regional development

(100) Paragraph (A)(2) - This paragraph requires the applicant to discuss the production of electric and magnetic fields for electric power transmission lines that are within 100 feet of an occupied residence or institution.

FirstEnergy states that this rule is vague and could apply to facilities other than electric transmission lines, none of which would be expected to contribute to electric and magnetic fields. Further, the requirement does not state where the 100 foot corridor starts, the edge of the right-of-way or the centerline. FirstEnergy requests that the proposed rule be revised to indicate that the operable distance is 100 feet from the centerline of the proposed electric transmission line. (FirstEnergy Att. at 46.)

The Board notes that the paragraph is intended to apply to electric power transmission lines and substations; it does not apply to a facility that does not contribute to electric and magnetic fields. However, the Board agrees that the rule should be clarified to reflect that the 100 foot corridor begins at the centerline of the facility.

(101) Paragraph (A)(2)(a) - This paragraph requires the applicant to calculate electric and magnetic field strength ratings at one meter above the ground for winter normal conductor rating and emergency line loading. FirstEnergy proposes that this paragraph include language distinguishing the number of field strength values that are required based upon the number of residences or institutions within 100 feet of the centerline, as well as the percentage of occupancy over the total length being certificated. The Board finds that FirstEnergy's recommendation is reasonable and should be adopted.

(102) Paragraph (A)(3) - This paragraph requires the applicant to estimate the impact of the proposed, electric power transmission facility's interference with radio, television, and other communications, identify severely impacted areas, if any, and discuss methods of mitigation.

FirstEnergy states that very little that can be done to estimate the impact of the proposed facility's interference with radio, television, and other communications, and electric transmission lines, which are operated below 345 kV, are unlikely to have any impacts. Consequently, this requirement is not likely to provide useful information during the review of an application. FirstEnergy, therefore, recommends that this provision be stricken. (FirstEnergy Att. at 47.)

As we have stated previously, R.C. 4906.10 prohibits the Board from issuing a certificate unless it determines that the eight criterion set forth in the statute are met. In order for the Board to adhere to this statutory mandate, it is necessary for the information set forth in this rule to be submitted and analyzed as part of our investigation. In addition, the Board notes that this is not a new requirement. However, if the specific facility proposed in an application is not likely to produce any interference, the applicant should simply explain this in the application. Therefore, the Board finds that FirstEnergy's recommendation should be denied.

(103) Paragraph (A)(5) - This paragraph requires the applicant to submit a blasting plan if site-specific conditions or construction methods require blasting.

FirstEnergy states that blasting associated with electric transmission line splicing differs considerably from in the ground concussion explosions designed to fracture or displace rock that may be used during foundation construction. FirstEnergy requests the rule be rewritten to exclude blasting associated with transmission line splicing and require information on blasting only in those instances where blasting will be used to support the construction of foundation structures. (FirstEnergy Att. at 47-48.)

EverPower states that, in the past, the Board has treated the blasting plan as a condition and that such practice should be continued to avoid having to incur the cost and time to develop detailed plans for construction prior to certificate approval. EverPower contends that the proposed rule should not be adopted. (EverPower at 6.)

The Board agrees and finds that EverPower's recommendation should be adopted. The Board finds that this paragraph should be removed and blasting plans should be addressed on a case-by-case basis.

(104) Paragraph (B) - This paragraph requires the applicant to provide information on land use.

FirstEnergy objects to the increased information requirements related to land use. FirstEnergy states that, although existing land use may be a relevant consideration for the Board, proposed and future land uses are not properly considered by the Board. FirstEnergy also states that the Board's review encourages local jurisdictions to adopt land use plans that are inconsistent with the construction of major utilities. FirstEnergy argues that local land use and development plans should not be considered by the Board, except as they relate to current use and the overall consideration of the project by the Board. (FirstEnergy Att. at 48.)

R.C. 4906.10 prohibits the Board from issuing a certificate unless it determines that the eight criterion set forth in the statute are met. Specifically, the Board is mandated by R.C. 4906.10(A)(2), (3), and (6) to conduct an investigation to determine the nature of the probable environmental impact, if the facility represents the minimum adverse environmental

impact, and if the facility will serve the public interest, convenience, and necessity. The information required by this rule is essential for the Board to meet its statutory obligations. Moreover, the Board observes that, these requirements are nearly identical to the current rules, and, in some areas, the rules have been reduced. Further, contrary to FirstEnergy's assertion, there is no mention of "proposed and future land uses" in this rule. The Board notes that the requirement to consider local land use plans is referenced in Ohio Adm.Code 4906-5-07(D); this requirement is not new. FirstEnergy's claim that local jurisdictions will "adopt land use plans that are inconsistent with the construction of major utilities" is unfounded. This requirement says nothing about how the Board will act in relation to existing land use plans, it only asks the applicant to review such plans and assess the facility's impact on regional development. The Board believes that formally adopted land use plans should be an important consideration when choosing the location for a facility; but, nothing in this rule suggests or requires that a land use plan would thwart the Board's authority. Therefore, FirstEnergy's request should be denied.

(105) Paragraph (B)(1) - This paragraph requires the applicant to provide a map at 1:24,000 scale for each of the site/route alternatives. AEP Transco notes that right-of-ways will barely be visible at this scale (AEP Transco at 11). The Board understands that a right-of-way may be difficult to discern at a scale of 1:24,000; however, the rule specifies that the applicant must provide a map of not less than 1:24,000. If the applicant determines that a larger scale map will more clearly depict its proposed route, the rule does not prohibit the applicant from submitting the larger map. The Board, therefore, finds that AEP Transco's comment regarding map scale should not be adopted and that the current language should be maintained.

(106) Paragraph (B)(1)(c) - This paragraph requires that land use features be included on the map submitted by the applicant.

FirstEnergy believes it is not appropriate to take into consideration local land use plans when determining existing land use. FirstEnergy believes that consideration of land use should be limited to general categories, such as residential, industrial, commercial, and agricultural. FirstEnergy argues

that the Board should not take into consideration all of the diverse land use and local development plans that have been adopted throughout Ohio. (FirstEnergy Att. at 49.)

The Board notes that R.C. 4906.10(A)(2), (3), and (6) require us to conduct an investigation to determine the nature of the probable environmental impact, if the facility represents the minimum adverse environmental impact, and if the facility will serve the public interest, convenience, and necessity. In order for the Board to consider this criteria, it is essential that the information provided for in this rule is submitted by the applicant. In addition, the Board notes that the reference to "local land use authority" in this paragraph provides a second option for how the applicant should categorize current land use by using the same classifications as the local land use authority. The Board also observes that land use authorities responsible for classifying land use are clearly defined in each county. Again, the Board notes that there is no reference to future land use, only the requirement that the applicant provide an assessment of impacts to regional development, referencing regional land use plans. Therefore, the Board finds that FirstEnergy's request is without merit and should be denied.

(107) Paragraph (B)(1)(e) - This paragraph requires that structures be included on the map submitted by the applicant.

AEP Transco notes that this land use information is "quite detailed for this scale" (AEP Transco at 11).

Again the Board notes that this information is crucial in order for the Board to determine, as required by R.C. 4906.10(A)(2) and (3), the basis of the need for the facility and the nature of the probable environmental impact of the facility. Moreover, as the Board noted previously, the rule specifies that the applicant must provide a map of not less than 1:24,000. If the applicant determines that a larger scale map will more clearly depict its proposed route, the rule does not prohibit the applicant from submitting it. The Board, therefore, finds that AEP Transco's comment regarding map scale should not be adopted and that the current language should be maintained.

(108) Paragraph (B)(3)(a) - This paragraph requires that, for structures within 200 feet of the proposed facility, the applicant

provide the distance between the nearest edge of the structure and the proposed facility.

AEP Transco states that this rule treats 138 kV electric transmission lines the same as 765 kV transmission lines. AEP Transco argues that there is no basis for the 200 feet zone; therefore, this rule would be better served by requiring the identification of structures within the proposed right-of-way, not at an arbitrary distance away from the facility. (AEP Transco at 7.)

Initially, the Board points out that, while the 200-feet measurement may appear arbitrary, so is AEP's proposal of "within the proposed right-of-way." The Board notes that impacts of the project to residences, businesses, and other structures do not end at the right-of-way. As proposed, this paragraph reduces the area of concern from the current rules, which require applicants to identify the number of residences within 1,000 feet of the facility, and separately within 100 feet. The Board, therefore, believes the proposed rule is less arbitrary and less burdensome than the current rule. Therefore, the Board finds that AEP Transco's recommendation to require the identification of structures only within the right-of-way and eliminate the 200-feet reference is without merit; however, the Board agrees that structures should be measured from the proposed facility "right-of-way" and the rule should be revised accordingly.

(109) Paragraph (B)(3)(c) - This paragraph requires that the applicant provide a description of the probable impact of the proposed facility on structures within 1,000 feet. AEP Transco states that there are virtually no impacts from the thousands of miles of existing electric and gas transmission facilities currently operating throughout Ohio; therefore, this rule is unnecessary and should be removed. (AEP Transco at 11.) The Board agrees that this paragraph should be removed, as its intent is repetitive of paragraph (B)(2) of this rule, regarding impacts to the use of structures and land, rather than the physical structure itself. Therefore, the Board finds that AEP Transco's recommendation should be adopted.

(110) Paragraph (C)(1)(a) - This paragraph requires the applicant provide map information, where available, regarding agricultural land use.

(a) AEP Transco suggests that "where available", be replaced with "where visible and distinguishable" (AEP Transco at 11-12). The Board agrees and finds that AEP Transco's suggested change should be adopted.

(b) FirstEnergy notes this rule includes subcategories of agricultural use that are undefined and irrelevant to the siting process. FirstEnergy believes there is no basis for the Board to require this information. (FirstEnergy Att. at 49.)

The Board notes that R.C. 4906.10(A)(7) requires the Board to conduct an investigation to determine what the impact of the facility will be on the viability of the land as agricultural land. In order for the Board to consider this criterion, it is essential that the information provided for in this rule is submitted by the applicant. Subcategories of agricultural use are relevant to describe the type of impact to agriculture, as agricultural use is a very broad land use definition encompassing many different types of activities. Moreover, the Board notes that this is not a new requirement. Accordingly, FirstEnergy's request should be denied.

(111) Paragraph (C)(2)(b)(v) - This paragraph requires that the applicant provide an evaluation of the impact of the proposed facility on agricultural district land.

AEP Transco states that this assessment will be difficult for an applicant to determine, as it is up to private landowners whether or not they wish to place their land in an agricultural district. AEP Transco also submits that there are certain requirements that must be met, including the value of crops grown on the land that the applicant would not be able to determine. AEP Transco, therefore, contends that, given the other requirements of this rule, it is impractical for an applicant

to discuss the project impacts on the potential viability of agricultural district land. (AEP Transco at 7.)

The Board observes that this criterion directly addresses one of the eight criteria in the Revised Code for granting a certificate. *See* R.C. 4906.10(A)(7). However, in response to AEP Transco's comment, the Board finds that the paragraph should be clarified; therefore, it should be revised accordingly.

(112) Paragraph (D) - This paragraph requires the applicant to provide information on land use plans and regional development.

FirstEnergy requests that the requirement be removed from the application requirements. FirstEnergy states that local and regional land use planning, the specific impediment to the construction of a regional transmission system, was the motivation behind the original adoption of R.C. Chapter 4906. FirstEnergy argues that the Board should not allow its rules to limit the intent of the General Assembly to remove local land use considerations from the siting process. (FirstEnergy Att. at 49.)

The Board notes that this is a statutory requirement of R.C. 4906. Regional plans must be considered in the decision, but are not the sole determining factor. Therefore, the Board finds that FirstEnergy's recommendation should be denied.

(113) Paragraph (E)(1) - This paragraph requires the applicant to show, on a map, landmarks that are recognized by the National Registry of Natural Landmarks, the Ohio Historical Society, or ODNR.

FirstEnergy requests that there be no reference to the Ohio Historical Society or ODNR, as neither of these agencies have specific legal authority to participate in the siting process. (FirstEnergy Att. at 50.)

Initially, the Board emphasizes that this information is crucial to our investigation and ultimate determination under R.C. 4906.10. The Board notes that these references are not new, nor do they grant any authority to these agencies; rather, they assist in limiting the breadth of our investigation to readily identifiable information, so that we will be able to ascertain

whether the project complies with the statutory criterion. They are in reference to the definition of "landmarks," limiting the definition to places identified by these agencies. Therefore, the Board disagrees with FirstEnergy's recommendation and finds that it should be denied.

(114) Paragraph (E)(3) - This paragraph requires the applicant to provide an evaluation of the probable impact of the proposed facility on the preservation and continued meaningfulness of cultural resources.

AEP Transco states that the term "continued meaningfulness" of a cultural resource should be properly defined or should be eliminated from the rule (AEP Transco at 7).

The Board believes the term is self-explanatory, that the resource will continue to have the properties that make it meaningful as a cultural resource, despite any potential impacts from the proposed project. The Board does not believe a definition would provide any further clarity and disagrees with the recommendation. Therefore, the Board finds that AEP Transco's suggestion should be denied.

Comments on Ohio Adm.Code 4906-5-08 - Ecological information and compliance with permitting requirements

(115) Paragraph (A)(3)(c) - This paragraph requires the applicant to show wetlands on a map, including the entire area of the wetland if it extends outside the study corridor.

OGA argues that, because wetlands are generally on private property, the applicant would have to survey land over which it has no legal control. Moreover, the portion of the wetland beyond the 1,000 feet of the study corridor will not be impacted by the project. OGA, therefore, recommends clarifying this rule to limit the maps only to the project site. (OGA at 4-5.)

FirstEnergy believes, and OGA agrees, that the Board should limit the data submittal requirements in applications and should not adopt rules that are more expansive or duplicative than the permitting authority of other state agencies, including the Ohio EPA. FirstEnergy argues that there is no justification for including wetlands that extend beyond the study corridor and this requirement is burdensome on applicants whose

projects may cross wetlands as part of a new transmission line. FirstEnergy insists that the Board limit its requirements to data collected on the actual study corridor and information collected to meet other applicable permitting requirements. FirstEnergy argues that this rule is unnecessary and unreasonable, and should be removed. (FirstEnergy Att. at 50-51; OGA Reply at 3.)

The Board notes that R.C. 4906.10(A)(2) and (3) require us to conduct an investigation to determine the nature of the probable environmental impact and if the facility represents the minimum adverse environmental impact. In order for the Board to consider this criteria, it is essential that the information provided for in this rule is submitted by the applicant. Moreover, the Board notes that, contrary to FirstEnergy's inference, this paragraph does not require a field survey of the entire wetland. It merely requires that the applicant use appropriate resources to estimate the entire area of the wetland. Wetland evaluation requires an estimate of the area of the entire wetland and it does not matter that a portion of the wetland will not be impacted. The Board further believes that the size of the wetland is an important indicator of wetland quality, and the wetland quality evaluation is used to determine whether impacts are acceptable and what type of mitigation is required. Therefore, the Board finds that the commenters' recommendations should be denied.

(116) Paragraph (A)(5) - This paragraph requires the applicant to show wildlife areas, nature preserves, and other conservation areas on a map.

FirstEnergy objects to the proposed rule on the grounds that the term "other conservation areas" is vague. FirstEnergy requests that this requirement be limited to publically identified conservation areas that are managed by a public body or a recognized nonprofit organization typically involved in managing conservation areas. (FirstEnergy at 51.)

The Board agrees and finds that FirstEnergy's recommendation should be adopted. The paragraph should be revised accordingly.

(117) Paragraph (B)(2) - This paragraph requires the applicant provide a map of 1:12,000 scale showing the facility, the right-of-way, and all delineated resources. AEP Transco states that the rule should say "at least" 1:12,000 scale (AEP Transco at 15). The Board agrees and finds that AEP Transco's suggestion should be adopted.

(118) Paragraph (D) - This paragraph requires the applicant provide information relating to geology and topography for each site/route alternative and describe the probable impact to these areas by the proposed facility.

AEP Transco states that soil boring information pertains to detailed foundation design, can only be taken after a final route is selected by the Board, and provides little useful information to others not involved with the final design of the structure foundations. Therefore, this rule will not aid in the selection of a gas or electric transmission line route. FirstEnergy agrees with AEP Transco that the submittal of soil boring information as part of an application is unnecessary, unduly burdensome, and generally not relevant to the selection of transmission line routes or locations of major utility facilities. AEP Transco and FirstEnergy argue this section should be eliminated. (AEP Transco at 8; FirstEnergy Reply at 9.)

The Board notes that R.C. 4906.10 requires us to conduct an investigation prior to issuing a certificate. The information required in this rule is necessary in order for the Board adhere to this statutory mandate. Moreover, the Board notes that the rule does not require that the actual test boring information be provided in the application. If the job does not require test borings, then the rule would not apply. In such a case, a simple statement to that effect in the application would fulfill the requirements of this rule. Therefore, the Board disagrees and finds that the commenters' recommendations should be denied.

(119) Paragraph (E)(4) - This paragraph requires the applicant provide a discussion of plans for disposition of contaminated soil and hazardous materials generated or encountered during construction.

OGA states that the term encountered is problematic and that, under the proposed rule, an area traversed on the way to the

project site might be subject to remediation. OGA states that better language to cure this situation is found in the definition of "commence to construct" in Ohio Adm.Code 4906-1-01(L). OGA contends that utilities should only be held responsible for removing contaminated soil excavated for the project and not beyond the scope of the project. (OGA at 5-6.)

The Board agrees and finds that OGA's recommendation should be adopted.

(120) Paragraph (E)(5) - This paragraph requires the applicant to provide the height of the tallest anticipated above-ground structures. For construction within 20 miles of airports or landing strips, the applicant shall provide the maximum possible height of all construction equipment, as well as all installed above-ground structures.

FirstEnergy requests that this rule be rewritten to remove all references to aviation and landing strips and/or airports. FirstEnergy states that the proposed rule requires information that is irrelevant to siting a major utility. Thus, only airports and landing strips registered with the FAA or the ODOT should be considered, and only when a new electric transmission line is proposed for construction within one mile of such a facility or if the configuration of the proposed electric transmission line could interfere with the facility. (FirstEnergy at 51-52.)

Initially, the Board notes that R.C. 4906.10 prohibits the Board from issuing a certificate unless it determines that the eight criteria set forth in the statute are met, including aviation considerations under division (5) and safety considerations under division (6). The information required by this rule is essential in order for us to complete our investigation in accordance with the statute. Moreover, the Board observes that this rule requires us to determine whether the facility constitutes an obstruction to air navigation. As such, the Board needs the information required by the rule. The Board, therefore, finds that FirstEnergy's recommendation should be denied. However, the Board does not object to limiting the requirement to public use airports within five miles of the proposed facility; therefore, the rule should be revised accordingly.

Ohio Adm.Code Chapter 4906-6 – Accelerated certificate application requirements

(121) General – This chapter pertains to the rules for filing an accelerated certificate application.

(a) FirstEnergy notes that the proposed rules require the same filings for both CNs and LONs. FirstEnergy does not believe that accelerated certificate applications that qualify for consideration as CNs should require the same level of detail as accelerated certificate applications that quality as LONs. FirstEnergy states that additional burdens for CN-type applications may have significant negative impacts on the ability to construct smaller projects in a timely manner. FirstEnergy also does not agree that these proposed rules will lower costs of compliance, when the costs of compliance for a large percentage of power siting projects will increase. (FirstEnergy Att. at 53-54.) OGA supports FirstEnergy's arguments that the proposed rules would greatly increase the filing requirements for the smallest projects, thus, creating negative impacts on the applicant's ability to construct smaller projects in a timely and least cost manner. (OGA Reply at 3.)

Initially, the Board notes that the requirements set forth in the rules specifically address each of the criterion the Board is responsible for reviewing in every application that comes before the Board. With that mandate in mind, each project is reviewed individually, based on the specifics of that particular case. While it is true that CN projects are generally smaller and of less impact than LON projects, this is not always the case. The application matrix has worked well for some time, but it does not perfectly categorize projects into the amount of review required. Some CN projects require more review than a typical LON, and some LON projects require less review than a typical CN. Moreover, the Board notes that we do not anticipate reviewing CN applications any

differently than we do now. The proposed requirements will enable the Board to review CN applications more efficiently because we will have more of the information we need upfront. Moreover, we are not requiring additional studies. The Board believes the proposed changes to the application requirement matrix will greatly increase the number of projects that are eligible to file as a CN or LON; thus, significantly reducing costs for applicants. Therefore, the Board finds that FirstEnergy's arguments are unfounded and should be denied.

(b) ELPC's concern is that the proposed rules do not require applicants seeking accelerated approval of electric transmission lines and associated facilities to provide the Board and the public with sufficient load flow and contingency information to evaluate the need for the proposals. Merely requiring an applicant to provide a statement explaining the need for the proposed facility is insufficient for the Board to meet its statutory obligation to determine the basis of the need for the facility. ELPC argues that the Board should require utilities seeking accelerated approval of transmission lines to include the same information required for standard certificate applications. (ELPC at 1, 6-7.) FirstEnergy states that ELPC's concern is misplaced and generally misconstrues the review process for the types of transmission projects that qualify for accelerated review. FirstEnergy argues that the detailed information that ELPC suggests is required to establish the need for a project is not mandated by statute and it is within the discretion of the Board to rely on the information it considers relevant to whether or not a project is needed. Moreover, FirstEnergy states that providing raw data to an interested party would be meaningless because interested parties have no access to the computer software to perform the necessary computer modeling. FirstEnergy argues that ELPC's concerns can be fully addressed in the

case of a specific transmission line project where a legitimate question arises regarding the need for the line. (FirstEnergy Reply at 11-13.)

The Board does not merely take the applicant's word as the basis of need for the project. If the Board does not have adequate information to assess the need for a project, it can request additional information from the applicant or suspend consideration of an accelerated certificate application to allow for time to further consider the application for up to 90 days during which the Board may set the matter for hearing. The Board finds no merit in ELPC's' statements and, therefore, the requests should be denied.

Comments on Ohio Adm.Code 4906-6-01 - Purpose and scope

(122) General - This rule states that the chapter sets forth the rules for filing an accelerated certificate application and that the Board may waive any requirement of the chapter, except those requirements mandated by statute. FirstEnergy recommends that language be added to the proposed rule limiting its applicability to accelerated certificate applications (FirstEnergy Att. at 6). As the title and requirements in this chapter are clearly delineated as applying to accelerated certificate applications, the Board finds that FirstEnergy's recommendation is without merit and should be denied.

Comments on Ohio Adm.Code 4906-6-03 - Filing of an accelerated application

(123) Paragraph (A) - Ohio Adm.Code 4906-6-03 sets forth the requirements for filing an accelerated certificate application. This paragraph requires the applicant to make certain preapplication filings at least five days prior to submitting an accelerated certificate application.

Leipsic states that this requirement extends the time period for abbreviated applications, as the five days is tacked on to the new statutory 90-day process; thus, it is contrary to R.C. 4906.03(E) that limits an accelerated process to 90 days. In addition, it is not clear why this information is needed in advance. (Leipsic at 14-15.)

The Board notes that the new statutory 90-day process begins when the application is filed. This notification letter does not abbreviate that process or add to the application processing time. There is no requirement that the application be ready to file prior to filing this notification letter. Also, it is not a five-day waiting period; rather, the letter may be filed as soon as the basic information required is known by the applicant. Applicants surely know well in advance of filing their application such basic information. Given the number of cases that are now eligible for accelerated filing and the increase in requests for expedited filing, advance notice of filings will aid Staff greatly in allocating proper resources to review accelerated cases and requests for expedited processing. Therefore, the Board finds that Leipsic's request should be denied.

Comments on Ohio Adm.Code 4906-6-05 - Accelerated application requirements

(124) General - This rule sets forth the requirements for filing accelerated certificate applications.

(a) AEP Transco states that this rule is a step backward from past rules, which required less detailed information for a project covered by a CN; thus, the applicant must now supply more information than the vast majority of projects covered by a CN would require. AEP Transco suggests that the rule be broken into two parts. The first part would detail the application requirements for an LON and the second part would detail the application requirements for a CN. AEP Transco notes that, just as the requirements for an LON are largely the same as in the past rules, the requirements for a CN could be the same as in past rules also. (AEP Transco at 8-9.)

Initially, the Board points out that some requirements from the existing LON application rules were removed, reduced, or simplified. However, the Board acknowledges that many CN projects have less impact than LON projects;

however, this is not always the case. The Board has repeatedly been in need of additional information on CN projects located near streams, wetlands, densely populated areas, and other sensitive areas. In order to cover this gap of information, it is necessary to revise the CN rules, which results in the CN rules looking much like the LON rules. Therefore, the Board believes it is more efficient to have the same requirements for both types of cases. In addition, if a requirement does not apply to a CN project, the applicant may briefly explain why it does not apply in the application, as the new CN requirements are only applicable if they are needed for the project, based on the resources in the area. This reflects how the Board operates under the current rules; the only change is that the Board is asking for the relevant information up-front so as to have adequate time for review. Accordingly AEP Transco's request should be denied.

(b) OGA states that, typically, CN projects are so small as to not allow for feasible alternate routes, even if alternate routes were physically available. Further, these small, low public impact projects fall below the threshold requirements of other state and federal agencies. Thus, they do not require ecological, archeological, or other types of investigations. OGA argues that, although CN projects are less complicated and require less data, the additional costs to provide the information listed in the proposed rules and the additional time to prepare the CNs are inconsistent with promoting sensible governmental directives. OGA argues that the proposed rule will compel Staff to increase their review of small projects, rather than focus its efforts on the larger or medium sized projects that present a greater prospect of affecting the public. OGA also argues that the increased requirements for a CN are inconsistent with the overall goals of the Board's review process. Further, noting the disparity in processing time, 42 days for a CN

versus 90 days for an LON, OGA states that the CN projects are less complicated and require less data and that this disparity in processing time underscores the inconsistency and ill-conceived notion of imposing the same requirements for a CN as for an LON. OGA urges the Board to amend the rule to retain the historical distinctions in the requirements for LONs and CNs. (OGA at 6-10.)

The Board finds that OGA's has misconstrued the requirements in this rule, thus, its concerns are unfounded. Contrary to OGA's assertion, the CN application rule does not require alternate routes; rather, if there is no reason to consider alternatives for the project, the applicant should simply explain this in its application. In addition, the rule does not require additional investigations, but requests that a description of the investigation be included in the application when such investigations are conducted by the applicant for other permitting requirements. With regard to the potential increase in Staff's time to review small projects, as we stated previously, Staff reviews each project individually and the amount of review required is largely dependent on the environmental impact of the project. While it is true that CN projects are generally smaller and of less impact than LON projects, this is not always the case. The application matrix has worked well, however, it does not perfectly categorize projects into the amount of review required. Some CN projects require more review than a typical LON, and some LON projects require less review than a typical CN. The Board reiterates that the size of the project does not always relate directly to the amount of impact or review required. Moreover, the Board notes that we do not anticipate reviewing CN applications any differently than we do now. The proposed requirements will enable the Board to review CN applications more efficiently because we will have more of the

information we need upfront. Contrary to OGA's assertions, we are not requiring additional studies; we simply ask that the applicant include the results of all studies conducted in their application. The Board believes the proposed changes to the application requirement matrix will greatly increase the number of projects that are eligible to file as a CN or LON; thus, significantly reducing costs for applicants. Accordingly, we conclude that OGA's recommendations should be denied.

(c) ELPC believes the rules proposed in this docket do not allow for a thorough review of all the information that is necessary to make public interest and need determinations with regard to transmission projects. ELPC argues that, as with applicants under the standard certificate process, applicants seeking accelerated approval should be required to provide detailed information regarding the load and resource assumptions incorporated into the alleged need. ELPC states that the Board should amend its proposed rules to require applicants seeking accelerated review to provide the same information as found in proposed Ohio Adm.Code 4906-5-03 and that, at a minimum, this information should include: peak load assumptions used; facilities assumed to be in-service; generating unit dispatch assumed; thermal violations and the contingencies that produce them; voltage violations and the contingencies that produce them; scenarios that will not solve and the contingencies that produce them; and load flow model data and solved load flow cases reflecting the above. (ELPC at 3-4.)

Initially, the Board notes that S.B. 315 requires the Board to adopt rules providing for "accelerated review of an application for a construction certificate for an electric transmission line that is necessary to maintain reliable electric service as a result of the retirement or shutdown of an electric generating facility within the state." The Board

> relies upon analysis conducted by the transmission planning authority, PJM Interconnection, LLC (PJM), as the basis of its recommendation. PJM analysis includes system modeling of load flow studies, voltage studies, and other issues that could impact transmission system reliability and efficiency. Additionally, the need for the project is identified by PJM's analysis. Therefore, the Board finds that ELPC's request is unfounded and should be denied.

(125) Paragraph (B)(4) - This paragraph requires the applicant to describe the alternatives considered and reasons why the proposed location or route is best suited for the proposed facility. OGA states that "[e]xcept for constructive notice applications" should be added to the first sentence of this paragraph (OGA at 11). The Board finds that OGA's suggestion should be denied. If there is no reason to consider alternatives for the project, the applicant should simply explain this in its application.

(126) Paragraph (B)(5) - This paragraph requires the applicant to describe its public information program to inform affected property owners and tenants about the project's construction and restoration activities. OGA states that "[e]xcept for constructive notice applications" should be added to the first sentence of this paragraph (OGA at 11). The Board finds that OGA's suggestion should be denied. Because these projects are typically small, there should be very few property owners to inform of the project; however, sometimes a CN application can affect many property owners. In either case, affected property owners should be notified of the project.

(127) Paragraph (B)(10)(b) - This paragraph requires the applicant to provide the acreage and a general description of all agricultural land and all agricultural district land within the potential disturbance area of the project. OGA states that "[e]xcept for constructive notice applications" should be added to the first sentence of this paragraph (OGA at 11). The Board finds that OGA's suggestion should be denied. An evaluation of impacts to agricultural districts is required by R.C. 4906.10(A)(7).

(128) Paragraph (B)(10)(c), (e), and (f) - These paragraphs require the applicant to provide descriptions of the applicant's investigations concerning significant archeological or cultural resources, federal or state designated species, and areas of ecological concern within the potential disturbance area of the project.

OGA states that "[e]xcept for constructive notice applications" should be added to the first sentence of this paragraph (OGA at 11).

The Board finds that OGA's suggestion should be denied. The Board reiterates that most of the requirements that the commenter is proposing to change do not actually require additional studies. If there was no need for an investigation for the CN project, then there is no investigation to describe in the application, and the applicant should simply explain why this requirement is not applicable. However, if such investigation was conducted because of other permitting requirements, that information should be included upfront in the application so that Staff can conduct its review more quickly and efficiently.

Comments on Ohio Adm.Code Chapter 4906-6-06 - Completeness of accelerated certificate applications, staff investigation, and staff report

(129) Paragraph (B) - This paragraph requires Staff to conduct an investigation of each accelerated certificate application and submit a written report no less than seven days prior to the automatic approval date.

FirstEnergy proposes that, if the staff report will contain proposed conditions on a certificate, Staff shall provide to the applicant, at the earliest date practicable, and in no event less than 10 business days before the automatic approval date, copies of the proposed conditions (FirstEnergy Reply at 3).

The Board disagrees and finds that FirstEnergy's recommendation should be denied. The new requirement that the staff report be issued at least seven days prior to automatic approval already reduces the time period for Staff's investigation. Thus, for some expedited cases, the review period is as short as two weeks. The Board believes seven days is sufficient to review and file objections.

Comments on Ohio Adm.Code Chapter 4906-6-08 – Public notice for letter of notification applications

(130) General – This rule requires the applicant to give public notice of the project in newspapers, at public libraries and other accessible locations, on the applicant's website, and by direct mail to affected property owners and tenants. FirstEnergy requests that the Board include a provision that allows applicants to correct any inadvertent failure of service or publication that might occur (FirstEnergy Att. at 56). The Board agrees and finds that FirstEnergy's recommendation is reasonable and should be adopted.

(131) Paragraph (A) – This paragraph requires the applicant to give public notice of the project in newspapers within seven days of the filing of an LON application. The paragraph further sets forth the type size, heading, and information to be contained in the notice.

FirstEnergy requests that the portion of the rule requiring the notice to "occupy not less than one-fourth of a standard newspaper page" be stricken or reworked to accommodate a more practical size for this notice and to take into account the current page size of newspapers. FirstEnergy also requests that the rules for LONs be rewritten to allow for public notification of multiple projects in a single newspaper publication, in order to reduce the cost of publication. Further, FirstEnergy requests that publication of newspaper notice for LONs occur within 14 days of the filing of the application, because 14 days is: a more reasonable period of time to obtain publication, particularly in more rural areas that are not necessarily served by daily papers and given the submittal requirements of newspapers for these types of legal notice; and more appropriate, as it allows applicants additional flexibility in the filing of LONs. (FirstEnergy Att. at 54-55.)

The Board finds, as we did previously with regard to FirstEnergy's comments on Ohio Adm.Code 4906-3-03(B)(1), that the recommendation pertaining to the size of the newspaper page should be adopted. However, the Board believes that applicants should be able to plan their newspaper notice in advance of filing their LON application; they do not need to wait until filing to begin seeking publication. We find

that seven days is appropriate because of the short review period and automatic approval of these applications, especially when expedited. Therefore, the Board finds that FirstEnergy's second recommendation regarding the time period to obtain publication for newspaper notice of an LON should be denied.

Comments on Ohio Adm.Code Chapter 4906-6-09 - Suspension of accelerated certificate applications.

(132) Paragraph (A) - This rule states that, upon good cause, the Board, its executive director, or ALJ may suspend consideration of an accelerated certificate application for up to 90 days.

OGA argues that the proposed rule is unfair because, by not specifying a time within which the suspension is to be issued, the suspension could occur on the 89th day. OGA asserts that the proposed rule should be modified to state that the application may be suspended within 10 days of filing. (OGA at 12.) Leipsic agrees, stating that, if Staff believes a suspension should be issued, it should recommend the suspension well before the end of the 90-day period. (Leipsic at 15.)

In its reply, ELPC argues that the Board should reject Leipsic's proposed changes. ELPC states that very large, expensive line projects are now eligible for accelerated review and that Leipsic's proposal for a 10-day time limit to determine whether suspension is needed unreasonably constrains the Board. (ELPC at 4.)

The Board notes that information warranting suspension of an application could arise at any time during the application review period. Putting this time limit on suspension inhibits the ability of Staff, the applicant, and other parties to resolve issues. This proposal also would likely cause many more applications to be suspended, which would delay the process. Furthermore, the Revised Code does not call for any deadline for suspension. Therefore, the suggestion that was recommended by OGA and Leipsic should be denied.

(133) Paragraph (C) - This rule states that, once an accelerated certificate application has been suspended, the Board will act within 90 days to approve, modify, or deny the application.

Further, the Board or ALJ may, at their discretion, set this matter for hearing.

OGA states, and Leipsic agrees, that this provision does not make it clear that, when the Board suspends an application for 90 days and decides to schedule a hearing, the hearing would be held within the same 90-day period and that, in any event, the Board will act within the 90 days. OGA argues that, in any event, the Board must act to approve, disapprove or modify an application, and hold a hearing, within the 90-day period to comply with R.C. 4906.03(F). (OGA at 13.)

The Board finds that the recommendations proposed by OGA and Leipsic are without merit and should be denied. The changes proposed in this rule clearly state in paragraph (A) that suspension is for up to 90 days, and paragraph (C) states that the Board will act within 90 days.

Comments on Ohio Adm.Code 4906-6-10 – Automatic approval of accelerated applications

(134) General – This rule states that, if the Board does not act on an LON or any waiver request within 90 days, the LON or waiver request shall be deemed automatically approved, subject to any conditions contained in the staff report.

(a) AEP Transco states that this rule appears to place default approval of the final terms of an accelerated application upon Staff, absent Board action. However, there is no process by which an applicant may refute Staff's conditions. AEP Transco states that, if Staff is going to have this potential control over an accelerated application, the rule should require Staff to provide the applicant an advance copy of the conditions with an offer to meet with the applicant prior to issuing a staff report. AEP Transco believes that a meeting between the two can avoid any potential misunderstandings that may lead to unnecessary conditions. (AEP Transco at 9-10.)

In its reply, ELPC states that the Board should accept AEP Transco's recommendation only if the proposal is circulated to all parties and if the

discussions are held with all parties. ELPC believes the Board should give all parties the same opportunities to share information with Staff and the Board. (ELPC Reply at 2.)

The Board notes that this rule has not changed from the current rules and has not been an issue to date. The Board, the applicant, and any other parties are provided a copy of the staff report with an opportunity to comment on the conditions prior to the automatic approval date and take any necessary action to request modification to the conditions if they choose. This rule does not prohibit requests for modification of conditions after the staff report is issued. Therefore, AEP Transco's recommendation should be denied.

(b) FirstEnergy states that R.C. 4906.03 does not provide the Board with the authority to delegate to Staff the ability to condition the approval of these projects. FirstEnergy argues that it is contrary to Ohio law for an administrative agency to delegate decision-making to the staff of that agency. Consequently, FirstEnergy does not believe the Board has the authority to authorize the automatic approval of accelerated certificate applications subject to conditions proposed in the staff report. FirstEnergy, therefore, believes the language subjecting automatic approval to conditions in the staff reports should be removed. In addition, FirstEnergy states that, as written, it is unclear how an applicant or an intervening party would be able to question or challenge conditions in a staff report. Further, absent requesting a rehearing, there is no avenue to appeal the issuance of a certificate pursuant to the automatic approval process that contained objectionable conditions. FirstEnergy argues that, pursuant to R.C. 4906.03, if an accelerated certificate application is not automatically approved, the Board must act to suspend the review, for good cause only, and may only delay

a decision for an additional 90 days. (FirstEnergy Att. at 56-57.) OGA agrees that Staff should not have the authority to condition automatic approval of accelerated applications (OGA Reply at 4).

Contrary to the commenters' assertions, the process implemented pursuant to this rule is in keeping with the statutory mandate of R.C. 4906.03. However, the Board acknowledges the comments submitted regarding this rule and finds that the rule should be revised to more clearly set forth the process the Board is adopting for our consideration of Staff's recommendations in its report. In addition, we agree that a process allowing for the filing of objections to the staff report should be included in this rule. Therefore, consistent with these findings, this rule and Ohio Adm.Code 4906-6-03 and 4906-6-04 should be revised accordingly.

Comments on Ohio Adm.Code 4906-6-12 – Amendments and expiration of certificates

(135) Paragraph (B) - This rule states that the Board's approval of the project will expire if a continuous course of construction has not commenced within two years of the application's approval date.

(a) OGA states, and FirstEnergy agrees, that, if condemnation is necessary to procure easements for a pipeline, the condemnation process alone consumes approximately two years; therefore, the time period stated in rule should be changed to three years, rather than two (OGA at 13; FirstEnergy Reply at 10). The Board agrees and finds that this recommendation should be adopted.

(b) EverPower states, and FirstEnergy agrees, that this is a significant change from current Board practice, where construction must commence within five years of certificate issuance.

EverPower believes the rule contradicts the statutory period of R.C. 4906.06, which states that an application cannot be filed more than five years prior to the planned date of the commencement of construction. EverPower argues that, to reconcile the statute and rule, the period for expiration should either be a minimum of four years or five years after the certificate issuance date. (EverPower at 8; FirstEnergy Reply at 11.)

The Board observes that this provision, and Ohio Adm.Code 4906-6 *in its entirety, applies only to* accelerated applications. The rule governing expiration of nonaccelerated certificates can be found in Ohio Adm.Code 4906-3-13(D), which requires construction to commence within five years. However, for clarity, the word *"accelerated" should be inserted before* "application" in this rule.

Ohio Adm.Code 4906-7 – Enforcement Investigations

Comments on Ohio Adm.Code 4906-7-02 – Enforcement investigations by the board

(136) Paragraph (E) – This rule states that the Board may require an evidentiary hearing on the alleged violation.

FirstEnergy believes the Board is required to conduct an evidentiary hearing before making any determinations regarding an alleged violation. Therefore, FirstEnergy's request, which OGA supports, is that the Board replace "may" in the proposed rule with "shall" from the former rule. (FirstEnergy at 59: OGA reply at 4.)

The Board disagrees with FirstEnergy's recommendation and finds that it should be denied. The Board observes that there may be instances when Staff and a utility company reach a settlement on the alleged violation of a rule. In such cases, no hearing would be necessary. Further, if a utility company is charged with the alleged violation of a rule, and the company

wishes to contest the matter, the company may always file a motion with the Board for an evidentiary hearing.

(137) Paragraph (F) - This rule states that the complaining party, which may include Staff, shall have the burden to prove the occurrence of the violation.

FirstEnergy requests that the words, "by a preponderance of the evidence," be added to the end of the rule. FirstEnergy states that it is imperative that the Board establishes the minimum requirements for proof of a violation and that removal of this provision from the existing rule implies that the Board may consider that a violation is proven when the evidence does not meet even this minimum requirement. OGA agrees with FirstEnergy. (FirstEnergy at 59; OGA at 4.)

The Board agrees and finds that FirstEnergy's recommendation should be adopted. This rule, therefore, will conclude with the words, "by a preponderance of the evidence."

(138) In conclusion, the Commission finds 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.

(139) The attached rescinded and adopted chapters are posted at: www.opsb.ohio.gov/opsb/index.cfm/Rules/. To minimize the expense of this proceeding, the Board will serve a paper copy of this Finding and Order only. All interested persons are directed to download the attachments to this Finding and Order from the above website or contact the Board's docketing division to request a paper copy.

It is, therefore,

ORDERED, 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. It is, further,

ORDERED, That attached new Ohio Adm.Code Chapters 4906-1 through 4906-7 be adopted. It is, further,

ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with Divisions (D) and (E) of R.C. 111.15. It is, further,

ORDERED, That the final rules be effective on the earlier date permitted. Unless otherwise ordered by the Board, the five-year review date for Ohio Adm.Code Chapters 4906-1 through 4906-7 shall be in compliance with R.C. 119.032. It is, further,

ORDERED, That a copy of this Finding and Order be sent to the electric-energy and gas-pipeline industry service lists. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all electric distribution utilities, all gas and natural gas local distribution companies, the Ohio Gas Association, the Oil and Gas Association, the Ohio Petroleum Council, Ohio Wind Working Group, the Ohio Wind Energy Association, the Ohio Historical Preservation Society, the Ohio Department of Transportation, and all applicants who have filed cases with the Board over the last five years.

THE OHIO POWER SITING BOARD

Todd A. Snitchler, Chairman
Public Utilities Commission of Ohio

David Goodman, Board Member
and Director of the Ohio
Development Services Agency

James Zehringer, Board Member
and Director of the Ohio
Department of Natural Resources

Theodore Wymyslo, Board
Member and Director of the
Ohio Department of Health

Craig Butler, Board Member
and Interim Director of the Ohio
Environmental Protection Agency

David Daniels, Board Member
and Director of the Ohio
Department of Agriculture

Jeffrey P. Lechak, Board Member
and Public Member

KKS/CMTP/vrm

Entered in the Journal

FEB 18 2014

Barcy F. McNeal
Secretary

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Chapter 4906-1 General Provisions for Filings and Proceedings before the Ohio Power Siting Board

4906-1-01 Definitions.

As used in Chapters 4906-1 to 4906-7 of the Administrative Code:

(A) "Accelerated certificate application" means a letter of notification or construction notice filed with the board under the requirements of chapter 4906-6 of the Administrative Code.

(B) "Accepted, complete application" means a standard certificate application which the chairman or individual designated by the chairman declares in writing to be accepted and in compliance with the content requirements of section 4906.06 of the Revised Code, pursuant to section 4906.07 of the Revised Code and rule 4906-3-06 of the Administrative Code.

(C) "Administrative law judge" means an attorney examiner of the public utilities commission.

(D) "Agricultural district" means any agricultural district established pursuant to Chapter 929. of the Revised Code.

(E) "Applicant" means any person filing an accelerated or standard application under Chapter 4906. of the Revised Code.

(F) "Associated facility" or "associated facilities" is defined as follows:

(1) For a gas pipeline: rights-of way, land, structures, mains, valves, meters, compressors, regulators, tanks, overpressure protection equipment, and other transportation items and equipment used for the transportation of gas from and to a gas pipeline.

(2) For an electric power transmission line:

(a) Where poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys and rights-of-way shall be classified as associated facilities of the transmission line, while the conductors, crossarms, braces, grounds, tiewires, insulators, etc., shall be classified as associated facilities of transmission lines or distribution lines according to the purposes for which they are used.

(b) Transmission voltage switching substations and substations that change electricity from one transmission voltage to another transmission voltage shall be classified as transmission substations and are considered

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associated facilities of transmission lines. Pole-mounted transmission switching substations are excluded. Those stations that change electricity from transmission voltage to distribution voltage shall be classified as distribution substations, and are not considered associated facilities of transmission lines.

(c) Rights-of-way, land, permanent access roads, structures, breakers, switches, transformers, and other transmission items and equipment used for the transmission of electricity at voltages of one hundred and twenty-five kilovolts or greater shall be classified as associated facilities of transmission lines.

(3) For an electric power generation plant or wind farm: rights-of-way, land, permanent access roads, structures, tanks, distribution lines and substations necessary to interconnect the facility to the electric grid, water lines, pollution control equipment, and other equipment used for the generation of electricity.

(G) "Board" means the Ohio power siting board, as established by division (A) of section 4906.02 of the Revised Code.

(H) "Business day" means any day that is not a Saturday, Sunday, or legal holiday.

(I) "Certificate" means a certificate of environmental compatibility and public need, issued by the board.

(J) "Certificate application" means an application filed with the board under the requirements of Chapters 4906-4 to 4906-6 of the Administrative Code.

(K) "Chairman" means the chairman of the board as established by division (A) of section 4906.02 of the Revised Code.

(L) "Commence to construct" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include surveying changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions. This definition does not constitute a restriction on normal maintenance activities on any section of the proposed site or route that is located within an existing utility right-of-way.

(M) "Commercial operation" means the following:

(1) For electric generation plants and wind farms, the output of any generation unit is capable of being delivered to the grid.

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(2) For electric transmission lines and associated facilities, the line is interconnected to the grid.

(3) For gas pipelines, the gas is being transported through the pipeline in an attempt or offer to exchange the gas for money, barter, or anything of value.

(N) "Commission" means the public utilities commission of Ohio, as established by division (A) of section 4901.02 of the Revised Code.

(O) "Construction notice" means a document filed with the board under the requirements of paragraph 4906-6-03(C) of the Administrative Code.

(P) "Docketing division" means the commission's division responsible for the filing and maintenance of case documents.

(Q) "Docketing information system" means the commission's system for electronically storing documents filed in a case, which is maintained by the commission's docketing division. The internet address of the docketing information system is http://dis.puc.state.oh.us.

(R) "Economically significant wind farm" means a wind-powered electric generation facility, including wind turbines and associated facilities, with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of five megawatts or more but less than fifty megawatts.

(S) "Electric distribution line" means an electric power line that has a design capacity of less than one hundred twenty-five kilovolts.

(T) "Electric power transmission line" (transmission line) means an electric power line that has a design capacity of one hundred twenty-five kilovolts or more.

(U) "Electronic filing" (e-filing) means the submission of electronic files to the public utilities commission's docketing information system.

(V) "Electronic mail" (email) means the exchange of digital messages across the internet or other computer network.

(W) "Facility" means the proposed major utility facility and all associated facilities.

(X) "Gas" means natural gas, flammable gas, or gas that is toxic or corrosive.

(Y) "Gas pipeline" means a pipeline that is greater than five hundred feet in length, is more than nine inches in outside diameter, and is designed for transporting gas at a maximum allowable operating pressure in excess of one hundred twenty-five pounds per square inch and its associated facilities.

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(Z) "Letter of notification" means a document filed with the board under the requirements of paragraph 4906-6-03(B) of the Administrative Code.

(AA) "Major utility facility" means a facility that meets the definition of major utility facility set forth in section 4906.01 of the Revised Code.

(BB) "Manufacturing facility that creates byproducts that may be used in the generation of electricity" means a facility that produces exhaust heat or flue gases from engines or boilers used primarily for manufacturing processes and excludes facilities whose primary purpose is the generation of electricity.

(CC) "Maximum allowable operating pressure" means the maximum pressure at which a pipeline or segment of a pipeline may be operated under 49 C.F.R. 192.

(DD) "Person" means an individual, corporation, business trust, association, estate, trust, or partnership, or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity.

(EE) "Potential disturbance area" means the area of land or water that may be cleared, graded, excavated, accessed with heavy equipment, constructed on, or otherwise directly disturbed for construction of the facility.

(FF) "Project" means all equipment, land, and activities required for construction, operation, and maintenance of the facility and associated facilities.

(GG) "Project area" means all land within a contiguous geographic boundary that contains the facility, associated setbacks, and properties under lease or agreement that contain any components of the facility.

(HH) "Replacement of an existing facility with a like facility" means replacing an existing major utility facility with a major utility facility of equivalent size, rating and operating characteristics, and within the same right-of-way. If the existing facility includes material sizes and specifications that are no longer widely manufactured and available, or no longer used by the applicant, replacement with the nearest equivalent standard industry size and material available that meets the needs of the project is considered a replacement with a like facility.

(II) "Specific customer or customers" means industrial or commercial end-use customer(s) in Ohio.

(JJ) "Staff" means the board staff.

(KK) "Standard certificate application" means a document filed with the board under the requirements of Chapter 4906-4 or Chapter 4905-5 of the Administrative Code.

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(LL) "Substantial addition," in the case of an electric power transmission line or gas pipeline already in operation, is any addition or modification that meets any of the descriptions listed in the "Application Requirement Matrix" contained in appendix A and appendix B to this rule. Construction necessary to restore service of a transmission line damaged by reason of natural disaster or human-caused accident does not constitute a substantial addition and therefore does not require the filing of a certificate application. In the case of an electric power generation plant, it is any modification of an operating generation plant which modification in itself constitutes a major utility facility or economically significant wind farm. Additions under this definition include, but are not limited to:

(1) Addition of an electric power generation unit of fifty megawatts or greater to an existing plant.

(2) Addition of a fifty megawatts or greater electric power generation unit which is designed to operate in conjunction with an existing unit to establish a combined-cycle unit.

(3) Addition of an electric power generation unit to an existing plant which is not a major utility facility, or modification of an existing unit, with the result that the combined capacity of the new facility is fifty megawatts or greater.

(4) Addition of a wind-powered electric generation turbine to an existing wind farm, with the result that the combined capacity of the new facility is five megawatts or greater.

(MM) "Wind farm" means a wind-powered electric generation facility, including wind turbines and associated facilities, with a single interconnection to the electrical grid.

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4906-1-01 APPENDIX A
Application Requirement Matrix for Electric Power Transmission Lines

Description of the Proposed Electric Power Transmission Line and Associated Facilities	Standard Application (BTX or BTA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-5	4906-6-05	4906-6-05
(1) New construction, extension, or relocation of single or multiple circuit electric power transmission line(s), or upgrading existing transmission or distribution line(s) for operation at a higher transmission voltage, as follows:			
(a) Line(s) not greater than 0.2 miles in length.			X
(b) Line(s) greater than 0.2 miles in length but not greater than two miles in length.		X	
(c) Line(s) greater than two miles in length.	X		
(d) Line(s) primarily needed to attract or meet the requirements of a specific customer or customers, as follows:			
(i) The line is completely on property owned by the specific customer or the applicant.			X
(ii) Any portion of the line is on property owned by someone other than the specific customer or applicant.		X	

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Description of the Proposed Electric Power Transmission Line and Associated Facilities	Standard Application (BTX or BTA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-5	4906-6-05	4906-6-05
(e) Line(s) that are necessary to maintain reliable electric service as a result of the retirement or shutdown of an electric generation facility located within Ohio.		X	
(2) Adding new circuits on existing structures designed for multiple circuit use, replacing conductors on existing structures with larger or bundled conductors, adding structures to an existing transmission line, or replacing structures with a different type of structure, for a distance of:			
(a) Two miles or less.			X
(b) More than two miles.		X	
(3) Constructing a new electric power transmission substation.		X	
(4) Constructing additions to existing electric power transmission stations or converting distribution stations to transmission stations where:			
(a) There is a twenty percent or less expansion of the fenced area.			X
(b) There is a greater than twenty percent expansion of the fenced area.		X	
(5) Replacement or relocation of an electric power transmission line and associated facilities where the project is required by publicly funded entities and is located on or adjacent to right-of-way or land owned by the public entity requiring the project.			X

*The three-letter acronyms in the column header refer to the three-letter purpose codes that are assigned to these types of applications when filed with and given a case number by the Ohio Power Siting Board.

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4906-1-01 APPENDIX B
Application Requirement Matrix for Gas Pipelines

Description of the Proposed Gas Pipelines or Pipeline Segments and Associated Facilities	Standard Application (BTX or BTA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-5	4906-6-05	4906-6-05
(1) New construction, extension, relocation, upgrade, or replacement (except with a like facility) of gas pipelines or pipeline segments, as follows:			
(a) Pipelines or pipeline segments not greater than one mile in length.			X
(b) Pipelines or pipeline segments greater than one mile in length but not greater than five miles in length.		X	
(c) Pipelines or pipeline segments greater than five miles in length.	X		
(d) Pipelines or pipeline segments greater than one mile in length and primarily needed to meet the requirements of a specific customer or customers, as follows:			
(i) The pipeline or pipeline segments is completely on property owned by the specific customer or the applicant.			X
(ii) Any portion of the pipeline or pipeline segment is on property owned by someone other than the specific customer or applicant.		X	
(2) Adding a compressor station to an existing gas pipeline or pipeline segment.		X	
(3) Replacement or relocation of gas pipeline facilities where the project is required by publicly funded entities and is located on or adjacent to new right-of-way owned by the public entity requiring the project.			X

* The three-letter acronyms in the column header refer to the three-letter purpose codes that are assigned to these types of applications when filed with and given a case number by the Ohio Power Siting Board.

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4906-1-01 APPENDIX C
Application Requirement Matrix for Electric Generation Facilities

Description of the Proposed Electric Generation Facility	Standard Application (BGN or BGA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-4	4906-6-05	4906-6-05
(1) An electric generation facility designed for, or capable of, operation at a capacity of fifty megawatts or more that uses waste heat or natural gas and is primarily within the current boundary of an existing industrial or electric generation facility.		X	
(2) A wind-powered electric generation facility designed for, or capable of, operation at a capacity of five megawatts or more.	X		
(3) An electric generation facility designed for, or capable of, operation at a capacity of fifty megawatts or more and not listed in one of the above categories.	X		

* The three-letter acronyms in the column header refer to the three-letter purpose codes that are assigned to these types of applications when filed with and given a case number by the Ohio Power Siting Board.

4906-1-02 Purpose and scope.

(A) The purpose of this chapter is to provide for just, efficient, and inexpensive determination of the issues presented in matters under Chapter 4906. of the Revised Code.

(B) The board may, upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

4906-1-03 Board meetings.

(A) All meetings of the board at which official action is taken and deliberation upon official business is conducted shall be open to the public. For the purpose of this rule, the term "meeting" shall mean any prearranged discussion of the public business of the board by a majority of its members. All resolutions, rules, regulations or formal action of any kind shall be adopted in an open meeting of the board.

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(B) The chairman shall cause to be made and preserve such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the board and for the protection of the legal and financial rights of the state and persons directly affected by the board's activities under Chapter 4906. of the Revised Code.

(C) The minutes of a regular or special meeting of the board shall be promptly recorded and such records shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) of section 121.22 of the Revised Code.

(D) Following a majority vote of its members, the board may hold an executive session only at a regular or special meeting for the sole purpose of the consideration of the matters contained in division (G) of section 121.22 of the Revised Code. Such executive session may be held only at a meeting for which notice has been given in accordance with the requirements of paragraph (E) of this rule.

(E) Notice of board meetings

(1) Any person may ascertain the time and place of each regularly scheduled meeting and the time, place and purpose of each special meeting in the following manner:

(a) Writing to the board's principal office.

(b) Calling the board between eight a.m. and five-thirty p.m. except on Saturdays, Sundays, or legal holidays.

(c) Accessing the board's website at www.opsb.ohio.gov.

(d) Emailing the board at contact.opsb@puc.state.oh.us.

(2) Notice of all meetings of the board shall be given to the following persons:

(a) All individuals on the board's electronic notification of meeting distribution list shall be given notice of all regular meetings. This list shall consist of those persons who have requested notice of each board meeting by signing upon the board's website or contacting the board at (866) 270-6772.

(b) All news media routinely notified by the board shall be given notice of all regular board meetings. No special meeting of the board shall be held unless the board gives twenty-four hours advance notice to the news media, except in the event of an emergency requiring immediate official

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action. In the event of an emergency, the board shall immediately notify the news media of the time, place and purpose of the meeting.

(3) Notice of all board meetings shall include but not be limited to the following information:

(a) Date, time and location of the meeting.

(b) Agenda for the meeting.

(c) Name of a person to be contacted for further information.

(4) When practicable, such notice shall be issued not less than seven days prior to any regular meeting of the board. Such notice shall be issued not less than twenty-four hours prior to a special meeting and immediately before a meeting in the event of an emergency.

4906-1-04 Fees and payments.

(A) All duplication fees used to defray the cost of copying documents shall be charged by the board in accordance with applicable provisions of the Revised Code, including section 4903.23 of the Revised Code.

(B) All application fees shall be determined pursuant to rule 4906-3-12 of the Administrative Code.

(C) All payments of application fees shall be in the form of a check payable to "Treasurer of the State of Ohio, Ohio Power Siting Board, fund 561," and shall be designated by case number.

(D) All payments of forfeitures, compromise forfeitures, and other payments made pursuant to stipulation shall be made in accordance with rule 4906-7-03 of the Administrative Code.

4906-1-05 Site visits.

Persons proposing, owning or operating major utility facilities or economically significant wind farms should make all reasonable efforts to ensure that, upon prior notification, the board, its representatives, or staff may make visits to proposed or alternative sites or routes of a major utility facility or economically significant wind farm or a substantial addition in order to carry out board responsibilities pursuant to Chapter 4906. of the Revised Code.

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Chapter 4906-2 Power Siting Procedural Provisions

4906-2-01 Purpose and scope.

(A) This chapter sets forth the procedural standards which apply to all persons or entities participating in cases before the board.

(B) The board may, upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

4906-2-02 Filing of pleadings and other documents.

(A) General provisions

(1) The principal office of the board is located within the office of the public utilities commission of Ohio. The official address of the board is: 180 East Broad Street, Columbus, Ohio 43215-3793.

(2) Filings for the board shall be addressed to: "Ohio Power Siting Board, Docketing Division, 180 East Broad Street, Columbus, Ohio 43215-3797."

(3) The internet address of the docketing division is http://dis.puc.state.oh.us.

(4) The docketing division is open from seven-thirty a.m. to five-thirty p.m., Monday through Friday, except on state holidays.

(5) Except as discussed in paragraph (D) of this rule, no document shall be considered filed with the board until it is received and date-stamped by the docketing division.

(6) The board reserves the right to redact any material from a filed document prior to posting the document on the docketing information system if the board finds the material to be confidential personal information, a trade secret, or inappropriate for posting to its website.

(7) A party seeking to consolidate a new case with one or more previously filed cases, or with cases being concurrently filed, shall file a motion to consolidate the cases.

(B) Paper filing

(1) All applications, complaints, reports, pleadings, or other documents to be paper filed with the board shall be mailed or delivered to the docketing division at the address shown in paragraph (A) of this rule. In addition to the original, any

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person paper filing a document for inclusion in a case file must submit the required number of copies of the document. Information regarding the number of copies required by the board is available under procedural filing requirements on the docketing information system website, by calling the docketing division at 614-466-4095, or by visiting the docketing division at the offices of the commission. As an alternative, a filer may submit twenty copies of the filing. Failure to submit the required copies may result in the document being stricken from the case file. An administrative law judge may require a party to provide additional paper copies of any filed document.

(2) Unless a request for a protective order is made in accordance with rule 4906-2-21 of the Administrative Code, concurrent with or prior to receipt of the document by the docketing division, any document filed with the docketing division will be made publicly available on the docketing information system.

(C) Facsimile transmission (fax) filing

A person may file documents with the board via fax under the following conditions:

(1) The following documents may not be delivered via fax:

(a) The application or other initial pleading that is responsible for the opening of a case.

(b) Any document for which protective or confidential treatment is requested under rule 4906-2-21 of the Administrative Code.

(c) A notice of appeal of a board order to the Ohio supreme court filed pursuant to section 4903.13 of the Revised Code or service of that notice upon the chairman.

(2) All documents sent via fax must include a transmission sheet that states the case number, case title, date of transmission, number of pages, brief description of the document, and the name and telephone number of the sender.

(3) The originator of a fax document must contact the docketing division at (614) 466-4095 prior to sending a fax. A person must notify the docketing division of its intent to send a document by fax by five p.m. on the date the document is to be sent. The person must be prepared to commence transmission at the time the docketing division is notified.

(4) All documents must be sent to the fax machine in the docketing division at (614) 466-0313. If that machine is inoperable, directions for alternative arrangements will be given when the originator calls to commence a fax.

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Unrequested documents sent to any of the board's other facsimile machines will not be relayed to the docketing division by board employees.

(5) Excluding the transmission sheet, all documents transmitted by fax must be thirty pages or less.

(6) All documents must be legible when received. Illegible documents received via fax will not be filed. If the document is illegible, the docketing division will attempt to contact the sender to resolve the problem. The person making a fax filing shall bear all risk of transmission, including all risk of equipment, electric, or telephonic failure or equipment overload or backup. Any document sent by fax that is received in whole or in part after five-thirty p.m. will be considered filed the next business day.

(7) No document received via fax will be given confidential treatment by the board.

(8) If a document is delivered via fax, the party must make arrangements for the original signed document and the required number of copies of the pleading to be delivered to the board no later than the next business day. Failure to comply with this requirement may result in the document being stricken from the case file.

(9) Because a document sent to the board by fax will be date-stamped, and thus filed, the day it is received by the docketing division, the originator of the document shall serve copies of the document upon other parties to the case no later than the date of filing.

(D) Electronic filing (e-file)

A person may e-file documents with the board under the following conditions:

(1) All filings must comply with the electronic filing manual and technical requirements at the docketing information system website and any additional guidelines provided by the board.

(2) All filings must be searchable and the electronic file must be able to be reproduced in hard copy at the same quality as the original.

(3) The following documents shall not be delivered via e-filing:

(a) Any document for which protective or confidential treatment is requested under rule 4906-2-21 of the Administrative Code.

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(b) A notice of appeal of a board order to the Ohio supreme court filed pursuant to section 4903.13 of the Revised Code or service of that notice upon the chairman.

(4) An applicant may electronically file a certificate application pursuant to section 4906.06 of the Revised Code, provided that the applicant provides ten computer disks, each containing the full electronic copy of the application. The applicant also shall submit five complete paper copies of the application to the docketing division on the same day that an e-filing of the application is made and will be expected to provide additional paper copies or disk copies upon request.

(5) Provided that a document is not subsequently rejected by the docketing division, an e-filed document will be considered filed as of the date and time recorded on the confirmation page that is electronically inserted as the last page of the filing upon receipt by the docketing division, except that any e-filed document received after five-thirty p.m. shall be considered filed at seven-thirty a.m. the next business day. The docketing division may reject any filing that does not comply with the electronic filing manual and technical requirements, is unreadable, includes anything deemed inappropriate for inclusion on the docketing information system, or is submitted for filing in a closed or archived case. If an e-filing is rejected by the docketing division, an email message will be sent to inform the filer of the rejection and the reason for the rejection.

(6) If an e-filing is accepted, notice of the filing will be sent via electronic mail to all persons who have electronically subscribed to the case, including the filer. This email notice will constitute service of the e-filed document upon those persons electronically subscribed to the case. Upon receiving the email notice that the e-filed document has been accepted by the docketing division, the filer shall serve copies of the document in accordance with rule 4906-2-05 of this chapter upon parties to the case who are not electronically subscribed to the case.

(7) The docketing division closes at five-thirty p.m. To allow time for same-day review and acceptance of e-filings, persons making e-filings are encouraged to make their filings by no later than four p.m.

(8) The person making an e-filing shall bear all risk of transmitting a document including, but not limited to, all risk of equipment, electric, or internet failure.

(9) If an electronic filing of a certificate application cannot be made due to electronic or other problems that prevent either all or part of the certificate application to go through the docketing division equipment, the applicant shall file the five paper copies of the certificate application, fifteen computer disks containing the complete application, and a geographic information systems

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map disk with the docketing division in lieu of the electronic filing. The applicant will then have an additional one business day either to complete the electronic filing of the certification application or to provide fifteen more paper copies of the certificate application unless a longer period is granted by the administrative law judge. If the additional paper copies are made timely, the certificate application shall be considered filed on the day the electronic filing could not be made but the five paper copies, the fifteen disks, and the geographic information systems disk were filed.

(10) E-filed documents must be complete documents. Appendices or attachments to an e-filed document may not be filed by other methods without prior approval. Large documents may be e-filed in parts as long as all parts are e-filed on the same day.

(11) Except as otherwise provided by this rule or directed by an administrative law judge, a person filing a document electronically need not submit any paper copy of an e-filed document to the docketing division.

(E) The docketing division designates the status of each case under the case number and case name on the docket card. As discussed below, attempts to make filings in certain designated cases will be denied.

(1) An open case is an active case in which filings may be made.

(2) A closed case is one in which no further filings may be made without the consent of the administrative law judge. When a case is closed, any person seeking to make a filing in a case must first contact the administrative law judge assigned to the case. If the administrative law judge agrees to permit the filing, the docketing division will be notified to reopen the case. If an additional filing is permitted, the case status will be changed to open and service of the filing must be made by the filer upon the parties to the case in accordance with rule 4906-2-05 of this chapter.

(3) An archived case is a closed case that will not be reopened and in which no further filings will be permitted. If additional activity is thereafter required on any matter addressed in an archived case, the board will open a new case and designate the new case as a related case. The docketing information system displays for each case a related cases tab to provide a link to related cases.

(4) A reserved case is one set aside for future use. No filings should be made in the case until the party for who it was reserved makes an initial filing.

(5) A void case is one that was opened in error and no documents may be filed in it.

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4906-2-03 Form of pleadings and other papers.

(A) Except as provided by rule 4906-2-04 of the Administrative Code, all pleadings or other papers to be filed with the board shall contain a caption or cover sheet setting forth the name of the board, the title of the proceeding, and the nature of the pleading or paper. All pleadings or papers filed subsequently to the original filing or board entry initiating the proceeding shall contain the case name and docket number of the proceeding. Such pleadings or other papers shall also contain the name, address, and telephone number of the person filing the paper, or the name, address, telephone number, and attorney registration number of his or her attorney, if such person is represented by counsel. The party making a filing should include a fax number and/or an email address if the party is willing to accept service of pleadings by fax or email. An attorney or party who is willing to accept service of filed documents by fax shall include the following phrase next to or below its fax number: (willing to accept service by fax). An attorney or party who is willing to accept service of filed documents by email shall include the following phrase next to or below its email address: (willing to accept service by email).

(B) All pleadings or other papers to be filed with the board shall be printed, typewritten, or legibly handwritten on eight and one-half by eleven-inch paper. Widths of the margins shall be no less than one inch. The impression may be printed on both sides of the page, and shall have at least one and a half line spacing, except that quotations in excess of five typewritten lines shall be single spaced and indented. This requirement does not apply to:

(1) Original documents to be offered as exhibits.

(2) Copies of original documents to be offered as exhibits, where compliance with this requirement would be impracticable.

(3) Forms approved or supplied by the board.

(C) Nothing in paragraph (B) of this rule prohibits the filing of photocopies of documents that otherwise meet the requirements of that paragraph.

(D) Maps and exhibits that are printed on large format paper (greater than eleven inches by seventeen inches) should be provided in a roll or tube, and not folded.

4906-2-04 Form and general content requirements for certificate applications.

(A) In addition to the requirements of Chapter 4906-2-03 of the Administrative Code, the following conditions apply to certificate applications:

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(1) Each page of the certificate application shall be numbered.

(2) Copies of the standard certificate application shall be submitted in hard-cover, loose-leaf binders labeled with the following information.

(a) Name of applicant.

(b) Name of the proposed facility.

(c) Year of submittal of the certificate application.

(d) Case number.

(3) Each certificate application shall be accompanied by a cover letter containing the following information:

(a) Name and address of the applicant.

(b) Name and location of the proposed facility.

(c) Name and address of the applicant's authorized representative.

(d) An explanation of any information that was presented by the applicant in the preapplication notification letter that has been revised by the applicant since the issuance of the letter.

(e) Notarized statement that the information contained in the certificate application is complete and correct to the best knowledge, information and belief of the applicant.

(B) The information contained within the certificate application shall conform to the requirements of Chapters 4906-4 through 4906-6 of the Administrative Code, whichever is applicable, except that a standard certificate application for a major utility facility which is related to a coal research and development project as defined in section 1555.01 of the Revised Code, or to a coal development project as defined in section 1551.30 of the Revised Code, submitted to the Ohio coal development office for review under division (B)(8) of section 1551.33 of the Revised Code, shall be the full final proposal as accepted by the Ohio coal development office.

(C) The following general instructions apply to certificate applications:

(1) The costs and benefits of the direct and indirect effects of siting decisions shall be expressed in monetary and quantitative terms whenever doing so is practicable. All responses shall be supported by:

(a) An indication of the source of data.

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(b) The assumptions made.

(c) The methods of reaching the conclusions.

(d) The justification for selection of alternatives.

(2) Information filed by the applicant in response to the requirements of one section without a clear reference to the information that was given in a prior section shall not be deemed responses to any other section of the certificate application requirements.

(3) If an applicant asserts that a particular requirement is not applicable to the proposed facility, the applicant must provide an explanation why the requirement is not applicable.

(4) Information shall be derived from onsite surveys, as needed, and the best available, most current reference materials. The applicant shall provide all required information for each facility alternative.

(5) The applicant may provide a copy of any study produced by or for the applicant for the proposed project as an attachment to the application. The study may be submitted in response to a specific requirement, provided that the information contained therein is responsive to the requirement. A brief summary of the study shall be provided in the body of the application.

(6) If the applicant has prepared the required hard copy maps using digital, geographically referenced data, an electronic copy of all such data, excluding data obtained by the applicant under a licensing agreement which prohibits distribution, shall be provided to staff on computer disk concurrent with submission of the application

(7) All maps shall be produced at a scale such that all required features are legible, with minimal overlap. If a map requires shading or colors to distinguish different classes of the same feature (e.g., land use types), no more than six colors or shading patterns should be used for one set of features. Mapping requirements may be combined in a common map or maps, provided that the common map(s) remain legible and references to the common map(s) are included in the application.

4906-2-05 Service of pleadings and other papers.

(A) Unless otherwise ordered by the board or the administrative law judge, all pleadings or papers filed with the board subsequent to the original filing or board entry initiating the proceeding shall be served upon all parties no later than the date of

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filing. Such pleadings or other papers shall contain a certificate of service. The certificate of service shall state the date and manner of service, identify the names of the persons served, and be signed by the attorney or the party who files the document. The certificate of service for a document served by mail or personal service also shall include the address of the person served. The certificate of service for a document served by fax also shall include the fax number of the person to whom the document was transmitted. The certificate of service for a document served by email also shall include the email address of the person to whom the document was sent.

(B) If an e-filing is accepted by the docketing division, an email notice of the filing will be sent by the docketing division's e-filing system to all persons who have electronically subscribed to the case. The email notice will constitute service of the document upon the recipient. Upon receiving notice that an e-filing has been accepted by the docketing division, the filer shall serve copies of the document in accordance with this rule upon all other parties to the case who are not served via the email notice. A person making an e-filing shall list in the certificate of service included with the e-filing the parties who will be served by email notice by the docketing division's e-filing system and the parties who will be served by traditional methods by the person making the filing. The certificate of service for an e-filed document shall include the following notice: The docketing division's e-filing system will electronically serve notice of the filing of this document on the following parties: (list the names of the parties referenced on the service list of the docket card who have electronically subscribed to the case). The docketing division shall serve all parties to a proceeding with copies of the staff report in a proceeding.

(C) If a party has entered an appearance through an attorney, service of pleadings or other papers shall be made upon the attorney instead of the party. If the party is represented by more than one attorney, service need only be made upon the "counsel of record" designated under rule 4906-2-26 of the Administrative Code.

(D) Service upon an attorney or party may be personal, by mail, by fax, or by email. Personal, facsimile transmission, or electronic message service made after five-thirty p.m. shall be considered complete on the next business day.

(1) Personal service is complete by delivery of the copy to the attorney or to a responsible person at the office of the attorney. Personal service to a party not represented by an attorney is complete by delivery to the party or to a responsible person at the address provided by the party in its pleadings.

(2) Service by mail to an attorney or party is complete by mailing a copy to his or her last known address. If the attorney or party to be served has previously filed and served one or more pleadings or documents in the proceeding, the

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term "last known address" means the address set forth in the most recent pleading or document.

(3) Service of a document to an attorney or party by fax may be made only if the person to be served has consented to receive service of the document by fax. Service by fax is complete upon the sender receiving a confirmation generated by the sender's fax equipment that the fax has been sent. The sender shall retain the confirmation as proof of service until the case is completed.

(4) Service of a document by email to an attorney or party may be made only if the person to be served has consented to receive service of the document by email. Service by email is complete upon the sender receiving a confirmation generated by the sender's computer that the email has been sent. The sender shall retain the confirmation as proof of service until the case is completed.

(E) For purposes of this rule, the term "party" includes all persons who have filed notices or petitions to intervene that are pending at the time a pleading or document is to be served, provided that the person serving the pleading or document has been served with a copy of the notice or petition to intervene.

(F) The board or the administrative law judge may order in certain cases that pleadings or documents be served in a specific manner to expedite the exchange of information.

4906-2-06 Computation of time.

Unless otherwise provided by law or by the board:

(A) In computing any period of time prescribed or allowed by the board, the date of the event from which the period of time begins to run shall not be included. Going forward, the last day of the period so computed shall be included, unless it falls on a Saturday, Sunday, or legal holiday, in which case the period of time shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. Going backwards (e.g., expert testimony shall be filed five days before the start of the hearing), the last day of the period so computed shall be included, unless it falls on a Saturday, Sunday, or holiday, in which case the period of time shall move forward (e.g., toward the start of the hearing) to a day that is not a Saturday, Sunday, or legal holiday. Unless otherwise noted, time is measured in calendar, not business days.

(B) If the board office is closed to the public for the entire day that constitutes the last day for doing an act or closes before its usual closing time on that day, the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

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4906-2-07 Continuances and extensions of time.

(A) Except as otherwise provided by law, and notwithstanding any other provision in this chapter, continuances of public hearings and extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown, or upon motion of the board or the administrative law judge.

(B) A motion for an extension of time to file a document must be timely filed so as to permit the board or administrative law judge sufficient time to consider the request and to make a ruling prior to the established filing date. If two or more parties have similar documents due the same day and a party intends to seek an extension of the filing date, the moving party must file its motion for an extension sufficiently in advance of the existing filing date so that other parties who might be disadvantaged by submitting their filing prior to the movant submitting its filing will not be disadvantaged. If two or more parties have similar documents due the same day and the motion for an extension is filed fewer than five business days before the document is scheduled to be filed, then the moving party, in addition to regular service of the motion for an extension, must provide a brief summary of the request to all other parties orally, by facsimile transmission, or by electronic message by no later than five-thirty p.m. on the day the motion is filed.

(C) A copy of any written ruling granting or denying a request for a continuance or extension of time shall be served upon all parties to the proceeding.

(D) Nothing in this rule restricts or limits the authority of the administrative law judge to issue oral rulings during public hearings or transcribed prehearing conferences.

4906-2-08 Signing of pleadings.

(A) Except for e-filed documents, every notice, motion, petition, complaint, brief, memorandum, or other paper filed by any person shall be signed by that person or by his or her attorney but need not be verified unless specifically required by law or by the board. Persons who e-file documents shall use "/s/" followed by their name to indicate a signature or an electronic signature where applicable.

(B) Each application for a certificate shall include a statement, signed by a person having authority with respect thereto, and having knowledge of the matters presented in the certificate application of the company submitting such document, that the statements set forth in the document are true and correct to the best of his/her knowledge, information, and belief.

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4906-2-09 Hearings.

(A) Unless otherwise ordered, all hearings shall be held at the principal office of the board. However, where practicable, the board shall schedule a session of the hearing for the purpose of taking public testimony in the vicinity of the project. Reasonable notice of each hearing shall be provided to all parties.

(B) The administrative law judge shall regulate the course of the hearing and conduct of the participants. Unless otherwise provided by law, the administrative law judge may without limitation:

(1) Administer oaths and affirmations.

(2) Determine the order in which the parties shall present testimony and the order in which witnesses shall be examined.

(3) Issue subpoenas.

(4) Rule on objections, procedural motions, and other procedural matters.

(5) Examine witnesses.

(6) Grant continuances.

(7) Require expert or factual testimony to be offered in board proceedings to be reduced to writing, filed with the board, and served upon all parties and the staff prior to the time such testimony is to be offered and according to a schedule to be set by the administrative law judge.

(8) Take such actions as are necessary to:

(a) Avoid unnecessary delay.

(b) Prevent the presentation of irrelevant or cumulative evidence.

(c) Prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The administrative law judge may, upon motion of any party, direct that a portion of the hearing be conducted in camera and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information or confidential research, development, or commercial materials and information. The party requesting such protection shall have the burden of establishing that such protection is required.

(d) Assure the hearing proceeds in an orderly and expeditious manner.

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(C) Members of the public to offer testimony may be sworn in or affirmed at the portion or session of the hearing designated for the taking of public testimony.

(D) Formal exceptions to rulings or orders of the administrative law judge are unnecessary if, at the time any ruling or order is made, the party makes known the action which he or she desires the presiding hearing officer to take, or his or her objection to action which has been taken and the basis for that objection.

4906-2-10 Ex parte discussion of cases.

After a case has been assigned a formal docket number, no board or administrative law judge assigned to the case shall discuss the merits of the case with any party or intervenor to the proceeding, unless all parties and intervenors have been notified and have been given the opportunity of being present or a full disclosure of the communication insofar as it pertains to the subject matter of the case has been made.

When an ex parte discussion occurs, a representative of the party or parties at the discussion shall prepare a document listing the parties in attendance and providing a full disclosure of the communications made. Within two business days of the occurrence of the ex parte discussion, the document shall be provided to the chairman or board member or to an administrative law judge present at the discussion for review. Upon completion of the review, the final document shall be filed with the board's docketing division and served upon the parties to the case within two business days and the filer shall serve a copy upon the parties to the case and to each participant in the discussion. The document filed and served shall include the following language: Any participant in the discussion who believes that any representation made in this document is inaccurate or that the communications made during the discussion have not been fully disclosed shall prepare a letter explaining the participant's disagreement with the document and shall file the letter with the board and serve the letter upon all parties and participants in the discussion within two business days of receipt of this document.

4906-2-11 Parties.

(A) The parties to a board proceeding concerning an application for a certificate shall include:

(1) Any person who files an application or a petition for a jurisdictional determination.

(2) Any person who is designated as the subject of a board investigation.

(3) Any person granted leave to intervene under rule 4906-2-12 of the Administrative Code.

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(4) Any other person expressly made a party by order of the board or administrative law judge.

(B) If any owner of a major utility facility is operated by a receiver or trustee, the receiver or trustee shall also be made a party.

(C) Except for purposes of rules 4906-2-05, 4906-2-13, 4906-2-16, 4906-2-22, 4906-2-24, 4906-2-26, 4906-2-27, 4906-2-28, and 4906-2-29 of the Administrative Code, the board staff shall not be considered a party to any proceeding.

4906-2-12 Intervention.

(A) Persons who desire to intervene in a board proceeding shall comply with the following requirements:

(1) The chief executive officer of each municipal corporation and county and the head of each public agency charged with the duty of protecting the environment or of planning land use in the area in which any portion of such facility is to be located may intervene by preparing and filing with the board, within thirty days after the date he or she was served with a copy of the application under division (B) of section 4906.06 of the Revised Code, a notice of intervention containing the following information:

(a) A certification or affirmation as to the legal title and authority of such official.

(b) A statement demonstrating the fact that all or part of the proposed facility is to be located within the area under the jurisdiction of such official.

(c) A statement indicating that such official intends to intervene in the proceedings, together with the grounds for which intervention is sought.

(2) All other persons may petition for leave to intervene by:

(a) Preparing a petition for leave to intervene setting forth the grounds for the proposed intervention and the interest of the petitioner in the proceedings.

(b) Filing said petition within thirty days after the date of publication of the notice required in accordance with paragraph (A)(1) of rule 4906-3-09 of the Administrative Code or in accordance with division (B) of section 4906.08 of the Revised Code or as otherwise directed by the board or the administrative law judge.

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(3) Copies of all notices of intervention and petitions for leave to intervene shall be sent to all parties by the prospective intervenor, and a certificate of service shall be filed with the board at the time of filing said notice or petition pursuant to rule 4906-2-05 of the Administrative Code.

(B) The board or the administrative law judge shall grant petitions for leave to intervene only upon a showing of good cause.

(1) In deciding whether to permit intervention under this paragraph, the board or the administrative law judge may consider:

(a) The nature and extent of the person's interest.

(b) The extent to which the person's interest is represented by existing parties.

(c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.

(d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

(C) The board or the administrative law judge may, in extraordinary circumstances and for good cause shown, grant a petition for leave to intervene in subsequent phases of the proceeding, filed by a person identified in paragraph (A)(1) or (A)(2) of this rule, who failed to file a timely notice of intervention or petition for leave to intervene. Any petition filed under this paragraph must contain, in addition to the information set forth in paragraph (A)(1) or (A)(2) of this rule, a statement of good cause for failing to timely file the notice or petition and shall be granted only upon a finding that:

(1) Extraordinary circumstances justify the granting of the petition.

(2) The intervenor agrees to be bound by agreements, arrangements, and other matters previously made in the proceeding.

(D) Unless otherwise provided by law, the board or the administrative law judge may:

(1) Grant limited participation, which permits a person to participate with respect to one or more specific issues, if:

(a) The person has no real and substantial interest with respect to the remaining issues.

(b) The person's interest with respect to the remaining issues is adequately represented by existing parties.

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(2) Require intervenors with substantially similar interests to consolidate their examination of witnesses or presentation of testimony.

4906-2-13 Role of participants in public hearings.

At the public hearing, the board or the administrative law judge shall accept written or oral testimony from any person regardless of that person's status. However, the right to examine witnesses is reserved exclusively for parties and the staff.

4906-2-14 General provisions and scope of discovery.

(A) The purpose of rules 4906-2-14 to 4906-2-22 of the Administrative Code is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in board proceedings. These rules are intended to minimize board intervention in the discovery process.

(B) Except as otherwise provided in this rule, any party to a board proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of that proceeding. It is not grounds for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained through interrogatories, requests for the production of documents and things or permission to enter upon land or other property, depositions and requests for admission. The frequency of using these discovery methods is not limited unless the board orders otherwise under rule 4906-2-21 of the Administrative Code.

(C) Any party may, through interrogatories, require any other party to identify each expert witness expected to testify at the hearing and to state the subject matter on which the expert is expected to testify. Thereafter, any party may discover from the expert or other party facts or data known or opinions held by the expert which are relevant to the stated subject matter. A party who has retained or specially employed an expert may, with the approval of the board, require the party conducting discovery to pay the expert a reasonable fee for the time spent responding to discovery requests.

(D) Discovery responses which are complete when made need not be supplemented with subsequently acquired information unless:

(1) The response did not fully identify each expert witness expected to testify at the hearing and stated the subject matter upon which each expert was expected to testify.

(2) The responding party later learned that the response was incorrect or otherwise materially deficient.

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(3) The response indicated that the information sought was unknown or nonexistent and such information subsequently became known or existent.

(4) An order of the board or agreement of the parties provides for the supplementation of responses.

(5) Requests for the supplementation of responses are submitted prior to the commencement of the hearing.

(E) The supplementation of responses required under paragraph (D) of this rule and requests for supplementation of responses submitted pursuant to paragraph (D)(5) of this rule shall be provided within five business days of discovery of the new information.

(F) Nothing in rules 4906-2-14 to 4906-2-22 of the Administrative Code precludes parties from conducting informal discovery by mutually agreeable methods or by stipulation.

(G) A discovery request under rules 4906-2-14 to 4906-2-22 of the Administrative Code may not seek information from any party which is available in prefiled testimony, prehearing data submissions, or other documents which that party has filed with the board in the pending proceeding. Before serving any discovery request, a party must first make a reasonable effort to determine whether the information sought is available from such sources.

(H) For purposes of rules 4906-2-14 to 4906-2-22 of the Administrative Code, the term "party" includes any person who has filed a notice or petition to intervene which is pending at the time a discovery request or motion is to be served or filed.

(I) Rules 4906-2-14 to 4906-2-22 of the Administrative Code do not apply to board staff.

(J) Discovery may not be used to harass or delay existing procedural schedules.

4906-2-15 Time period for discovery.

(A) Discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible. Unless otherwise ordered for good cause shown, discovery must be completed prior to the commencement of the hearing.

(B) The board or the administrative law judge may shorten or extend the time period for discovery upon their own motion or upon motion of any party for good cause shown.

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4906-2-16 Filing and service of discovery requests and responses.

Except as otherwise provided in rules 4906-2-21 and 4906-2-22 of the Administrative Code or unless otherwise ordered for good cause shown, discovery requests and responses shall be served upon all parties and staff. Upon a showing of good cause, the board or the administrative law judge may determine that the responding party may recover the reasonable cost of providing copies from the party making the request. For purposes of this rule the term "response" includes written responses or objections to interrogatories, requests for the production of documents or tangible things, requests for permission to enter upon land or other property, and requests for admission.

4906-2-17 Interrogatories and response time.

(A) Any party may serve upon any other party written interrogatories, to be answered by the party served. If the party served is a corporation, partnership, association, government agency, or municipal corporation, it shall designate one or more of its officers, agents, or employees to answer the interrogatories, who shall furnish such information as is available to the party. Each interrogatory shall be answered separately and fully, in writing and under oath, unless it is objected to, in which case the reason for the objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers or objections upon the party submitting the interrogatories and all other parties within twenty days after the service thereof, or within such shorter or longer time as the board or the administrative law judge may allow. The party submitting the interrogatories may move for an order under rule 4906-2-22 of the Administrative Code with respect to any objection or other failure to answer an interrogatory.

(B) Subject to the scope of discovery set forth in rule 4906-2-14 of the Administrative Code, interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served. An interrogatory which is otherwise proper is not objectionable merely because it calls for an opinion, contention, or legal conclusion, but the board or the administrative law judge may direct that such interrogatory need not be answered until certain designated discovery has been completed, or until some other designated time. The answers to interrogatories may be used to the extent permitted by the rules of evidence, but such answers are not conclusive and may be rebutted or explained by other evidence.

(C) Where the answer to an interrogatory may be derived or ascertained from public documents on file in this state, or from documents which the party served with the interrogatory has furnished to the party submitting the interrogatory within the

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preceding twelve months, it is a sufficient answer to such interrogatory to specify the title of the document, the location of the document or the circumstances under which it was furnished to the party submitting the interrogatory, and the page or pages from which the answer may be derived or ascertained.

(D) Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, and the burden of deriving the answer is substantially the same for the party submitting the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party submitting the interrogatory a reasonable opportunity to examine, audit, or inspect such records.

4906-2-18 Depositions.

(A) Any party to a board proceeding may take the testimony of any other party or person, other than a member of the board staff, by deposition upon oral examination with respect to any matter within the scope of discovery set forth in rule 4906-2-14 of the Administrative Code. The attendance of witnesses and production of documents may be compelled by subpoena as provided in rule 4906-2-23 of the Administrative Code.

(B) Any party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to the deponent, to all parties, and to the board. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient for identification. If a subpoena duces tecum is to be served upon the person to be examined, a designation of the materials to be produced thereunder shall be attached to or included in the notice.

(C) If any party shows that he or she was unable with the exercise of due diligence to obtain counsel to represent him or her at the taking of a deposition, the deposition may not be used against such party.

(D) The board or the administrative law judge may, upon motion, order that a deposition be recorded by other than stenographic means, in which case the order shall designate the manner of recording the deposition, and may include provisions to assure that the recorded testimony will be accurate and trustworthy. If such an order is made, any party may arrange to have a stenographic transcription made at his or her own expense.

(E) A party may, in the notice and in a subpoena, name a corporation, partnership, association, government agency, or municipal corporation and designate with reasonable particularity the matters on which examination is requested. The

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organization so named shall choose one or more of its officers, agents, employees, or other persons duly authorized to testify on its behalf, and shall set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

(F) Depositions may be taken before any person authorized to administer oaths under the laws of the jurisdiction in which the deposition is taken, or before any person appointed by the board or the administrative law judge. Unless all of the parties expressly agree otherwise, no deposition shall be taken before any person who is a relative, employee, or attorney of any party, or a relative or employee of such attorney.

(G) The person before whom the deposition is to be taken shall put the witness on oath or affirmation, and shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness. Examination and cross-examination may proceed as permitted in board hearings. The testimony shall be recorded stenographically or by any other means ordered under paragraph (D) of this rule. If requested by any of the parties, the testimony shall be transcribed at the expense of the party making the request.

(H) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope upon the party taking the deposition, who shall transmit them to the officer, who in turn shall propound them to the witness and record the answers verbatim.

(I) At any time during the taking of a deposition, the board or the administrative law judge may, upon motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass, or oppress the deponent or party, order the person conducting the examination to cease taking the deposition, or may limit the scope and manner of taking the deposition as provided in rule 4906-2-21 of the Administrative Code. Upon demand of the objecting party or deponent, the taking of the depositions shall be suspended for the time necessary to make a motion for such an order.

(J) If and when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him or her, unless such examination and reading are expressly waived by the witness and the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making the

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changes. The deposition shall then be signed by the witness unless the signing is expressly waived by the parties or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within ten days after its submission to him or her, the officer shall sign it and state on the record the fact of the waiver or the illness or absence of the witness, or the fact of the refusal to sign together with the reason, if any, given for such refusal. The deposition may then be used as fully as though signed, unless the administrative law judge upon motion to suppress, holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(K) The officer shall certify on the deposition that the witness was duly sworn by him or her and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(L) Documents and things produced for inspection during the examination of the witness shall, upon request of any party, be marked for identification and annexed to the deposition, except that:

(1) The person producing the materials may substitute copies to be marked for identification, if all parties are afforded a fair opportunity to verify the copies by comparison with the originals.

(2) If the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to deposition.

(M) Depositions may be used in board hearings to the same extent permitted in civil actions in courts of record. Unless otherwise ordered for good cause shown, any depositions to be used as evidence must be filed with the board at least three days prior to the commencement of the hearing. A deposition need not be prefiled if used to impeach the testimony of a witness at hearing.

(N) The notice to a party deponent may be accompanied by a request made in compliance with rule 4906-2-19 of the Administrative Code for the production of documents or tangible things at the taking of the deposition.

4906-2-19 Production of documents and things, entry upon land or other property.

(A) Subject to the scope of discovery set forth in rule 4906-2-14 of the Administrative Code, any party may serve upon any other party a written request to:

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(1) Produce and permit the party making the request, or someone acting on his or her behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, or data compilations, which are in the possession, custody, or control of the party upon whom the request is served.

(2) Produce for inspection, copying, sampling, or testing any tangible things which are in the possession, control, or custody of the party upon whom the request is served.

(3) Permit entry upon designated land or other property for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(B) The request shall set forth the items to be inspected either by individual item or by category, and shall describe each category with reasonable particularity. The request shall also specify a reasonable time, place, and manner for conducting the inspection and performing the related acts.

(C) The party upon whom the request is served shall serve a written response within twenty days after the service of the request, or within such shorter or longer time as the board or the administrative law judge may allow. The response shall state, with respect to each item or category, that the inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reason for the objection shall be stated. If an objection is made to part of an item or category, that part shall be specified. The party submitting the request may move for an order under rule 4906-2-22 of the Administrative Code with respect to any objection or other failure to respond to a request or any part thereof, or any failure to permit inspection as requested.

(D) Where a request calls for the production of a public document on file in this state, or a document which the party upon whom the request is served has furnished to the party submitting the request within the preceding twelve months, it is a sufficient response to such request to specify the location of the document or the circumstances under which the document was furnished to the party submitting the request.

4906-2-20 Request for admission.

(A) Any party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any specific matter within the scope of discovery set forth in rule 4906-2-14 of the Administrative Code, including the genuineness of any documents described in the request. Copies of any such documents shall be served with the request unless they are or have been otherwise furnished for inspection or copying.

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(B) Each matter for which an admission is requested shall be separately set forth. The matter is admitted unless, within twenty days after the service of the request, or within such shorter or longer time as the board or the administrative law judge may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection, signed by the party or by his or her attorney. If an objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully make an admission or denial. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only part of the matter of which an admission is requested, the party shall specify that portion which is true and qualify or deny the remainder. An answering party may not give lack of information as a reason for failure to admit or deny a matter unless the party states that he or she has made reasonable inquiry and that information known or readily obtainable is insufficient to enable him or her to make an admission or denial. A party who considers the truth of a matter of which an admission has been requested to be a genuine issue for the hearing may not, on that basis alone, object to the request, but may deny that matter or set forth the reasons why an admission or denial cannot be made.

(C) Any party who has requested an admission may move for an order under rule 4906-2-22 of the Administrative Code with respect to any answer or objection. Unless it appears that an objection is justified, the board or the administrative law judge shall order that an answer be served. If an answer fails to comply with the requirements of this rule, the board or the administrative law judge may:

(1) Order that the matter be admitted for purposes of the pending proceeding.

(2) Order that an amended answer be served.

(3) Determine that final disposition of the matter should be deferred until a prehearing conference or some other designated time prior to the commencement of the hearing.

(D) Unless otherwise ordered by the board or the administrative law judge, any matter admitted under this rule is conclusively established against the party making the admission, but such admission may be rebutted by evidence offered by any other party. An admission under this rule is an admission for the purposes of the pending proceeding only and may not be used for any other purposes.

4906-2-21 Motions for protective orders.

(A) Upon motion of any party or person from whom discovery is sought, the board or the administrative law judge may issue any order which is necessary to protect a party or

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person from annoyance, embarrassment, oppression, or undue burden or expense. Such a protective order may provide that:

(1) Discovery not be had.

(2) Discovery may be had only on specified terms and conditions.

(3) Discovery may be had only by a method of discovery other than that selected by the party seeking discovery.

(4) Certain matters not be inquired into.

(5) The scope of discovery be limited to certain matters.

(6) Discovery be conducted with no one present except persons designated by the board or the administrative law judge.

(7) A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.

(8) Information acquired through discovery be used only for purposes of the pending proceeding, or that such information be disclosed only to designated persons or classes of persons.

(B) No motion for a protective order shall be filed under this rule until the person or party seeking the order has exhausted all other reasonable means of resolving any differences with the party seeking discovery. A motion for a protective order shall be accompanied by:

(1) A memorandum in support, setting forth the specific basis of the motion and citations to any authorities relied upon.

(2) Copies of any specific discovery request which are the subject of the request for a protective order.

(3) An affidavit of counsel, or of the person seeking a protective order if such person is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party seeking discovery.

(C) If a request for a protective order is denied in whole or in part, the board or the administrative law judge may require that the party or person seeking the order provide or permit discovery on such terms and conditions as are just.

(D) Upon motion of any party or person filing a document with the board's docketing division relative to a case before the board, the board or the administrative law judge assigned to the case may issue any order which is necessary to protect the

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confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where it is determined that both of the following criteria are met: The information is deemed by the board or administrative law judge assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure. The following requirements apply to a motion filed under this paragraph.

(1) All documents submitted pursuant to this rule should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information. Such redacted documents should be filed with the otherwise required number of copies for inclusion in the public case file.

(2) Three unredacted copies of the allegedly confidential information shall be filed under seal, along with a motion for protection of the information, with the chief of the docketing division, or the chief's designee. Each page of the allegedly confidential material filed under seal must be marked as "confidential," "proprietary", or "trade secret".

(3) The motion for protection of allegedly confidential information shall be accompanied by a memorandum in support setting forth the specific basis of the motion, including a detailed discussion of the need for protection from disclosure, and citations of any authorities relied upon. The motion and memorandum in support shall be made part of the public record of the proceeding.

(E) Pending a ruling on a motion filed in accordance with this rule, the information filed under seal will not be included in the public record of the proceeding or disclosed to the public until otherwise ordered or released pursuant to this rule. The board and its employees will undertake reasonable efforts to maintain the confidentiality of the information pending a ruling on the motion. A document or portion of a document filed with the docketing division that is marked "confidential", "proprietary", "trade secret", or with any other such marking, will not be afforded confidential treatment and protected from disclosure unless it is filed in accordance with this rule.

(F) Unless otherwise ordered, any order prohibiting public disclosure pursuant to this rule shall automatically expire twenty-four months after the date of its issuance, and such information may then be included in the public record of the proceeding. Exceptions may be made for motions seeking to protect critical energy infrastructure information. A party wishing to extend a protective order beyond twenty-four months shall file an appropriate motion at least forty-five days in advance of the expiration

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date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure.

(G) Nothing precludes the board from reexamining the need for protection issue de novo during the twenty-four month period if there is an application for rehearing on confidentiality or a public records request for the redacted information.

4906-2-22 Motions to compel discovery

(A) Any party, upon reasonable notice to all other parties and any persons affected thereby, may move for an order compelling discovery, with respect to:

(1) Any failure of a party to answer an interrogatory served under rule 4906-2-17 of the Administrative Code.

(2) Any failure of a party to produce a document or tangible thing or permit entry upon land or other property as requested under rule 4906-2-19 of the Administrative Code.

(3) Any failure of a deponent to appear or to answer a question propounded under rule 4906-2-18 of the Administrative Code.

(4) Any other failure to answer or respond to a discovery request made under rules 4906-2-17 to 4906-2-20 of the Administrative Code.

(B) For purposes of this rule, an evasive or incomplete answer shall be treated as a failure to answer.

(C) No motion to compel discovery shall be filed under this rule until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought. A motion to compel discovery shall be accompanied by:

(1) A memorandum in support, setting forth:

(a) The specific basis of the motion, and citations of any authorities relied upon.

(b) A brief explanation of how the information sought is relevant to the pending proceeding.

(c) Responses to any objections raised by the party or person from whom discovery is sought.

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(2) Copies of any specific discovery requests which are the subject of the motion to compel, and copies of any responses or objections thereto.

(3) An affidavit of counsel, or of the party seeking to compel discovery if such party is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party or person from whom discovery is sought.

(D) The board or the administrative law judge may grant or deny the motion in whole or in part. If the motion is denied in whole or in part, the board or the administrative law judge may issue such protective order as would be appropriate under rule 4906-2-21 of the Administrative Code.

(E) Any order of the administrative law judge granting a motion to compel discovery in whole or in part may be appealed to the board in accordance with rule 4906-2-29 of the Administrative Code. If no application for review is filed within the time limit set forth in that rule, the order of the administrative law judge becomes the order of the board.

(F) If any party or person disobeys an order of the board compelling discovery, the board may:

(1) Seek appropriate judicial relief against the disobedient person or party under section 4903.04 of the Revised Code.

(2) Prohibit the disobedient party from further participation in the pending proceeding.

(3) Prohibit the disobedient party from supporting or opposing designated claims or defenses, or from introducing evidence or conducting cross-examination on designated matters.

(4) Dismiss the pending proceeding if such proceeding was initiated by an application or petition, unless such a dismissal would unjustly prejudice any other party.

(5) Take such other action as the board considers appropriate.

4906-2-23 Subpoenas.

(A) The board, any board member empowered to vote, or the administrative law judge assigned to a case may issue subpoenas, upon their own motion or upon motion of any party or the staff. A subpoena shall command the person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command such a person to produce the books, papers, documents, or other

tangible things described therein. A copy of the motion for a subpoena and the subpoena itself should be submitted in person to the board, any board member entitled to vote, or the administrative law judge assigned to the case for signature of the subpoena. After the subpoena is signed, a copy of the motion for a subpoena and a copy of the signed subpoena shall be docketed and served upon the parties of the case. The person seeking the subpoena shall file the original signed subpoena and make arrangements for its service.

(B) Arranging for service of a signed subpoena is the responsibility of the requesting person. A subpoena may be served by a sheriff, deputy sheriff, or any other person who is not a party and who is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering it to such person, reading it to him or her in person, leaving it at his or her place of residence, leaving it at his or her business address if the person is a party or employee of a party to the case, or mailing the subpoena via United States mail as certified or express mail, return receipt requested, with instructions to the delivering postal authority to show to whom delivered, date of delivery, and address where delivered. A subpoena may be served at any place within this state. The person serving the subpoena shall file a return thereof with the docketing division. When a subpoena is served by mail, the person filing the return shall include the signed receipt with the return.

(C) The board or the administrative law judge may, upon their own motion or upon motion of any party, quash a subpoena if it is unreasonable or oppressive, or condition the denial of such a motion upon the advancement by the party on whose behalf the subpoena was issued of the reasonable costs of producing the books, papers, documents, or other tangible things described therein.

(D) A subpoena may require a person, other than a member of the board staff, to attend and give testimony at a deposition, and to produce designated books, papers, documents, or other tangible things within the scope of discovery set forth in rule 4906-2-14 of the Administrative Code. Such a subpoena is subject to the provisions of rule 4906-2-21 of the Administrative Code as well as paragraph (C) of this rule.

(E) Unless otherwise ordered for good cause shown, all motions for subpoenas requiring the attendance of witnesses at a hearing must be filed with the board no later than five days prior to the commencement of the hearing.

(F) Any persons subpoenaed to appear at a board hearing, other than a party or an officer, agent, or employee of a party, shall receive the same witness fees and mileage expenses provided in civil actions in courts of record. For purposes of this paragraph, the term "employee" includes consultants and other persons retained or specially employed by a party for purposes of the proceeding. If the witness is subpoenaed at the request of one or more parties, the witness fees and mileage expenses shall be paid

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by such party or parties. If the witness is subpoenaed upon motion of the board, any board member entitled to vote, or the administrative law judge, the witness fees and mileage expenses shall be paid by the state, in accordance with section 4903.05 of the Revised Code. Unless otherwise ordered, an application for a subpoena requiring the attendance of a witness at a hearing shall be accompanied by a deposit sufficient to cover the required witness fees and mileage expenses for one day's attendance. The deposit shall be tendered to the fiscal officer of the board, who shall retain it until the hearing is completed, at which time the officer shall pay the witness the necessary fees and expenses, and shall either charge the party making the deposit for any deficiency or refund to such party any surplus remaining from the deposit.

(G) If any person fails to obey a subpoena issued by the board, any board member entitled to vote or an administrative law judge, the board may seek appropriate judicial relief against such person under section 4903.02 or 4903.04 of the Revised Code.

(H) A sample subpoena is provided in the appendix to this rule.

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RULE 4906-2-23 APPENDIX

BEFORE
THE OHIO POWER SITING BOARD

SUBPOENA

TO:

_____

_____

_____

Upon application of _____ you are hereby required to appear before the Ohio Power Siting Board as a witness for _____ in the following proceeding:

Case No. _____

Case Title

You are to appear at the offices of the Board, 180 East Broad Street, Columbus, Ohio, on the _____ day of _____, 20 _____, at _____ _____.m. in hearing room _____.

You shall bring with you the following:

Dated at Columbus, Ohio, this _____ day of _____, 20_____.

_____
Administrative Law Judge

Notice: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

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4906-2-24 Stipulations.

(A) Any two or more parties may enter into a written or oral stipulation concerning issues of fact or the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding.

(B) A written stipulation must be signed by all of the parties joining therein, and must be filed with the board and served upon all parties to the proceeding twenty-four hours before the commencement of the hearing in a proceeding.

(C) An oral stipulation may be made only during a public hearing or recorded at a prehearing conference, and all parties joining in such a stipulation must acknowledge their agreement thereto on the record. The board or the administrative law judge may require that an oral stipulation be reduced to writing and filed and served in accordance with paragraph (B) of this rule.

(D) Unless otherwise ordered, parties who file a full or partial written stipulation or make an oral stipulation must file or provide testimony that supports the stipulation. Parties that do not join the stipulation may offer evidence and/or argument in opposition. No stipulation shall be considered binding upon the board.

4906-2-25 Prehearing conferences.

(A) In any proceeding, the board or the administrative law judge may, upon motion of any party or upon their own motion, hold one or more prehearing conferences for the purpose of:

(1) Resolving outstanding discovery matters, including:

(a) Ruling on pending motions to compel discovery or motions for protective orders.

(b) Establishing a schedule for the completion of discovery.

(2) Ruling on any other pending procedural motions.

(3) Identifying the witnesses to be presented in the proceeding and the subject matter of their testimony.

(4) Identifying and marking exhibits to be offered in the proceeding.

(5) Discussing possible admissions or stipulations regarding issues of fact or the authenticity of documents.

(6) Clarifying the issues involved in the proceeding.

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(7) Discussing or ruling on any other procedural matter which the board or the administrative law judge considers appropriate.

(B) Reasonable notice of any prehearing conference shall be provided to all parties. Unless otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at such conference.

(C) Following the conclusion of a prehearing conference, the board or the administrative law judge may issue an appropriate prehearing order, reciting or summarizing any agreements reached or rulings made at such conference. Unless otherwise ordered for good cause shown, such order shall be binding upon all persons who are or subsequently become parties, and shall control the subsequent course of the proceeding.

4906-2-26 Practice before the board and designation of counsel of record.

(A) Except as otherwise provided in paragraphs (B), (C), and (D) of this rule, each party shall be represented by an attorney at law authorized to practice before the courts of this state, with the exception of an individual person who is appearing on his or her own behalf.

(B) An out-of-state attorney may seek permission to appear pro hac vice before the board in any activity of a case upon the filing of a motion. The motion shall include all the information and documents required by paragraph (A)(6) of section 2 of rule XII of the Rules of the Government of the Bar of Ohio.

(C) Certified legal interns may appear before the board under the direction of a supervising attorney in accordance with rule II of the Supreme Court Rules for the Government of the Bar of Ohio. No legal intern shall participate in a board hearing in the absence of the supervising attorney without:

(1) The written consent of the supervising attorney.

(2) The approval of the board or the administrative law judge.

(D) Where a party is represented by more than one attorney, one of the attorneys shall be designated as the "counsel of record," who shall have principal responsibility for the party's participation in the proceeding. The designation "counsel of record" shall appear following the name of that attorney on all pleadings or papers submitted on behalf of the party.

(E) No attorney shall withdraw from a board proceeding without prior written notice to the board and shall serve a copy of the notice upon the parties to the proceeding.

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4906-2-27 Motions.

(A) All motions, unless made at a public hearing or transcribed prehearing conference, or unless otherwise ordered for good cause shown, shall be in writing and shall be accompanied by a memorandum in support. The memorandum in support shall contain a brief statement of the grounds for the motion and citations of any authorities relied upon.

(B) Except as otherwise provided in paragraphs (C) and (F) of this rule:

(1) Any party may file a memorandum contra within fifteen days after the service of a motion, or such other period as the board or the administrative law judge requires.

(2) Any party may file a reply memorandum within seven days after the service of a memorandum contra, or such other period as the board or the administrative law judge requires.

(C) Any motion may include a specific request for an expedited ruling. The grounds for such a request shall be set forth in the memorandum in support. If the motion requests an extension of time to file pleadings or other papers of five days or less, an immediate ruling may be issued without the filing of memoranda. In all other cases, the party requesting an expedited ruling must first contact all other parties to determine whether any party objects to the issuance of such a ruling without the filing of memoranda. If the moving party certifies that no party objects to the issuance of such a ruling, an immediate ruling may be issued. If any party objects to the issuance of such a ruling, or if the moving party fails to certify that no party has any objections, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the board or the administrative law judge requires. No reply memoranda shall be filed in such cases unless specifically requested by the board or the administrative law judge.

(D) All written motions and memoranda shall be filed with the board and served upon all parties in accordance with rules 4906-2-02 and 4906-2-05 of the Administrative Code.

(E) For purposes of this rule, the term "party" includes all persons who have filed notices or petitions to intervene which are pending at the time a motion or memorandum is to be filed or served.

(F) Notwithstanding paragraphs (B) and (C) of this rule, the board or the administrative law judge may, upon their own motion, issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party.

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(G) The administrative law judge may direct that any motion made at a public hearing or transcribed prehearing conference be reduced to writing and filed and served in accordance with this rule.

4906-2-28 Procedural rulings.

The board or the administrative law judge may rule, in writing, upon any procedural motion or other procedural matter. A copy of any such ruling shall be served upon all parties to the proceeding.

4906-2-29 Interlocutory appeals.

(A) Any party who is adversely affected thereby may take an immediate interlocutory appeal to the board from any ruling issued under rule 4906-2-28 of the Administrative Code or any oral ruling issued during a hearing or prehearing conference which:

(1) Grants a motion to compel discovery or denies a motion for a protective order.

(2) Denies a motion to intervene or terminates a party's right to participate in a proceeding.

(3) Refuses to quash a subpoena.

(4) Requires the production of documents or testimony over an objection based on privilege.

(B) Except as provided in paragraph (A) of this rule, no party may take an interlocutory appeal from any ruling issued under rule 4906-2-28 of the Administrative Code or any oral ruling issued during a hearing or prehearing conference unless the appeal is certified to the board by the administrative law judge. The administrative law judge shall not certify such an appeal unless he or she finds that:

(1) The appeal presents a new or novel question of law or policy.

(2) The appeal is taken from a ruling which represents a departure from past precedent and an immediate determination by the board is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the board ultimately reverse the ruling in question.

(C) Any party wishing to take an interlocutory appeal from any ruling must file an application for review with the board within five days after the ruling is issued. An extension of time for the filing of an interlocutory appeal may be granted only under extraordinary circumstances. The application for review shall set forth the basis of the appeal and citations of any authorities relied upon. A copy of the ruling or the portion of the record which contains the ruling shall be attached to the application for review.

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If the record is unavailable, the application for review must set forth the date the ruling was issued and must describe the ruling with reasonable particularity.

(D) Any party intending to file an interlocutory appeal on the day before a day on which board offices are closed shall notify all other parties of the intent to file an interlocutory appeal by three p.m. on the day of filing. Notice may be personal or by phone or email. The party filing the interlocutory appeal shall serve, upon request, a copy of the appeal by email or fax. Unless otherwise ordered by the board, any party may file a memorandum contra within five days after the filing of any interlocutory appeal.

(E) Upon consideration of an interlocutory appeal, the board may, in its discretion:

(1) Affirm, reverse, or modify the ruling of the administrative law judge.

(2) Dismiss the appeal, if the board is of the opinion that:

(a) The issues presented are moot.

(b) The party taking the appeal lacks the requisite standing to raise the issues presented or has failed to show prejudice as a result of the ruling in question.

(c) The issues presented should be deferred and raised at some later point in the proceeding.

(F) Any party that is adversely affected by a ruling issued under rule 4906-2-28 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference and that (1) elects not to take an interlocutory appeal from the ruling or (2) files an interlocutory appeal that is not certified by the administrative law judge may still raise the propriety of that ruling as an issue for the board's consideration by discussing the matter as a distinct issue in its initial brief or in any other appropriate filing prior to the issuance of the board's order in the case.

4906-2-30 Decision by the board

Within a reasonable time after the conclusion of the hearing, the board shall issue a final decision based only on the record, including such additional evidence as it shall order admitted. The board may determine that the location of all or part of the proposed facility should be modified. If it so finds, it may condition its certificate upon such modifications. Persons and municipal corporations shall be given reasonable notice thereof. The decision of the board shall be entered on the board journal and into the record of the hearing. Copies of the decision or order shall be served on all attorneys of record and all unrepresented parties in the proceedings by ordinary mail.

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4906-2-31 Reopening of proceedings.

(A) The board or the administrative law judge may, upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order.

(B) A motion to reopen a proceeding shall specifically set forth the nature and purpose. If the purpose is to permit the presentation of additional evidence, the motion shall specifically describe the nature and purpose of the requested reopening of such evidence and shall set forth facts showing why such evidence could not with reasonable diligence have been presented earlier in the proceeding.

4906-2-32 Applications for rehearing.

(A) Any party or any affected person, firm, or corporation may file an application for rehearing, within thirty days after the issuance of a board order, in the manner and form and circumstances set forth in section 4903.10 of the Revised Code. An application for rehearing must set forth the specific ground or grounds upon which the applicant considers the board order to be unreasonable or unlawful. An application for rehearing must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the application for rehearing and which shall be filed no later than the application for rehearing.

(B) Any party may file a memorandum contra within ten days after the filing of an application for rehearing.

(C) As provided in section 4903.10 of the Revised Code, all applications for rehearing must be submitted within thirty days after an order has been journalized by the secretary of the board, or in the case of an application that is subject to automatic approval under the board's procedures, an application for rehearing must be submitted within thirty days after the date on which the automatic time frame has expired, unless the application has been suspended by the board.

(D) A party or any affected person, firm, or corporation may only file one application for rehearing to a board order within thirty days following the entry of the order upon the journal of the board.

(E) The board, the chairman of the board, or the administrative law judge may issue an order granting rehearing for the purpose of affording the board more time to consider the issues raised in an application for rehearing.

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4906-2-33 Supreme court appeals.

Consistent with the requirements of section 4903.13 of the Revised Code, a notice of appeal of a board order to the Ohio supreme court must be filed with the board's docketing division within the time period prescribed by the court and served upon the chairman of the board or, in his absence, upon any voting board member, or by leaving a copy at the offices of the board. A notice of appeal of a board order to the Ohio supreme court may not be delivered via fax or email.

Chapter 4906-3 Procedural Requirements for Standard Certificate Applications

4906-3-01 Purpose and scope.

(A) This chapter sets forth the specific procedural requirements for the filing of a standard certificate application.

(B) The board may, upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

(C) With respect to any aspect of the public information program, including all notices, service requirements, and other forms of public information, inadvertent failure of service on, or notice to, any of the persons entitled to receive service pursuant to the requirements of this chapter, may be cured pursuant to orders of the board or the administrative law judge, designed to afford such persons adequate notice to enable their effective participation in the proceeding.

4906-3-02 Preapplication conference.

An applicant considering construction of a major utility facility or economically significant wind farm may request a preapplication conference with the board staff prior to submitting an application. The results of such conference(s) shall in no way constitute approval or disapproval of a particular site or route, and shall in no way predetermine the board's decision regarding subsequent certification or approval.

4906-3-03 Public information program.

(A) The applicant shall file a preapplication notification letter with the board at least fifteen days prior to the date of any public informational meeting(s) held pursuant to paragraph (B) of this rule. The preapplication notification letter shall include the following information:

(1) A basic description of the project that shall include information about the anticipated function, equipment size, approximate areal extent, general location, schedule, and purpose of the project.

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(2) The date, time, and location of the public informational meeting to be held pursuant to paragraph (B) of this rule.

(3) A list of any anticipated waivers of the board's rules that the applicant will be requesting for the project.

(B) No more than sixty days prior to submitting a standard certificate application to the board, the applicant shall conduct at least one informational meeting open to the public to be held in the area in which the project is located.

(1) The applicant will give one public notice of the informational meeting in newspapers of general circulation in the project area, to be published not more than twenty-one days or fewer than seven days before the date for the meeting. The notice shall occupy not less than one-fourth of each newspaper's standard page, with letters not less than ten-point type, and shall bear the heading "Notice of Public Information Meeting for Proposed Major Utility Facility" in bold letters not less than one-fourth inch high or thirty-point type. The notice shall not be published in the legal notices section of the newspaper. The information provided shall address the need for the project, the project schedule, the design of the facility, and other pertinent data. Proof of publication shall be filed with the board no later than thirty days from the date of publication.

(2) At least twenty-one days before the informational meeting, the applicant shall send a letter to each property owner and affected tenant. The letter shall briefly describe the certification process, including information on how to participate in the proceeding and how to request notification of the public hearing. The letter shall include the applicant's website and the website, mailing address, email address, and telephone number of the board. The letter shall also include the date, time, and location of the informational meeting, and a brief description of the project. The letter shall be sent by first class mail. Notice of compliance with this requirement shall be filed with the board and a list of the names of each tenant and property owner shall be provided to staff. Inability or inadvertent failure to notify the persons described in this rule shall not constitute failure to give public notices, provided there is substantial compliance with these requirements. The letter shall be sent to each property owner and affected tenant:

(a) Within the planned site or along the proposed route options for the proposed facility.

(b) Contiguous to the planned site or contiguous to the preferred or alternate route(s) of the proposed facility.

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(c) Who may be approached by the applicant for any additional easement necessary for the construction, operation, or maintenance of the facility.

(d) If the property owner's address is not the same as the address affected by the proposed facility, then the applicant shall also send a letter to the affected property.

(3) If the location of the proposed facility changes after the informational meeting, the applicant shall send a letter to any property owner and affected tenant, as defined by paragraph (2) of this rule. The letter shall be sent at least twenty-one days prior to the public hearing. The letter shall briefly describe the certification process, including information on how to participate in the proceeding, and the date, time, and location of the public hearing. The letter shall also include a brief description of the project. The letter shall include the applicant's website and the website, mailing address, email address, and telephone number of the board. The letter shall be sent by first class mail. Notice of compliance with this requirement shall be filed with the board and a list of the names of each tenant and property owner shall be provided to staff.

(4) At the informational meeting, the applicant shall present maps showing the proposed facility at a scale that allows affected property owners to identify the location of their property in relation to the facility. The applicant shall solicit written comments from the attendees. The applicant shall summarize in its certificate application how many and what types of comments were received.

4906-3-04 Combined standard and accelerated certificate applications.

(A) If a project that qualifies for accelerated review is an associated facility of a major utility facility that is subject to filing a standard certificate application with the board, the projects may be combined into one standard certificate application.

(B) Electric generation plants and associated electric transmission or gas pipeline projects that do not qualify for accelerated review shall be filed in separate standard certificate applications.

4906-3-05 Alternatives in standard certificate applications.

All standard certificate applications for electric power transmission facilities and gas pipelines shall include fully developed information on two sites/routes. Applicants for electric power generation facilities may choose to include fully developed information on two or more sites. Each proposed site/route shall be designated as a preferred or an alternate site/route. Each proposed site/route shall be a viable alternative on which the applicant could construct the proposed facility. Two routes shall be considered as alternatives if not

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more than twenty per cent of the routes are in common. The percentage in common shall be calculated based on the shorter of the two routes. Any segment of a route that makes use of existing transmission structures or is entirely within existing transmission rights-of-way may be excluded from the calculation of the percentage in common. Standard certificate applications may include information on additional alternatives, which may include site, route, major equipment, or other alternatives.

4906-3-06 Completeness of standard certificate applications, staff investigations, and staff reports.

(A) Upon receipt of a standard certificate application for an economically significant wind farm or major utility facility, excluding those filed under paragraph (B) of this rule, the chairman shall examine the certificate application to determine compliance with Chapters 4906-1 to 4906-7 of the Administrative Code. Within sixty days following receipt, the chairman shall either:

(1) Accept the standard certificate application as complete and complying with the content requirements of section 4906.06 of the Revised Code and Chapters 4906-1 to 4906-7 of the Administrative Code, and notify the applicant to serve and file a certificate of service for the accepted, complete application.

(2) Reject the standard certificate application as incomplete, setting forth specific grounds on which the rejection is based. The chairman shall mail a copy of the completeness decision to the applicant.

(B) Upon receipt of a standard certificate application for a major utility facility which is related to a coal research and development project as defined in section 1551.01 of the Revised Code, or to a coal development project as defined in section 1551.30 of the Revised Code, submitted to the Ohio coal development office for review under division (B)(8) of section 1551.33 of the Revised Code, the chairman shall promptly accept the certificate application as complete and shall notify the applicant to file the accepted, complete application in accordance with the provisions of rules 4906-3-08 and 4906-3-09 of the Administrative Code.

(C) Staff shall conduct an investigation of each accepted, complete application and submit a written report as provided by division (C) of section 4906.07 of the Revised Code not less than fifteen days prior to the beginning of public hearings.

(1) The staff report for an economically significant wind farm or major utility facility, excluding those filed under paragraph (B) of this rule shall set forth the nature of the investigation, and shall contain recommended findings with regard to division (A) of section 4906.10 of the Revised Code and all applicable rules contained in Chapters 4906-1 to 4906-7 of the Administrative Code.

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(2) The staff report for a major utility facility that is filed under paragraph (B) of this rule shall set forth the nature of the investigation and shall contain recommended findings with regard to divisions (A)(2), (A)(3), (A)(5), and (A)(7) of section 4906.10 of the Revised Code.

(3) The staff report shall be filed by staff and become part of the official record in the case pursuant to section 4906.07 of the Revised Code.

(4) Copies of the staff report shall be provided to the board members, the administrative law judge assigned to the case, the applicant, and all persons who have become parties to the proceedings. Copies shall be made available to any person upon request.

(5) The chairman shall cause either a copy of such staff report or a notice of the availability of such staff report to be placed in the main public library of each political subdivision as referenced in division (B) of section 4906.06 of the Revised Code. If a notice is provided, that notice shall state that an electronic or paper copy of the staff report is available from staff (with instructions as to how to obtain an electronic or paper copy) and available for inspection at the board's main office. Staff will also maintain on the board's website information as to how to request an electronic or paper copy of the staff report. Upon request for a paper copy of the staff report, staff shall supply the report without cost.

4906-3-07 Service and publication of accepted, complete applications.

(A) Upon receipt of notification from the chairman that the standard certificate application is complete, the applicant shall:

(1) Serve a copy of the accepted, complete application, either electronically or by disk on the chief executive officer of each municipal corporation, county, township, and the head of each public agency charged with the duty of protecting the environment or of planning land use in the area in which any portion of such facility is to be located. Hard copies shall be made available upon request. As used in this rule, "any portion" includes site or route alternatives as provided in rule 4906-3-05 of the Administrative Code.

(2) Place a copy of the accepted, complete application or place a notice of the availability of such application in the main public library of each political subdivision as referenced in division (B) of 4906.06 of the Revised Code. If a notice is provided, that notice shall state that an electronic or paper copy of the accepted, complete application is available from the applicant (with instructions as to how to obtain an electronic or paper copy), available for inspection at the applicant's main office, available for inspection at the board's main office, and

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available at any other sites at which the applicant will maintain a copy of the accepted, complete application.

(3) Supply the board with such additional copies of the accepted, complete application as the board shall require.

(4) Supply the board with a certificate of its service of such accepted, complete standard certificate application, which shall include the name, address, and official title of each person so served, together with the date on which service was performed and a description of the method by which service was obtained.

(5) Submit the application fee.

(B) The applicant shall maintain on its website, information as to how to request an electronic or paper copy of the accepted, complete application. Upon request for a paper copy of the accepted, complete application, the applicant shall supply the copy within five business days and at no more than cost.

(C) Proof of compliance with the requirements of this rule shall be filed in the case.

4906-3-08 Scheduling for accepted, complete applications and the effective date of filing.

(A) Once the applicant has complied with rule 4906-3-07 of the Administrative Code, the board or administrative law judge shall file an entry in the case indicating the date on which the accepted, complete application is deemed as filed.

(B) Upon an accepted, complete application being deemed filed, the board or administrative law judge shall promptly fix the date(s) for the public hearing(s) and notify the parties.

4906-3-09 Public notice of accepted, complete applications.

(A) After filing an accepted, complete application with the board, the applicant shall give two notices of the proposed utility facility in newspapers of general circulation in those municipal corporations and counties in which the chief executive received service of a copy of the application pursuant to rule 4906-3-07 of the Administrative Code.

(1) The initial notice shall be a written notice to each owner of a property crossed and/or adjacent to the preferred and alternative routes for transmission lines and/or a new generation site within fifteen days of the filing of the accepted, complete application and shall contain the following information:

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(a) The name and a brief description of the proposed facility, including type and capacity.

(b) A map showing the location and general layout of the proposed facility.

(c) A list of officials served with copies of the accepted, complete application pursuant to rule 4906-3-07 of the Administrative Code.

(d) A list of public libraries that were sent paper copies or notices of availability of the accepted, complete application, and other readily accessible locations (including the applicant's website and the website, mailing address, and telephone number of the board) where copies of the accepted, complete application are available for public inspection.

(e) A statement, including the assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is now pending before the board.

(f) A statement setting forth the eight criteria listed in division (A) of section 4906.10 of the Revised Code used by the board to review an application.

(g) Section 4906.07 of the Revised Code, including the time and place of the public hearing.

(h) Division (C) of section 4906.08 of the Revised Code, including the deadline for filing a notice of intervention or petition for leave to intervene as established by the board or administrative law judge.

(2) The second public notice shall be published at least seven days but no more than twenty-one days before the public hearing. The notice shall be published with letters not less than ten-point type, shall bear the heading "Notice of Proposed Major Utility Facility" in bold type not less than one-fourth inch high or thirty-point type and shall contain the following information:

(a) The name and a brief description of the project.

(b) A map showing the location and general layout of the proposed facility.

(c) A statement, including the assigned docket number that an application for a certificate to construct, operate, and maintain said facility is now pending before the board.

(d) The date, time, and location of the public hearing.

(e) A statement that the public will be given an opportunity to comment on the proposed facility.

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(f) A reference to the date of the first public notice.

(B) Inability or inadvertent failure to notify the persons described in this rule shall not constitute a failure to give public notice, provided substantial compliance with these requirements is met.

4906-3-10 Proof of publication.

(A) The applicant shall file proof of the first public notice, together with a copy of the notice, with the board within fourteen days of publication.

(B) The applicant shall provide proof of the second public notice to the board at least three days before the public hearing by providing either a copy of the entire date-marked newspaper page that contains the actual notice or copy of the proof of publication from the newspaper(s) in which the notice was published.

(C) Inadvertent failure of service on, or notice to, any of the persons entitled to receive service pursuant to the requirements for this chapter, may be cured pursuant to orders of the board or the administrative law judge, designed to afford such persons adequate notice to enable their effective participation in the proceeding. In addition, the board or the administrative law judge may, after filing, require the applicant to serve notice of the accepted, complete application or copies thereof, or both, upon such other persons, and file proof thereof, as the board or the administrative law judge considers appropriate.

4906-3-11 Amendments of accepted, complete applications and of certificates.

(A) The applicant shall submit to the board any applications for amendment to a pending accepted, complete application in accordance with rule 4906-3-06 of the Administrative Code.

(1) Each application for amendment shall specifically identify the portion of the pending accepted, complete application which has been amended.

(2) The applicant shall serve a copy of the application for amendment upon all persons previously entitled to receive a copy of the application, and shall supply the board with proof of such service.

(3) The applicant shall place a copy of such application for amendment or notice of its availability in all libraries consistent with rule 4906-3-07 of the Administrative Code, and shall supply the board with proof of such action.

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(4) Upon review, the board or the administrative law judge may require such additional action as is determined necessary to inform the general public of the proposed amendment, including, but not limited to:

(a) Ordering the applicant to issue public notice pursuant to rule 4906-3-09 of the Administrative Code.

(b) If a hearing is required, the hearing may be postponed on the pending, accepted, complete application and/or application for amendment up to ninety days after receipt of said application for amendment.

(5) Staff shall review the application for amendment pursuant to paragraph (C) of rule 4906-3-06 of the Administrative Code.

(6) Unless otherwise ordered by the board or administrative law judge, modifications to a proposed route that are introduced into the record by the applicant during review of the accepted, complete application and during the hearing process shall not be considered amendments if such modifications are within the two thousand foot study corridor and do not impact additional landowners by requiring easements for construction, operation, or maintenance or create further impacts within the planned right-of-way of the proposed facility. Unless otherwise ordered by the board or administrative law judge, modifications to the footprint of an electric power generation facility that are introduced into the record by the applicant during review of the accepted, complete application and during the hearing process shall not be considered amendments if such modifications do not create further impacts for each property owner or within the planned site, or within the right-of-way of the proposed facility.

(B) Applications for amendments to certificates shall be submitted in the same manner as if they were applications for a certificate.

(1) Staff shall review applications for amendments to certificates pursuant to rule 4906-3-06 of the Administrative Code and make appropriate recommendations to the board and the administrative law judge.

(a) If the board, its executive director, or the administrative law judge determines that the proposed change in the certified facility would result in any significant adverse environmental impact of the certified facility or a substantial change in the location of all or a portion of such certified facility other than as provided in the alternates set forth in the application, then a hearing shall be held in the same manner as a hearing is held on a certificate application.

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(b) If the board, its executive director, or the administrative law judge determines that a hearing is not required, as defined in paragraph (B)(1)(a) of this rule, the applicant shall be directed to take such steps as are necessary to notify all parties of that determination.

(2) The applicant shall:

(a) Serve a copy of the application for amendment to a certificate upon:

(i) The persons entitled to service pursuant to rule 4906-3-07 of the Administrative Code.

(ii) All parties to the original certificate application proceedings.

(iii) Any property owner(s) along the new route.

(b) File with the board proof of service and, if required, proof of notice pursuant to this chapter.

4906-3-12 Application fees and board expenses.

(A) The board's expenses associated with the review, analysis, processing, and monitoring of applications made pursuant to Chapters 4906-1 to 4906-7 of the Administrative Code shall be borne by the person submitting the application and shall include all expenses associated with monitoring, construction, and operation of the facility and compliance with certificate conditions. Application fees submitted to the board shall be utilized for all direct expenses associated with the consideration of an application and granting of a certificate and monitoring of construction and initial operation of the facility. The chairman shall provide, annually to each applicant, a current summary of the applicant's active cases showing case numbers, fees received, and board expenses.

(B) The application filing fee for a certificate for a single or multiple unit electric power generation plant and associated facilities, or substantial additions thereto, shall consist of the product of fifty cents times the maximum kilowatt electric capacity, as determined by the estimated net demonstrated capability of the highest capacity alternative. The maximum application filing fee shall be one hundred and fifty thousand dollars.

(1) After accepting an application as complete, the chairman, using paragraph (B) of this rule, shall determine the amount of the application filing fee, advise the applicant of the fee amount and advise the applicant that it is payable upon filing the accepted, complete application.

(2) Board expenses associated with a preapplication conference will be included as part of the application review expenses. If the applicant fails to file an

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application within twelve months of the preapplication conference, the chairman shall invoice the applicant for the board's expenses incurred as a result of the preapplication conference.

(C) The application filing fee for a certificate for a gas pipeline and associated facilities or an electric power transmission line and associated facilities shall consist of:

(1) An amount based on the estimated construction cost of the most costly alternative route as follows:

Construction cost	Fee
up to - $500,000	$10,000
$500,000 - 1,000,000	$25,000
1,000,001 - 2,000,000	$35,000
2,000,001 - 5,000,000	$50,000
5,000,001 - up	$65,000

(2) After accepting an application as complete, the chairman, using paragraph (C)(1) of this rule, shall determine the amount of the application filing fee, advise the applicant of the fee amount, and advise the applicant that it is payable upon filing the accepted, complete application.

(3) Board expenses associated with a preapplication conference will be included as part of the application review expenses. If the applicant fails to file an application within twelve months of the preapplication conference, the chairman shall invoice the applicant for the expenses the board incurred as a result of the preapplication conference.

(4) If an associated transmission substation is included in the application for an electric transmission line, the application fee for the substation shall be calculated separately and added to the filing fee for the transmission line.

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(D) The application filing fee for an amendment to a certificate shall consist of:

(1) An amount based on the estimated construction cost of the amended portion of the facility as follows:

Construction cost	Fee
up to - $500,000	$3,000
$500,000 - 1,000,000	6,000
1,000,000 - 2,000,000	9,000
2,000,001 - 5,000,000	12,000
5,000,001 - up	15,000

(2) After accepting an amendment application as complete, the chairman, using paragraph (D)(1) of this rule, shall determine the amount of the application filing fee, advise the applicant of the fee amount, and advise the applicant that it is payable upon filing the accepted, complete amendment application.

(E) If the chairman determines that the initial application fee paid under paragraph (B), (C) or (D) of this rule will not be adequate to pay for the board's expenses associated with the application prior to the end of the year in which the certificate is issued, the chairman may charge the applicant a supplemental application fee in an amount necessary to cover such expenses.

(F) At the end of the calendar year in which the certificate is issued, the chairman shall determine if the application filing fee was adequate to pay the actual expenses for review of the application. If the fee was inadequate, the chairman shall invoice the applicant for the amount of the shortage, and shall do so, at least, annually thereafter to cover the board's expenses until the project has been completed. If there are adequate funds, no annual invoicing will be required until a shortage occurs. The review will be done annually. Final reconciliation, including refunds in cases where fees paid exceed the amount needed to cover the board's expenses, will be done at the end of the calendar year in which the applicant notifies the board that the project has been completed. If a certificate application is withdrawn, the chairman shall cause a refund to be issued in the amount of the application fee in excess of the costs incurred to date.

(G) For purposes of this rule, "construction cost" shall include all costs of the project including rights-of-way, land acquisition, clearing, material and equipment, erection of the facility and any other capital cost applicable to that project.

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(H) Board expenses for the resolution of jurisdictional issues, and all other incidental services will be invoiced at cost. Payment shall be due upon receipt of an invoice.

(I) The board shall publish annually a report accounting for the collection and expenditure of fees. The annual report shall be published not later than the last day of June of the year following the calendar year to which the report applies.

4906-3-13 Construction and operation.

(A) The standard certificate application shall be filed no more than five years prior to the planned date of commencement of construction. The five-year period may be waived by the board for good cause shown.

(B) The applicant shall notify the board of the date on which construction will begin, the date on which construction was completed, and the date on which the facility began commercial operation.

(C) The certificate shall become invalid if the applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of issuance of the certificate.

(D) If any changes are made to the project layout after the certificate is issued, all changes shall be provided to staff in hard copy and as geographically-referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally-sensitive areas are subject to staff review and acceptance prior to construction in those areas.

(E) Within sixty days after the commencement of commercial operation, the applicant shall submit to staff a copy of the as-built drawings for the entire facility. The applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.

(F) Within six months of commencement of operation of the facility, the applicant shall register the as-built locations of the underground electric lines or gas pipelines referenced in the application with the Ohio utilities protection service. The applicant shall also register with the Ohio oil and gas producers underground protection service, if it operates in the project area. Confirmation of registration(s) shall be provided to the board.

4906-3-14 Preconstruction requirements.

(A) Prior to commencement of any construction activities, the applicant shall inform affected property owners and tenants of the nature of the project, specific contact information of applicant personnel who are familiar with the project, the proposed

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schedule for project construction and restoration activities, and a complaint resolution process. Notification to affected property owners and tenants shall be given at least seven days prior to work on the affected property.

(B) Prior to commencement of any construction activities, the applicant shall conduct a preconstruction conference. Staff, the applicant, and representatives of the prime contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the applicant and contractors to ensure compliance with the certificate, and discussion of the procedures for on-site investigations by staff during construction. Prior to the conference, the applicant shall provide a proposed conference agenda to staff. The applicant may conduct separate preconstruction conference for each stage of construction.

(C) At least thirty days prior to the preconstruction conference, the applicant shall submit to staff one set of detailed engineering drawings of the final project design, including associated facilities and construction access plans. The engineering drawings shall be at least as detailed and complete, so that staff can determine that the final project design is in compliance with the certificate. The final project layout shall be provided in hard copy and as geographically-referenced electronic data. The drawings shall include references at the locations where the applicant and/or its contractors must adhere to a specific avoidance or mitigation measure in order to comply with the certificate.

(D) Prior to construction of any electric generation project or associated facilities, the applicant shall provide to staff a letter stating that an interconnection service agreement has been signed or shall submit a copy of a signed interconnection service agreement.

Chapter 4906-4 Standard Certificate Applications for Electric Generation Facilities

4906-4-01 Purpose and scope.

(A) This chapter sets forth the rules governing standard certificate applications for electric generation facilities.

(B) The board may, upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

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4906-4-02 Project summary and applicant information.

(A) The applicant shall provide a summary of the proposed project. The summary should be suitable as a reference for state and local governments and for the public. The summary shall include the following:

(1) A statement explaining the general purpose of the facility.

(2) A description of the general location, size, and operating characteristics of the proposed facility.

(3) A discussion of the suitability of the site for the proposed facility.

(4) An explanation of the project schedule (a Gantt chart is acceptable).

(B) The applicant shall provide information regarding its future plans for additional generation units or facilities in the region, if any.

(1) The applicant shall provide a description of any plans for future additions of electric power generation units for the site (including the type and timing) and the maximum electric power generation capacity anticipated for the site.

(2) The applicant shall provide a brief description of the applicant's history, affiliate relationships and current operations, and a description of the company that will construct and operate the facility, if different from the applicant.

4906-4-03 Project description in detail and project schedule in detail.

(A) The applicant shall provide a description of the project area's geography, topography, population centers, major industries, and landmarks.

(1) The applicant shall provide a map of at least 1:24,000 scale containing a two-mile radius from the project area and showing the following features:

(a) The proposed facility.

(b) Population centers and administrative boundaries.

(c) Transportation routes and gas and electric transmission corridors.

(d) Named rivers, streams, lakes, and reservoirs.

(e) Major institutions, parks, and recreational areas.

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(2) The applicant shall provide the area, in acres, of all owned and leased properties that will be used for construction and/or operation of the project, and the number of properties.

(B) The applicant shall provide a detailed description of the proposed generation facility.

(1) The applicant shall submit the following for each generation equipment alternative, where applicable:

(a) Type, number of units, estimated net demonstrated capacity, heat rate, annual capacity factor, and hours of annual generation.

(b) For wind farms, the turbine hub height, tip height, rotor diameter, and blade length for each model under consideration.

(c) Fuel quantity and quality (i.e., ash, sulfur, and British thermal unit value).

(d) A list of types of pollutant emissions and estimated quantities.

(e) Water volume requirement, source of water, treatment, quantity of any discharge and names of receiving streams.

(2) The applicant shall describe, in as much detail as is available at the time of submission of the application, the construction method, site preparation and reclamation method, materials, color and texture of surfaces, and dimensions of all facility components, including the following:

(a) Electric power generation plant or wind-powered electric generation turbines, including towers and foundations.

(b) Fuel, waste, water, and other storage facilities.

(c) Fuel, waste, water, and other processing facilities.

(d) Water supply, effluent, and sewage lines.

(e) Associated electric transmission and distribution lines and gas pipelines.

(f) Electric collection lines.

(g) Substations, switching substations, and transformers.

(h) Temporary and permanent meteorological towers.

(i) Transportation facilities, access roads, and crane paths.

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(j) Construction laydown areas.

(k) Security, operations, and maintenance facilities or buildings.

(l) Other pertinent installations.

(3) The applicant shall submit a brief description of the need for new electric transmission line(s) or gas pipelines associated with the proposed facility.

(4) The applicant shall supply a map of at least 1:12,000 scale of the project area, showing the following features:

(a) An aerial photograph.

(b) The proposed facility, including all components listed in paragraph (B)(2) of this rule.

(c) Road names.

(d) Property lines.

(C) The applicant shall provide a detailed project schedule.

(1) The applicant shall provide a proposed project schedule in Gantt chart format covering all major activities and milestones, including:

(a) Acquisition of land and land rights.

(b) Wildlife and environmental surveys/studies.

(c) Receipt of grid interconnection studies and other critical path milestones for project construction.

(d) Preparation of the application.

(e) Submittal of the application for certificate.

(f) Issuance of the certificate.

(g) Preparation of the final design.

(h) Construction of the facility.

(i) Placement of the facility in service.

(2) The applicant shall describe the proposed construction sequence.

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(3) The applicant shall describe the potential impact of critical delays on the in-service date.

4906-4-04 Project area selection and site design.

(A) The applicant shall describe the selection of the project area.

(1) The applicant shall provide a description of the study area or the geographic boundaries of the area considered for development of the project, including the rationale for the selection.

(2) The applicant shall provide a map of suitable scale that depicts the boundary of the study area and the general sites which were evaluated.

(3) The applicant shall provide a comprehensive list and description of all qualitative and quantitative siting criteria utilized by the applicant, including any weighting values assigned to each.

(4) The applicant shall provide a description of the process by which the applicant utilized the siting criteria to determine the proposed project area and any alternative area(s).

(5) The applicant shall provide a description of the project area(s) selected for evaluation, and the factors and rationale used by the applicant for selecting the proposed project area and any alternative area(s).

(B) The applicant shall describe the process of designing the facility layout.

(1) The applicant shall provide a constraint map showing setbacks from residences, property lines, utility corridors, and public rights-of-way, and any other constraints of the site design.

(2) The applicant shall provide a description of the criteria used to determine the facility layout and site design, and a comparison of any site design alternatives considered, including equipment alternatives where the use of such alternatives influenced the site design.

(3) The applicant shall provide a description of how many and what types of comments were received.

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4906-4-05 Electric grid interconnection.

(A) The applicant shall describe how the facility will be connected to the regional electric grid.

(B) The applicant shall provide information on interconnection of the facility to the regional electric power grid.

(1) The applicant shall provide information relating to their generation interconnection request, including interconnection queue name, number, date, and website.

(2) The applicant shall provide system studies on their generation interconnection request. The studies shall include, but are not limited to, the feasibility study and system impact study.

4906-4-06 Economic impact and public interaction.

(A) The applicant shall state the current and proposed ownership status of the proposed facility, including leased and purchased land, rights-of-way, structures, and equipment.

(B) The applicant shall provide information regarding capital and intangible costs.

(1) The applicant shall provide estimates of applicable capital and intangible costs for the various alternatives. The data submitted shall be classified according to federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital and intangible costs classified in the accounting format ordinarily used by the applicant in its normal course of business).

(2) The applicant shall provide a comparison of the total costs per kilowatt with the applicant's similar facilities, and explain any substantial differences.

(3) The applicant shall provide a tabulation of the present worth and annualized cost for capital costs and any additional cost details as required to compare capital cost of alternates (using the start of construction date as reference date), and describe techniques and all factors used in calculating present worth and annualized costs.

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(C) The applicant shall provide information regarding operation and maintenance expenses.

(1) The applicant shall provide applicable estimated annual operation and maintenance expenses for the first two years of commercial operation. The data submitted shall be classified according to federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the operation and maintenance expenses classified in the accounting format ordinarily used by the applicant in its normal course of business).

(2) The applicant shall provide a comparison of the total operation and maintenance cost per kilowatt with applicant's similar facilities and explain any substantial differences.

(3) The applicant shall provide a tabulation of the present worth and annualized expenditures for operating and maintenance costs as well as any additional cost breakdowns as required to compare alternatives, and describe techniques and factors used in calculating present worth and annualized costs.

(D) The applicant shall submit an estimate of the cost for a delay prorated to a monthly basis beyond the projected in-service date.

(E) The applicant shall provide information regarding the economic impact of the project.

(1) The applicant shall provide an estimate of the annual total and present worth of construction and operation payroll.

(2) The applicant shall provide an estimate of the construction and operation employment and estimate the number that will be employed from the region.

(3) The applicant shall provide an estimate of the increase in county, township, and municipal tax revenue accruing from the facility.

(4) The applicant shall provide an estimate of the economic impact of the proposed facility on local commercial and industrial activities.

(F) The applicant shall provide information regarding public responsibility.

(1) The applicant shall describe the applicant's program for public interaction during the siting, construction, and operation of the proposed facility. This description shall include detailed information regarding the applicant's public information and complaint resolution programs as well as how the applicant

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will notify affected property owners and tenants about these programs at least seven days prior to the start of construction.

(2) The applicant shall describe any insurance or other corporate programs for providing liability compensation for damages to the public resulting from construction, operation, or decommissioning of the proposed facility.

(3) The applicant shall evaluate and describe the anticipated impact to roads and bridges associated with construction vehicles and equipment delivery. Describe measures that will be taken to improve inadequate roads and repair roads and bridges to at least the condition present prior to the project.

(4) The applicant shall list all transportation permits required for construction and operation of the project, and describe any necessary coordination with appropriate authorities for temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility.

(5) The applicant shall describe the plan for decommissioning the proposed facility, including a discussion of any financial arrangements designed to assure the requisite financial resources.

4906-4-07 Compliance with air, water, solid waste, and aviation regulations.

(A) The information requested in this rule shall be used to determine whether the facility will comply with regulations for air and water pollution, solid and hazardous wastes, and aviation. Where appropriate, the applicant may substitute all or portions of documents filed to meet federal, state, or local regulations. Existing data may be substituted for physical measurements.

(B) The applicant shall provide information on compliance with air quality regulations.

(1) The applicant shall submit information regarding preconstruction air quality and permits.

(a) Provide available information concerning the ambient air quality of the proposed project area and any proposed alternative project area(s).

(b) Describe the air pollution control equipment for the proposed facility. Stack gas parameters including temperature and all air pollutants regulated by the federal or state environmental protection agency shall be described for each proposed fuel. These parameters shall be included for each electric power generation unit proposed for the facility. Include tabulations of expected efficiency, power consumption, and operating

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costs for supplies and maintenance. Describe the reliability of the equipment and the reduction in efficiency for partial failure.

(c) Describe applicable federal and/or Ohio new source performance standards (NSPS), applicable air quality limitations, applicable national ambient air quality standards (NAAQS), and applicable prevention of significant deterioration (PSD) increments.

(d) Provide a list of all required permits to install and operate air pollution sources. If any such permit(s) have been issued more than thirty days prior to the submittal of the certificate application, the applicant shall provide a list of all special conditions or concerns attached to the permit(s).

(e) Except for wind farms, provide a map of at least 1:100,000 scale containing:

(i) The location and elevation (ground and sea level) of Ohio environmental protection agency primary and secondary air monitoring stations or mobile vans which supplied data used by the applicant in assessing air pollution potential.

(ii) The location of major present and anticipated air pollution point sources.

(f) Describe how the proposed facility will achieve compliance with the requirements identified in paragraphs (B)(1)(c) and (B)(1)(d) of this rule.

(2) The applicant shall describe plans to control emissions and fugitive dust during the site clearing and construction phase.

(3) Except for wind farms, the applicant shall provide information regarding air quality for the operation of the proposed facility.

(a) Describe ambient air quality monitoring plans for air pollutants regulated by the federal or state environmental protection agency.

(b) On a map of at least 1:24,000 scale, show three isopleths of estimated concentrations that would be in excess of the U.S. environmental protection agency-defined "significant emission rates" when the facility is operating at its maximum rated output. The intervals between the isopleths shall depict the concentrations within a five-mile radius of the proposed facility. A screening analysis may be used to estimate the concentrations.

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(c) Describe procedures to be followed in the event of failure of air pollution control equipment, including consideration of the probability of occurrence, expected duration and resultant emissions.

(C) The applicant shall provide information on compliance with water quality regulations.

(1) The applicant shall provide information regarding preconstruction water quality and permits.

(a) Provide a list of all permits required to install and operate the facility, including water pollution control equipment and treatment processes.

(b) On a map of at least 1:24,000 scale, show the location and sampling depths of all water monitoring and gauging stations used in collecting preconstruction survey data. Samples shall be collected by standard sampling techniques and only in bodies of water likely to be affected by the proposed facility. Information from U.S. geological survey (USGS), Ohio environmental protection agency, and similar agencies may be used where available, but the applicant shall identify all such sources of data.

(c) Describe the ownership, equipment, capability, and sampling and reporting procedures of each station.

(d) Describe the existing water quality of the receiving stream based on at least one year of monitoring data, using appropriate Ohio environmental protection agency reporting requirements.

(e) Provide available data necessary for completion of any application required for a water discharge permit from any state or federal agency for this project. Comparable information shall be provided for the proposed site and any proposed alternative site(s).

(2) The applicant shall provide information regarding water quality during construction.

(a) Indicate, on a map of at least 1:24,000 scale, the location of the water monitoring and gauging stations to be utilized during construction.

(b) Provide an estimate of the quality and quantity of aquatic discharges from the site clearing and construction operations, including runoff and siltation from dredging, filling, and construction of shoreside facilities.

(c) Describe any plans to mitigate the above effects in accordance with current federal and Ohio regulations.

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(d) Describe any changes in flow patterns and erosion due to site clearing and grading operations.

(e) Describe the equipment proposed for control of effluents discharged into bodies of water and receiving streams.

(3) The applicant shall provide information on water quality during operation of the facility.

(a) Indicate, on a map of at least 1:24,000 scale, the location of the water quality monitoring and gauging stations to be utilized during operation.

(b) Describe the water pollution control equipment and treatment processes planned for the proposed facility.

(c) Describe the schedule for receipt of the national pollution discharge elimination system permit.

(d) Provide a quantitative flow diagram or description for water and water-borne wastes through the proposed facility, showing the following potential sources of pollution, including:

(i) Sewage.

(ii) Blow-down.

(iii) Chemical and additive processing.

(iv) Waste water processing.

(v) Run-off and leachates from fuels and solid wastes.

(vi) Oil/water separators.

(vii) Run-off from soil and other surfaces.

(e) Describe how the proposed facility incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives.

(D) The applicant shall provide information on compliance with solid waste regulations.

(1) The applicant shall provide information regarding preconstruction solid waste.

(a) Describe the nature and amount of debris and solid waste in the project area.

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(b) Describe any plans to deal with such wastes.

(2) The applicant shall provide information regarding solid waste during construction.

(a) Provide an estimate of the nature and amounts of debris and other solid waste generated during construction.

(b) Describe the proposed method of storage and disposal of these wastes.

(3) The applicant shall provide information regarding solid waste during operation of the facility.

(a) Provide an estimate of the amount, nature, and composition of solid wastes generated during the operation of the proposed facility.

(b) Describe proposed methods for storage, treatment, transport, and disposal of these wastes.

(4) The applicant shall describe its plans and activities leading toward acquisition of waste generation, storage, treatment, transportation and/or disposal permits. If any such permit(s) have been issued more than thirty days prior to the submittal of the certificate application, the applicant shall provide a list of all special conditions or concerns attached to the permit(s).

(E) The applicant shall provide information on compliance with aviation regulations.

(1) List all public use airports, helicopter pads, and landing strips within five miles of the project area and all known private use airports, helicopter pads, and landing strips or property within or adjacent to the project area, and show these facilities on a map(s) of at least 1:24,000 scale. Provide confirmation that the owners of these airports have been notified of the proposed facility and any impacts it will have on airport operations.

(2) Provide the FAA filing status of each airport and describe any potential conflicts with air navigation or air traffic communications that may be caused by the proposed facility.

4906-4-08 Health and safety, land use and ecological information.

(A) The applicant shall provide information on health and safety.

(1) The applicant shall provide information on the safety and reliability of all equipment.

(a) Describe all proposed major public safety equipment.

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(b) Describe the reliability of the equipment.

(c) Provide the generation equipment manufacturer's safety standards. Include a complete copy of the manufacturer's safety manual or similar document and any recommended setbacks from the manufacturer.

(d) Describe any measures that will be taken to restrict public access to the facility.

(e) Describe the fire protection, safety, and medical emergency plan(s) to be used during construction and operation of the facility, and how such plan(s) will be developed in consultation with local emergency responders.

(2) Except for wind farms, the applicant shall describe in conceptual terms the probable impact to the population due to failures of air pollution control equipment.

(3) The applicant shall provide information on noise from the construction and operation of the facility.

(a) Describe the construction noise levels expected at the nearest property boundary. The description shall address:

(i) Blasting activities.

(ii) Operation of earth moving equipment.

(iii) Driving of piles, rock breaking or hammering, and horizontal directional drilling.

(iv) Erection of structures.

(v) Truck traffic.

(vi) Installation of equipment.

(b) Describe the operational noise levels expected at the nearest property boundary. The description shall address:

(i) Operational noise from generation equipment. In addition, for a wind facility, cumulative operational noise levels at the property boundary for each non-participating property adjacent to or within the project area, under both day and nighttime operations. The applicant shall use generally accepted computer modeling software (developed for wind turbine noise measurement) or

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similar wind turbine noise methodology, including consideration of broadband, tonal, and low-frequency noise levels.

(ii) Processing equipment.

(iii) Associated road traffic.

(c) Indicate the location of any noise-sensitive areas within one mile of the proposed facility, and the operational noise level at each habitable residence, school, church, and other noise-sensitive receptors, under both day and nighttime operations.

(d) Describe equipment and procedures to mitigate the effects of noise emissions from the proposed facility during construction and operation, including limits on the time of day at which construction activities may occur.

(e) Submit a preconstruction background noise study of the project area that includes measurements taken under both day and nighttime conditions.

(4) The applicant shall provide information regarding water impacts.

(a) Provide an evaluation of the impact to public and private water supplies due to construction and operation of the proposed facility.

(b) Provide an evaluation of the impact to public and private water supplies due to pollution control equipment failures.

(c) Provide existing maps of aquifers, water wells, and drinking water source protection areas that may be directly affected by the proposed facility.

(d) Describe how construction and operation of the facility will comply with any drinking water source protection plans near the project area.

(e) Provide an analysis of the prospects of floods for the area, including the probability of occurrences and likely consequences of various flood stages, and describe plans to mitigate any likely adverse consequences.

(5) The applicant shall provide a map of suitable scale showing the proposed facility, geological features of the proposed facility site, topographic contours, existing gas and oil wells, and injection wells. The applicant shall also:

(a) Describe the suitability of the site geology and plans to remedy any inadequacies.

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(b) Describe the suitability of soil for grading, compaction, and drainage, and describe plans to remedy any inadequacies and restore the soils during post-construction reclamation.

(c) Describe plans for the test borings, including closure plans for such borings. Plans for the test borings shall contain a timeline for providing the test boring logs and the following information to the board:

(i) Subsurface soil properties.

(ii) Static water level.

(iii) Rock quality description.

(iv) Percent recovery.

(v) Depth and description of bedrock contact.

(6) The applicant shall provide an analysis of the prospects of high winds for the area, including the probability of occurrences and likely consequences of various wind velocities, and describe plans to mitigate any likely adverse consequences.

(7) The applicant shall evaluate and describe the potential impact from blade shear at the nearest property boundary and public road, including its plans to minimize potential impacts and instruct workers of potential hazards.

(8) The applicant shall evaluate and describe the potential impact from ice throw at the nearest property boundary and public road, including its plans to minimize potential impacts and instruct workers of potential hazards.

(9) The applicant shall evaluate and describe the potential impact from shadow flicker at habitable residences within at least one-half mile of a turbine, including its plans to minimize potential impacts.

(10) The applicant shall evaluate and describe the potential for the facility to interfere with radio and TV reception and describe measures that will be taken to minimize interference.

(11) The applicant shall evaluate and describe the potential for the facility to interfere with military and civilian radar systems and describe measures that will be taken to minimize interference.

(12) The applicant shall evaluate and describe the potential for the facility to interfere with microwave communication paths and systems and describe measures that will be taken to minimize interference. Include all licensed

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systems and those used by electric service providers and emergency personnel that operate in the project area.

(B) The applicant shall provide information on ecological resources.

(1) The applicant shall provide information regarding ecological resources in the project area.

(a) Provide a map of at least 1:24,000 scale containing a one half-mile radius from the project area, showing the following:

(i) The proposed facility and project area boundary.

(ii) Undeveloped or abandoned land such as wood lots or vacant fields.

(iii) Wildlife areas, nature preserves, and other conservation areas.

(iv) Surface bodies of water, including wetlands, ditches, streams, lakes, reservoirs, and ponds.

(v) Highly-erodible soils and slopes of twelve percent or greater.

(b) Provide the results of a field survey of the vegetation and surface waters within one-hundred feet of the potential construction impact area of the facility. The survey should include a description of the vegetative communities, and delineations of wetlands and streams. Provide a map of at least 1:12,000 scale showing all delineated resources.

(c) Provide the results of a literature survey of the plant and animal life within at least one-fourth mile of the project area boundary. The literature survey shall include aquatic and terrestrial plant and animal species that are of commercial or recreational value, or species designated as endangered or threatened.

(d) Provide the results of field surveys of the plant and animal species identified in the literature survey.

(e) Provide a summary of any additional studies which have been made by or for the applicant addressing the ecological impact of the proposed facility.

(2) The applicant shall provide information regarding potential impacts to ecological resources during construction.

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(a) Provide an evaluation of the impact of construction on the resources surveyed in response to paragraph (B)(1) of this rule. Include the linear feet and acreage impacted, and the proposed crossing methodology of each stream and wetland that would be crossed by or within the footprint of any part of the facility or construction equipment. Specify the extent of vegetation clearing, and describe how such clearing work will be done so as to minimize removal of woody vegetation. Describe potential impacts to wildlife and their habitat.

(b) Describe the mitigation procedures to be utilized to minimize both the short-term and long-term impacts due to construction, including the following:

(i) Plans for post-construction site restoration and stabilization of disturbed soils, especially in riparian areas and near wetlands. Restoration plans should include details on the removal and disposal of materials used for temporary access roads and construction staging areas, including gravel.

(ii) A detailed frac out contingency plan for stream and wetland crossings that are expected to be completed via horizontal directional drilling.

(iii) Methods to demarcate surface waters and wetlands and to protect them from entry of construction equipment and material storage or disposal.

(iv) Procedures for inspection and repair of erosion control measures, especially after rainfall events.

(v) Measures to divert storm water runoff away from fill slopes and other exposed surfaces.

(vi) Methods to protect vegetation in proximity to any project facilities from damage, particularly mature trees, wetland vegetation, and woody vegetation in riparian areas.

(vii) Options for disposing of downed trees, brush, and other vegetation during initial clearing for the project, and clearing methods that minimize the movement of heavy equipment and other vehicles within the project area that would otherwise be required for removing all trees and other woody debris off site.

(viii) Avoidance measures for major species and their habitat.

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(3) The applicant shall provide information regarding potential impacts to ecological resources during operation and maintenance of the facility.

(a) Provide an evaluation of the impact of operation and maintenance on the undeveloped areas shown in response to paragraph (B)(1) of this rule.

(b) Describe the procedures to be utilized to avoid, minimize, and mitigate both the short- and long-term impacts of operation and maintenance. Describe methods for protecting streams, wetlands, and vegetation, particularly mature trees, wetland vegetation, and woody vegetation in riparian areas. Include a description of any expected use of herbicides for maintenance.

(c) Describe any plans for post-construction monitoring of wildlife impacts.

(C) The applicant shall provide information on land use and community development.

(1) The applicant shall provide information regarding land use in the region and potential impacts of the facility.

(a) Provide a map of at least 1:24,000 scale showing the following within one-mile of the project area boundary:

(i) The proposed facility.

(ii) Land use, depicted as areas on the map. Land use, for the purposes of paragraph (C) of this rule, refers to the current economic use of each parcel. Categories should include residential, commercial, industrial, institutional, recreational, agricultural, and vacant, or as classified by the local land use authority.

(iii) Structures, depicted as points on the map. Identified structures should include residences, commercial centers or buildings, industrial buildings and installations, schools, hospitals, churches, civic buildings, and other occupied places.

(iv) Incorporated areas and population centers.

(b) Provide, for the types of structures identified on the map in paragraph (C)(1)(a) of this rule, a table showing the following:

(i) For all structures within 1,000 feet of the generation equipment or wind turbine, the distance between the structure and the equipment or nearest wind turbine.

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(ii) For all structures within 250 feet of a collection line, access road, or other associated facility, the distance between the structure and the associated facility.

(iii) For each structure in the table, whether the structure is on a property that is being leased by the applicant for the proposed facility.

(c) Provide an evaluation of the impact of the proposed facility on the above land uses identified on the map in paragraph (C)(1)(a) of this rule. Include, for each land use type, the construction impact area and the permanent impact area in acres, in total and for each project component (e.g., turbines, collection lines, access roads), and the explanation of how such estimate was calculated.

(d) Identify structures that will be removed or relocated.

(2) For wind farms only, the applicant shall provide a map(s) of at least 1:24,000 scale showing the proposed facility, habitable residences, and parcel boundaries of all parcels within a half-mile of the project area. Indicate on the map, for each parcel, whether the parcel is being leased by the applicant for the proposed facility, as of no more than 30 days prior to the submission of the application. Include on the map the setbacks for wind turbine structures in relation to property lines, habitable residential structures, electric transmission lines, gas pipelines, and state and federal highways, consistent with no less than the following minimum requirements:

(a) The distance from a wind turbine base to the property line of the wind farm property shall be at least one and one-tenth times the total height of the turbine structure as measured from its tower's base (excluding the subsurface foundation) to the tip of a blade at its highest point.

(b) The wind turbine shall be at least seven hundred fifty feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest habitable residential structure, if any, located on adjacent property at the time of the certification application.

(c) The distance from a wind turbine base to any electric transmission line, gas pipeline, hazardous liquid pipeline, or state or federal highway shall be at least one and one-tenth times the total height of the turbine structure as measured from its tower's base (excluding the subsurface foundation) to the tip of a blade at its highest point.

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(d) Minimum setbacks from property lines and residences may be waived in the event that all owners of property adjacent to the turbine agree to such waiver.

(3) The applicant shall provide information regarding land use plans.

(a) Describe formally adopted plans for future use of the project area and surrounding lands for anything other than the proposed facility.

(b) Describe the applicant's plans for concurrent or secondary uses of the site.

(c) Describe the impact of the proposed facility on regional development, including housing, commercial and industrial development, schools, transportation system development, and other public services and facilities.

(d) Assess the compatibility of the proposed facility and the anticipated resultant regional development with current regional plans.

(e) Provide current population counts or estimates and ten-year population projections for counties and populated places within five miles of the project area.

(D) The applicant shall provide information on cultural and archaeological resources.

(1) The applicant shall indicate, on a map of at least 1:24,000 scale, any formally adopted land and water recreation areas, recreational trails, scenic rivers, scenic routes or byways, and registered landmarks of historic, religious, archaeological, scenic, natural, or other cultural significance within five miles of the project area. Landmarks to be considered for purposes of paragraph (D) of this rule are those districts, sites, buildings, structures, and objects that are recognized by, registered with, or identified as eligible for registration by the national registry of natural landmarks, the Ohio historical society, or the Ohio department of natural resources.

(2) The applicant shall provide an evaluation of the impact of the proposed facility on the preservation and continued meaningfulness of these landmarks and describe plans to avoid or mitigate any adverse impact.

(3) The applicant shall describe the identified recreation areas within five miles of the project area in terms of their proximity to population centers, uniqueness, topography, vegetation, hydrology, and wildlife. Provide an evaluation of the impact of the proposed facility on identified recreational areas within five miles of the project area and describe plans to mitigate any adverse impact.

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(4) The applicant shall evaluate the visual impact of the proposed facility within at least a five-mile radius from the project area. The applicant shall:

(a) Describe the visibility of the project, including a viewshed analysis and corresponding map of the study area.

(b) Describe the existing landscape and evaluate its scenic quality.

(c) Describe the alterations to the landscape caused by the facility, and evaluate the impact of those alterations to the scenic quality of the landscape.

(d) Evaluate the visual impacts to the resources identified in paragraph (D)(1) of this rule, and any such resources within ten miles of the project area that are valued specifically for their scenic quality.

(e) Provide photographic simulations or artist's pictorial sketches of the proposed facility from public vantage points that cover the range of landscapes, viewer groups, and types of scenic resources found within the study area. The applicant should explain its selection of vantage points, including any coordination with local public officials and historic preservation groups in selecting these vantage points.

(f) Describe measures that will be taken to minimize any adverse visual impacts created by the facility, including, but not limited to, project area location, lighting, turbine layout, visual screening, and facility coloration. In no event shall these measures conflict with relevant safety requirements.

(E) The applicant shall provide information regarding agricultural districts and potential impacts to agricultural land.

(1) The applicant shall identify on a map of at least 1:24,000 scale the proposed facility, all agricultural land, and separately all agricultural district land existing at least sixty days prior to submission of the application located within the project area boundaries. Where available, distinguish between agricultural uses such as cultivated lands, permanent pasture land, managed woodlots, orchards, nurseries, livestock and poultry confinement areas, and agriculturally related structures.

(2) The applicant shall provide, for all agricultural land, and separately for agricultural uses and agricultural districts identified under paragraph (E)(1) of this rule, the following:

(a) A quantification of the acreage impacted.

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(b) An evaluation of the impact of the construction, operation, and maintenance of the proposed facility on the land and the following agricultural facilities and practices within the project area:

(i) Field operations such as plowing, planting, cultivating, spraying, harvesting.

(ii) Irrigation.

(iii) Field drainage systems.

(iv) Structures used for agricultural operations.

(v) The viability as agricultural district land of any land so identified.

(c) A description of mitigation procedures to be utilized by the applicant during construction, operation, and maintenance to reduce impacts to agricultural land, structures, and practices. The description shall illustrate how avoidance and mitigation procedures will achieve the following:

(i) Avoidance or minimization to the maximum extent practicable of any damage to field tile drainage systems and soils in agricultural areas.

(ii) Timely repair of damaged field tile systems to at least original conditions, at the applicant's expense.

(iii) Segregation of excavated topsoil, and decompaction and restoration of all topsoil to original conditions unless otherwise agreed to by the landowner.

Chapter 4906-5 Standard Certificate Applications for Electric Transmission Facilities and Gas Pipelines

4906-5-01 Purpose and scope.

(A) This chapter sets forth the requirements for the filing of standard certificate applications for electric transmission facilities and gas pipelines.

(B) The board may, upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

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4906-5-02 Project summary and applicant information.

(A) The applicant shall provide a summary of the proposed project. The summary should be suitable as a reference for state and local governments and for the public. The summary shall include the following:

(1) A statement explaining the general purpose of the facility.

(2) A description of the general location, size, and operating characteristics of the proposed facility.

(3) A discussion of the suitability of the preferred and alternate routes for the proposed facility.

(4) An explanation of the project schedule (a Gantt chart is acceptable).

(B) The applicant shall provide a brief description of the applicant's history, affiliate relationships, and current operations, and a description of the company that will construct and operate the facility, if different from the applicant.

4906-5-03 Review of need and schedule.

(A) The applicant shall provide a statement explaining the need for the proposed facility, including a listing of the factors upon which it relied to reach that conclusion and references to the most recent long-term forecast report (if applicable).

(1) The applicant shall explain the purpose of the proposed facility.

(2) The applicant shall provide specific projections of system conditions, local requirements, or any other pertinent factors that impacted the applicant's opinion on the need for the proposed facility.

(3) The applicant shall provide relevant load flow studies and contingency analyses, if appropriate, identifying the need for system improvement.

(4) For electric power transmission facilities, the applicant shall present load flow data in the form of transcription diagrams depicting system performance with and without the proposed facility.

(5) For gas pipeline projects, the applicant shall provide one copy in electronic format of the relevant base case system data on diskette, in a format acceptable to the board staff, with a description of the analysis program and the data format.

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(B) The applicant shall explain how the facility fits into regional expansion plans.

(1) For electric power transmission lines and associated facilities, the applicant shall provide a brief statement of how the proposed facility and site/route alternatives fit into the applicant's most recent long-term electric forecast report and the regional plans for expansion, including, but not limited to, the following:

(a) Reference to any description of the proposed facility and site/route alternatives in the most recent long-term electric forecast report of the applicant.

(b) If no description was contained in the most recent long-term electric forecast report, an explanation as to why none was filed in the most recent long-term electric forecast report.

(c) Reference to regional expansion plans, when applicable (if the transmission project will not affect regional plans, the applicant shall so state).

(2) For gas pipelines and associated facilities, the applicant shall provide a brief statement of how the proposed facility and site/route alternatives fit into the applicant's most recent long-term gas forecast report, including the following:

(a) Reference to any description of the proposed facility and site/route alternatives in the most recent long-term gas forecast report of the applicant.

(b) If no description was contained in the most recent long-term gas forecast report, an explanation as to why none was filed in the most recent long-term gas forecast report.

(C) For electric power transmission facilities, the applicant shall provide an analysis of the impact of the proposed facility on the electric power system economy and reliability. The impact of the proposed facility on all interconnected utility systems shall be evaluated, and all conclusions shall be supported by relevant load flow studies.

(D) For electric power transmission lines, the applicant shall provide an analysis and evaluation of the options considered which would eliminate the need for construction of an electric power transmission line, including electric power generation options and options involving changes to existing and planned electric power transmission substations.

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(E) The applicant shall describe why the proposed facility was selected to meet the projected need. The applicant shall also describe how the facility will serve the public interest, convenience, and necessity.

(F) The applicant shall provide a detailed project schedule.

(1) The applicant shall provide a proposed schedule in Gantt chart format covering all major activities and milestones, including:

(a) Preparation of the application.

(b) Submittal of the application for certificate.

(c) Issuance of the certificate.

(d) Receipt of grid interconnection studies and other critical path milestones for project construction.

(e) Acquisition of rights-of-way and land rights for the certified facility.

(f) Preparation of the final design.

(g) Construction of the facility.

(h) Placement of the facility in service.

(2) The applicant shall describe the potential impact of critical delays on the in-service date.

4906-5-04 Route alternatives analysis.

(A) The applicant shall conduct a site and route selection study prior to submitting an application for an electric power transmission line or gas pipeline, and associated facilities. The study shall be designed to evaluate all practicable sites, routes, and route segments for the proposed facility within the study area.

(1) The applicant shall provide a description of the study area, or the geographic boundaries of the area considered for development of the project, including the rationale for the selection.

(2) The applicant shall provide a map of suitable scale that depicts the boundary of the study area and all siting constraints and/or suitability analysis utilized for the study.

(3) The applicant shall provide a map of suitable scale that depicts the boundary of the study area and the routes, route segments, and sites which were evaluated.

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(4) The applicant shall provide a comprehensive list and description of all qualitative and quantitative siting criteria utilized by the applicant, including any weighting values assigned to each.

(5) The applicant shall provide a description of the process by which the applicant utilized the siting criteria to determine the preferred and alternate routes and sites.

(6) The applicant shall provide a description of the routes and sites selected for evaluation, and the factors and rationale used by the applicant for selecting the preferred and alternate routes and sites.

(B) The applicant shall provide a summary table comparing the routes, route segments, and sites, utilizing the technical, financial, environmental, socioeconomic, and other factors identified in the study. Design and equipment alternatives shall be included where the use of such alternatives influenced the siting decision.

(C) The applicant shall describe all public involvement that was undertaken in the site/route selection process. The applicant shall provide a description of how many and what types of comments were received.

4906-5-05 Project description.

(A) The applicant shall provide a description of the project area's geography, topography, population centers, major industries, and landmarks.

(1) The applicant shall provide a map of not less than at least 1:24,000 scale, including the area one thousand feet on each side of a transmission line or pipeline alignment, and the area within one thousand feet of a substation site or compressor station site, which shall include the following features:

(a) The proposed transmission line or pipeline alignments.

(b) The proposed substation or compressor station site locations.

(c) Roads and railroads.

(d) Major institutions, parks, and recreational areas that are publicly identified and publicly owned.

(e) Existing gas pipeline and electric transmission line corridors.

(f) Named lakes, reservoirs, streams, canals, and rivers.

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(g) Population centers and legal boundaries of cities, villages, townships, and counties.

(2) The applicant shall provide the area, in acres, of the proposed right-of-way for the facility, the length of the transmission line or pipeline, in miles, and the number of properties crossed by the facility.

(B) The applicant shall provide information on the facility layout for each route/site alternative, and a description of the installation methods as detailed below.

(1) The applicant shall describe the proposed site clearing, construction methods, and reclamation operations, including:

(a) Surveying and soil testing.

(b) Grading and excavation.

(c) Construction of temporary and permanent access roads and trenches.

(d) Stringing of cable and/or laying of pipe.

(e) Installation of electric transmission line poles and structures, including foundations.

(f) Post-construction reclamation.

(2) The applicant shall provide the layout of facilities. The applicant shall:

(a) Provide a map of at least 1:12,000 scale of the transmission line or pipeline routes and associated facilities such as substations, compressor stations, and other stations, showing the following proposed features:

(i) Temporary and permanent access roads, staging areas, and laydown areas.

(ii) Proposed location of major structures, including transmission line poles and structures, and buildings.

(iii) Fenced-in or secured areas.

(b) Describe reasons for the proposed layout and any unusual features.

(c) Describe plans for any future modifications in the proposed layout, including the nature and approximate timing of contemplated changes.

(C) The applicant shall provide a description of the proposed transmission lines or pipelines, as well as switching, capacity, metering, safety, and other equipment

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pertinent to the operation of the proposed electric power transmission lines and gas pipelines and associated facilities. Include any provisions for future expansion.

(1) The applicant shall provide the following information for electric power transmission lines:

(a) Design voltage.

(b) Tower designs, pole structures, conductor size and number per phase, and insulator arrangement.

(c) Base and foundation design.

(d) Cable type and size, where underground.

(e) Other major equipment or special structures.

(2) The applicant shall provide a single-line diagram of electric power transmission substations and a description of the proposed major equipment, such as:

(a) Breakers.

(b) Switchgear.

(c) Bus arrangement and structures.

(d) Transformers.

(e) Control buildings.

(f) Other major equipment.

(3) The applicant shall describe the following for gas pipelines:

(a) Maximum allowable operating pressure.

(b) Pipe material.

(c) Pipe dimensions and specifications.

(d) Control buildings.

(e) Heaters, odorizers, and above-ground facilities.

(f) Any other major equipment.

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4906-5-06 Economic impact and public interaction.

(A) The applicant shall state the current and proposed ownership status of the proposed facility, including leased and purchased land, rights-of-way, structures, and equipment.

(B) The applicant shall submit estimates of applicable capital and intangible costs for the various components of electric power transmission facility alternatives. The data submitted shall be classified according to the federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for the utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital costs classified in the accounting format ordinarily used by the applicant in its normal course of business). The estimates shall include:

(1) Land and land rights.

(2) Structures and improvements.

(3) Substation equipment.

(4) Poles and fixtures.

(5) Towers and fixtures.

(6) Overhead conductors.

(7) Underground conductors and insulation.

(8) Underground-to-overhead conversion equipment.

(9) Right-of-way clearing and roads, trails, or other access.

(C) The applicant shall submit estimates of applicable capital and intangible costs for the various components of gas pipeline facility alternatives. The data submitted shall be classified according to the federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital costs classified in the accounting format ordinarily used by the applicant in its normal course of business). The estimates shall include:

(1) Land and land rights.

(2) Structures and improvements.

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(3) Pipes.

(4) Valves, meters, boosters, regulators, tanks, and other equipment.

(5) Roads, trails, or other access.

(D) The applicant shall provide information regarding public interaction and the economic impact for each of the site/route alternatives.

(1) The applicant shall provide a list of counties, townships, villages, and cities within one thousand feet on each side of the centerline or facility perimeter.

(2) The applicant shall provide a list of the public officials contacted regarding the application, their office addresses, and office telephone numbers.

(3) The applicant shall provide a description of the public interaction planned for during the siting, construction, and operation of the proposed facility. This description shall include detailed information regarding the applicant's public information and complaint resolution programs as well as how the applicant will notify affected property owners and tenants about these programs at least seven days prior to the start of construction.

(4) The applicant shall describe any insurance or other corporate program for providing liability compensation for damages, if such should occur, to the public resulting from construction or operation of the proposed facility.

(5) The applicant shall provide an estimate of the increase in tax revenues as a result of facility placement.

4906-5-07 Health and safety, land use, and regional development.

(A) The applicant shall provide health and safety information for each site/route alternative.

(1) The applicant shall provide a description of how the facility will be constructed, operated, and maintained to comply with the requirements of applicable state and federal statutes and regulations, including the national electrical safety code, applicable occupational safety and health administration regulations, U.S. department of transportation gas pipeline safety standards, and Chapter 4901:1-16 of the Administrative Code.

(2) For electric power transmission facilities where the centerline of the facility is within one hundred feet of an occupied residence or institution, and for electric substations where the boundary of the footprint is within one hundred feet of an occupied residence or institution, the applicant shall discuss the production

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of electric and magnetic fields during operation of the preferred and alternate site/route. If more than one conductor configuration is to be used on the proposed facility, information shall be provided for each configuration that constitutes more than ten per cent of the total line length, or more than one mile of the total line length being certificated. Where an alternate structure design is submitted, information shall also be provided on the alternate structure. The discussion shall include:

(a) Calculated electric and magnetic field strength levels at one meter above ground, under the conductors and at the edge of the right-of-way for:

(i) Winter normal conductor rating.

(ii) Emergency line loading.

(iii) Normal maximum loading. Provide corresponding current flows, conductor ground clearance for normal maximum loading and distance from the centerline to the edge of the right-of-way. Estimates shall be made for minimum conductor height. The applicant shall also provide typical cross-section profiles of the calculated electric and magnetic field strength levels at the normal maximum loading conditions.

(iv) Where there is only one occupied residence or institution within one hundred feet of the centerline, only one set of field strength values are to be provided. Where there are two or more occupied residences or institutions with one hundred feet of the centerline, field strength values shall be provided for each configuration that includes these occupied residences and institutions, and constitutes more than ten percent of the total line length, or more than one mile of the total line length being certificated.

(b) References to the current state of knowledge concerning possible health effects of exposure to electric and magnetic field strength levels.

(c) Description of the company's consideration of electric and magnetic field strength levels, both as a general company policy and specifically in the design and siting of the transmission line project including: alternate conductor configurations and phasing, tower height, corridor location, and right-of-way width.

(d) Description of the company's current procedures for addressing public inquiries regarding electric and magnetic field strength levels, including

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copies of informational materials and company procedures for customer electric and magnetic field strength level readings.

(3) For electric power transmission facilities, the applicant shall provide an estimate of the level of radio, television, and other communication system interference from operation of the proposed facility, identify the most severely impacted areas, if any, and discuss methods of mitigation.

(4) The applicant shall provide an estimate of the effect of noise generation due to the construction, operation, and maintenance of the transmission line or pipeline and associated facilities. The applicant shall describe any equipment and procedures designed to mitigate noise emissions during site clearing, construction, operation, and maintenance of the facility to minimize noise impact, including limits on the time of day at which construction activities may occur. The applicant shall estimate the nature of any intermittent, recurring, or particularly annoying sounds from the following sources:

(a) Blasting activities.

(b) Operation of earth moving and excavating equipment.

(c) Driving of piles, rock breaking or hammering, and horizontal directional drilling.

(d) Erection of structures.

(e) Truck traffic.

(f) Installation of equipment.

(B) The applicant shall provide information on land use.

(1) The applicant shall provide, for each of the site/route alternatives, a map of at least 1:24,000 scale, including the area one thousand feet on each side of a transmission line or pipeline alignment, and the area within one thousand feet of a substation site, which map shall include the following features:

(a) Centerline and right-of-way for each transmission line or pipeline alternative being pro-posed.

(b) Proposed substation or compressor station locations.

(c) Land use, depicted as areas on the map. Land use, for the purposes of this rule, refers to the current economic use of each parcel. Categories should include residential, commercial, industrial, institutional,

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recreational, agricultural, and vacant, or as classified by the local land use authority.

(d) Road names.

(e) Structures, depicted as points on the map. Identified structures should include residences, commercial centers or buildings, industrial buildings and installations, schools, hospitals, churches, civic buildings, and other occupied places.

(f) Incorporated areas and population centers.

(2) The applicant shall provide, for each of the site/route alternatives, a description of the impact of the proposed facility on each land use identified in paragraph (B)(1) of this rule. Include, for each land use type, the potential disturbance area during construction and the permanent impact area in acres, in total and for each project component (e.g., transmission line or pipeline right-of-way, substation site), and the explanation of how such estimate was calculated.

(3) The applicant shall provide, for the types of structures identified in paragraph (B)(1) of this rule, the following:

(a) For all structures within two-hundred feet of the proposed facility right-of-way, the distance between the nearest edge of the structure and the proposed facility right-of-way.

(b) Any buildings that will be destroyed, acquired, or removed as the result of the planned facility and criteria for owner compensation.

(c) A description of the mitigation procedures to be used during the construction, operation, and maintenance of the proposed facility to minimize impact to structures near the facility.

(C) The applicant shall provide information regarding agricultural districts and potential impacts to agricultural land.

(1) The applicant shall provide, for each of the site/route alternatives, a map of at least 1:24,000 scale, including the potential disturbance area for the transmission or pipeline alignment, and the substation site, which map shall include the following features:

(a) Agricultural land use. Where visible and distinguishable, distinguish between agricultural uses such as cultivated land, permanent pasture land, managed woodlots, orchards, nurseries, livestock and poultry confinement areas, and agricultural-related structures.

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(b) Agricultural district land existing at least sixty days prior to submission of the application located within each transmission line or pipeline right-of-way or within each site boundary.

(2) The applicant shall provide, for all agricultural land, and separately for agricultural uses and agricultural districts identified under paragraph (C)(1) of this rule, the following:

(a) A quantification of the acreage impacted.

(b) An evaluation of the impact of the construction, operation, and maintenance of the pro-posed facility on the land and the following agricultural facilities and practices within the project area:

(i) Field operations such as plowing, planting, cultivating, spraying, harvesting.

(ii) Irrigation.

(iii) Field drainage systems.

(iv) Structures used for agricultural operations.

(v) The viability as agricultural land of any land identified as an agricultural district.

(c) A description of mitigation procedures to be utilized by the applicant during construction, operation, and maintenance to reduce impacts to agricultural land, structures, and practices. The description shall illustrate how avoidance and mitigation procedures will achieve the following:

(i) Avoidance or minimization to the maximum extent practicable of any damage to field tile drainage systems and soils in agricultural areas.

(ii) Timely repair of damaged field tile systems to at least original conditions, at the applicant's expense.

(iii) Segregation of excavated topsoil, and decompaction and restoration of all topsoil to original conditions unless otherwise agreed to by the landowner.

(D) The applicant shall provide information regarding land use plans and regional development.

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(1) The applicant shall provide a description of the impact of the facility on regional development, referring to pertinent formally adopted regional development plans.

(2) The applicant shall provide an assessment of the compatibility of the proposed facility and the anticipated resultant regional development with current regional land use plans.

(E) The applicant shall provide information on cultural and archaeological resources.

(1) The applicant shall indicate on a map of at least 1:24,000 scale, within one-thousand feet of each of the site/route alternatives, any formally adopted recreational areas, recreational trails, scenic rivers, scenic routes or byways, and registered landmarks of historic, religious, archaeological, scenic, natural, or other cultural significance. Landmarks to be considered for purposes of paragraph (E) of this rule are those districts, sites, buildings, structures, and objects that are recognized by, registered with, or identified as eligible for registration by the national registry of natural landmarks, the Ohio historical society, or the Ohio department of natural resources.

(2) The applicant shall describe studies used to determine the location of cultural resources within the study corridor. Correspondence with the Ohio historical preservation office shall be included.

(3) The applicant shall provide an evaluation of the probable impact of the construction, operation, and maintenance of the proposed facility on the preservation and continued meaningfulness of cultural resources.

(4) The applicant shall describe the plans to avoid or mitigate any adverse impacts to cultural resources. Mitigation procedures to be used during the operation and maintenance of the proposed facility shall be developed in consultation with the Ohio historical society. The plans shall detail procedures for flagging and avoiding all landmarks in the project area. The plans shall also contain measures to be taken should previously-unidentified landmarks be discovered during construction of the project.

(5) The applicant shall evaluate the aesthetic impact of the proposed facility, including the following:

(a) The visibility of the proposed facility from such sensitive vantage points as residential areas, lookout points, scenic highways, waterways, and landmarks identified in paragraph (E)(1) of this rule.

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(b) How the proposed facility will likely affect the aesthetic quality of the site and surrounding area.

(c) Measures that will be taken to minimize any visual impacts created by the proposed facility, including, but not limited to, facility location, lighting, structure design, visual screening, and facility coloration. In no event shall these measures conflict with relevant safety requirements.

4906-5-08 Ecological information and compliance with permitting requirements.

(A) The applicant shall provide for each of the site/route alternatives a map of at least 1:24,000 scale, including the area one thousand feet on each side of the transmission line or pipeline alignment and the area within one thousand feet of a substation site or compressor station site. The map shall include the following:

(1) Proposed transmission line or pipeline alignments.

(2) Proposed substation or compressor station locations.

(3) All undeveloped or abandoned land, including:

(a) Streams and drainage channels.

(b) Lakes, ponds, and reservoirs.

(c) Wetlands, including the entire area of the wetland if it extends outside of the study corridor.

(d) Woody and herbaceous vegetation land.

(4) Highly-erodible soils and slopes of 12 percent or greater.

(5) Wildlife areas, nature preserves, and publicly identified conservation areas that are managed by a public body or a recognized nonprofit organization.

(B) The applicant shall provide for each of the site/route alternatives the results of a field survey of the vegetation and surface waters within 100 feet of the potential disturbance area of the facility. The field survey report shall include the following:

(1) The applicant shall provide a description of the vegetative communities present within the study area, and delineations of wetlands and streams.

(2) The applicant shall provide a map of at least 1:12,000 scale showing the facility, the right-of-way, and all delineated resources.

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(3) The applicant shall provide a description of the probable impact of the construction of the proposed facility on vegetation and surface waters. This shall include the impacts from route/site clearing and grading, and disposal of vegetation. Include the linear feet and acreage impacted, and the proposed crossing methodology of each stream and wetland that would be crossed by any part of the facility or construction equipment. Specify the extent of vegetation clearing, and describe how such clearing work will be done so as to minimize removal of woody vegetation.

(4) The applicant shall provide a description of the probable impact of the operation and maintenance of the proposed facility on vegetation and surface waters. This shall include the permanent impacts from route clearing.

(5) The applicant shall provide a description of the mitigation procedures to be used during construction, operation, and maintenance of the proposed facility to minimize the impact on vegetation and surface waters. Include the following:

(a) Plans for post-construction site restoration and stabilization of disturbed soils, especially in riparian areas and near wetlands. Restoration plans should include details on the removal and disposal of materials used for temporary access roads and construction staging areas, including gravel.

(b) A detailed frac out contingency plan for stream and wetland crossings that are expected to be completed via horizontal directional drilling.

(c) Methods to demarcate surface waters and wetlands and to protect them from entry of construction equipment and material storage or disposal.

(d) Procedures for inspection and repair of erosion control measures, especially after rainfall events.

(e) Measures to divert storm water runoff away from fill slopes and other exposed surfaces.

(f) Methods to protect vegetation in proximity to any project facilities from damage, particularly mature trees, wetland vegetation, and woody vegetation in riparian areas.

(g) Options for disposing of downed trees, brush, and other vegetation during initial clearing for the project, and clearing methods that minimize the movement of heavy equipment and other vehicles within the project area that would otherwise be required for removing all trees and other woody debris off site.

(h) A description of any expected use of herbicides for maintenance.

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(C) The applicant shall provide for each of the site/route alternatives the results of a literature survey of the plant and animal life that may be affected by the facility. The literature survey shall include aquatic and terrestrial plant and animal species of commercial or recreational value, or species designated as endangered or threatened. The applicant shall provide the results of field surveys of the plant an animal species identified in the literature survey. The survey report shall include the following:

(1) The applicant shall provide a list of the species identified in the surveys, including their federal and state protection status.

(2) The applicant shall provide a description of the probable impact of the construction of the proposed facility on the identified species and their habitat. This would include the impacts from route clearing and any impact to natural nesting areas.

(3) The applicant shall provide a description of the probable impact of the operation and maintenance of the proposed facility on the species described above. This would include the permanent impact from route clearing and any impact to natural nesting areas.

(4) The applicant shall provide a description of the mitigation procedures to be used during construction, operation, and maintenance of the proposed facility to minimize the impact on species described above.

(D) The applicant shall provide for each of the site/route alternatives a description of the site geology, suitability of the soils for foundation construction, and areas with slopes that exceed twelve percent and/or highly erodible soils (according to the natural resource conservation service and county soil surveys) that may be affected by the proposed facility. The applicant shall describe the probable impact to these areas. The applicant shall include any plans for test borings, including a timeline for providing the test boring logs and the following information to the board:

(1) Subsurface soil properties.

(2) Static water level.

(3) Rock quality description.

(4) Percent recovery.

(5) Depth and description of bedrock contact.

(E) The applicant shall provide information regarding compliance with environmental and aviation regulations.

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(1) The applicant shall provide a list and brief discussion of all licenses, permits, and authorizations that will be required for construction of the facility.

(2) The applicant shall provide a description, quantification and characterization of debris that will result from construction of the facility, and the plans for disposal of the debris.

(3) The applicant shall provide a discussion of the process that will be used to control storm water and minimize erosion during construction and restoration of soils, wetlands, and streams disturbed as a result of construction of the facility.

(4) The applicant shall provide a discussion of plans for disposition of contaminated soil and hazardous materials generated from clearing of land, excavation or any other action that would adversely affect the natural environment of the project site during construction. Responsibility for removal of contaminated soil shall be limited solely to soil and material from clearing of land, excavation or any other action that would adversely affect the natural environment of the project site for the project, and shall not include additional remediation of measures beyond the scope of the project.

(5) The applicant shall provide the height of tallest anticipated above ground structures. For construction activities within five miles of public use airports or landing strips, the applicant shall provide the maximum possible height of construction equipment, as well as all installed above ground structures, and include a list of air transportation facilities, existing or proposed, and copies of any coordination with the federal aviation administration and the Ohio office of aviation.

(6) The applicant shall provide a description of the plans for construction during excessively dusty or excessively muddy soil conditions.

Chapter 4906-6 Accelerated Certificate Application Requirements

4906-6-01 Purpose and scope.

(A) This chapter sets forth the requirements for the filing of an accelerated certificate application.

(B) The board may, upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

4906-6-02 Types of accelerated applications.

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(A) An accelerated certificate application shall be submitted as either a letter of notification application or a construction notice application, as outlined in the appendix to rule 4906-1-01 of the Administrative Code.

(B) If a project meets the requirements of both a letter of notification application and construction notice application, a letter of notification application shall be filed.

(C) If a project that qualifies for accelerated review is an associated facility of another project or projects subject to accelerated review before the board, the projects may be combined into one accelerated certificate application. These applications should be in the same form, meaning that if any of the associated projects require a letter of notification application, the combined application shall follow the requirements for letter of notification applications outlined in this chapter.

4906-6-03 Filing of an accelerated application.

(A) At least five days prior to submitting an accelerated certificate application, the applicant shall request a case number and file a preapplication notification letter with the board. The preapplication notification letter shall include a general description of the project, an anticipated project schedule, and any requests for expedited processing. If an applicant fails to file a preapplication notification letter, and instead files its request for expedited processing along with its application, the expedited processing of its application will not begin until five days after its application is filed.

(B) A letter of notification application shall be filed not less than ninety days before the planned commencement of construction. A letter of notification for which the applicant requests expedited processing shall be filed not less than twenty-eight days before planned commencement of construction. For good cause shown, the applicant may request a shorter automatic approval date than the ninety or twenty-eight day requirement.

(C) A construction notice shall be filed not less than ninety days before planned commencement of construction. A construction notice for which the applicant requests expedited processing shall be filed not less than twenty-one days before planned commencement of construction. For good cause shown, the applicant may request a shorter automatic approval date than the ninety or twenty-one day requirement.

4906-6-04 Requests for expedited treatment and fees.

(A) If an applicant requests expedited processing of an accelerated certificate application, in addition to filing the preapplication notification letter, and application with the docketing division, the applicant shall:

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(1) Serve a copy of the application on the board's executive director or the executive director's designee at or before the filing of the expedited application by hand delivery or overnight courier service.

(2) Pay a fee of two thousand dollars due at the time of the filing. This payment is in addition to the payment due pursuant to paragraph (C) of this rule.

(B) Unless otherwise notified by the board, its executive director, or the administrative law judge, a request for expedited processing is considered to be accepted. The request for expedited processing may be rejected at any time prior to the expedited process automatic approval date. If a request for expedited processing is rejected, the two thousand dollar up front payment will be retained and credited against an applicant's final invoice to be issued pursuant to paragraph (D) of this rule.

(C) Board expenses for the processing of accelerated certificate applications, resolution of jurisdictional issues, and all other incidental services will be invoiced at cost. Payment shall be due upon receipt of an invoice.

4906-6-05 Accelerated application requirements.

(A) Accelerated certificate applications shall comply with the form and content requirements outlined in Chapter 4906-2 of the Administrative Code.

(B) Letter of notification and construction notice applications shall contain all data and information necessary to meet the requirements of this rule.

(1) The applicant shall provide the name of the project and applicant's reference number, names and reference number(s) of resulting circuits, a brief description of the project, and why the project meets the requirements for a letter of notification or construction notice application.

(2) If the proposed project is an electric power transmission line or gas pipeline, the applicant shall provide a statement explaining the need for the proposed facility.

(3) The applicant shall provide the location of the project in relation to existing or proposed lines and substations shown on an area system map of sufficient scale and size to show existing and proposed transmission facilities in the project area.

(4) The applicant shall describe the alternatives considered and reasons why the proposed location or route is best suited for the proposed facility. The discussion shall include, but not be limited to, impacts associated with socioeconomic, ecological, construction, or engineering aspects of the project.

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(5) The applicant shall describe its public information program to inform affected property owners and tenants of the nature of the project and the proposed timeframe for project construction and restoration activities.

(6) The applicant shall provide an anticipated construction schedule and proposed in-service date of the project.

(7) The applicant shall provide a map of at least 1:24,000 scale clearly depicting the facility with clearly marked streets, roads, and highways, and an aerial image.

(8) The applicant shall provide a list of properties for which the applicant has obtained easements, options, and/or land use agreements necessary to construct and operate the facility and a list of the additional properties for which such agreements have not been obtained.

(9) The applicant shall describe the following information regarding the technical features of the project:

(a) Operating characteristics, estimated number and types of structures required, and right-of-way and/or land requirements.

(b) For electric power transmission lines that are within 100 feet of an occupied residence or institution, the production of electric and magnetic fields during the operation of the proposed electric power transmission line. The discussion shall include:

(i) Calculated electric and magnetic field strength levels at one meter above ground under the lowest conductors and at the edge of the right-of-way for:

(a) Normal maximum loading.

(b) Emergency line loading.

(c) Winter normal conductor rating.

(ii) A discussion of the applicant's consideration of design alternatives with respect to electric and magnetic fields and their strength levels, including alternate conductor configuration and phasing, tower height, corridor location, and right-of-way width.

(c) The estimated capital cost of the project.

(10) The applicant shall describe the social and ecological impacts of the project.

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(a) Provide a brief, general description of land use within the vicinity of the proposed project, including a list of municipalities, townships, and counties affected.

(b) Provide the acreage and a general description of all agricultural land, and separately all agricultural district land, existing at least sixty days prior to submission of the application within the potential disturbance area of the project.

(c) Provide a description of the applicant's investigation concerning the presence or absence of significant archeological or cultural resources that may be located within the potential disturbance area of the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.

(d) Provide a list of the local, state, and federal governmental agencies known to have requirements that must be met in connection with the construction of the project, and a list of documents that have been or are being filed with those agencies in connection with siting and constructing the project.

(e) Provide a description of the applicant's investigation concerning the presence or absence of federal and state designated species (including endangered species, threatened species, rare species, species proposed for listing, species under review for listing, and species of special interest) that may be located within the potential disturbance area of the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.

(f) Provide a description of the applicant's investigation concerning the presence or absence of areas of ecological concern (including national and state forests and parks, floodplains, wetlands, designated or proposed wilderness areas, national and state wild and scenic rivers, wildlife areas, wildlife refuges, wildlife management areas, and wildlife sanctuaries) that may be located within the potential disturbance area of the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.

(g) Provide any known additional information that will describe any unusual conditions resulting in significant environmental, social, health, or safety impacts.

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4906-6-06 Completeness of accelerated certificate applications, staff investigation, and staff report.

(A) The board, its executive director, or the administrative law judge shall notify the applicant of any deficiencies in an accelerated application. Absent such notification, the application is considered to be complete and filed on the date on which it was submitted to the board. If the application is found to be deficient, the application is not deemed to be filed until the board, its executive director, or the administrative law judge determines that all deficiencies have been corrected.

(B) Staff shall conduct an investigation of each accelerated certificate application and submit a written report no less than seven calendar days prior to the automatic approval date.

(1) The report shall set forth the nature of the investigation and shall contain recommended findings with regard to section 4906.10 of the Revised Code.

(2) The report shall become part of the record and shall be provided to board members, the administrative law judge assigned to the case, the applicant, and all persons who have become parties to the proceedings. Copies shall be made available to any person upon request.

4906-6-07 Service and public distribution of accelerated certificate applications.

(A) Upon filing of accelerated applications, the applicant shall:

(1) Serve a copy of the application on the chief executive officer of each municipal corporation, county, township, and the head of each public agency charged with the duty of protecting the environment or of planning land use in the area in which any portion of such facility is to be located.

(2) Place a copy of the application or place a notice of the availability of such application in the main public library of each political subdivision as referenced in division (B) of 4906.06 of the Revised Code. If a notice is provided, that notice shall state that an electronic or paper copy of the application is available from the applicant (with instructions as to how to obtain an electronic or paper copy), available for inspection at the applicant's main office, available for inspection at the board's main office, and available at any other sites at which the applicant will maintain a copy of the application.

(3) Maintain on its website information as to how to request an electronic or paper copy of the application. Upon request for a paper copy of the application, the applicant shall supply the copy within five business days and at no more than cost.

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(B) Proof of compliance with this rule shall be filed with the board within seven days of filing the accelerated application.

4906-6-08 Public notice for letter of notification applications.

(A) Within seven days of the filing of a letter of notification application, the applicant shall give public notice in newspapers of general circulation in the project area and shall supply the board with proof of such publication no later than thirty days from the date of publication. The applicant is permitted to correct any inadvertent failure of service or publication, provided substantial compliance with these requirements is met. The notice shall occupy not less than one-fourth of a each newspaper's standard page, with letters not less than ten-point type, and shall bear the heading "Notice of Proposed Major Utility Facility" in bold letters not less than one-fourth inch high or thirty-point type. The notice shall contain the following information:

(1) The name and a brief description of the proposed facility, including type and capacity.

(2) A map showing the location and general layout of the proposed facility.

(3) A list of officials served with copies of the application.

(4) A list of public libraries that were sent paper copies or notices of availability of the application, and other readily accessible locations (including the applicant's website and the website, mailing address, email address, and telephone number of the board) where copies of the application are available for public inspection.

(5) A statement, including the assigned docket number, that a letter of notification to construct, operate, and maintain said facility is now pending before the board.

(6) A statement explaining that interested persons may file motions to intervene and/or file comments within ten days of the date of publication, in accordance with rule 4906-2-12 of the Administrative Code.

(B) Within seven days of the filing of a letter of notification, the applicant shall send a letter describing the proposed facility to each property owner and affected tenant. The letter shall provide a description of the facility, a map showing the location and layout of the facility, a list of readily accessible locations where copies of the letter of notification are available for public inspection, and a statement, including the assigned docket number, that a letter of notification to construct, operate, and maintain said facility is now pending before the board. The letter shall also explain how to participate and comment in the board's proceedings. The letter shall be sent by first

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class mail. Proof of compliance with this requirement shall be provided to the board staff. The letter shall be sent to each property owner and affected tenant:

(1) Within the planned site or along the preferred or alternate route(s) of the proposed facility.

(2) Contiguous to the planned site or along the preferred or alternate route(s) of the proposed facility.

(3) Who may be approached by the applicant for any additional easement necessary for the construction, operation, or maintenance of the facility.

(4) If the property owner's address is not the same as the address affected by the proposed facility, then the applicant shall also send a letter to the affected property.

4906-6-09 Suspension of accelerated certificate applications.

(A) Upon good cause, the board, its executive director, or the administrative law judge may suspend consideration of an accelerated certificate application for up to ninety days.

(B) If the board, its executive director, or the administrative law judge assigned by the board acts to suspend an accelerated certificate application, the board, its executive director, or the administrative law judge will docket its decision and notify the applicant of the reasons for such suspension and may direct the applicant to furnish any additional information as the board, its executive director, or the administrative law judge deems necessary to evaluate the accelerated certificate application.

(C) Once an accelerated certificate application has been suspended, the board will act to approve, modify, or deny the accelerated certificate application within ninety days from the date that the application was suspended. The board or administrative law judge may, at its discretion, set the matter for hearing.

4906-6-10 Automatic approval of accelerated applications.

(A) Staff shall recommend an automatic approval date for an accelerated application in its written report of investigation to the board, unless staff is recommending suspension of the automatic approval date. The recommended automatic approval date shall be no sooner than seven calendar days after the filing of the written report of investigation and no later than 90 days after the filing date of the application.

(B) If the board does not act upon a letter of notification or construction notice and/or waiver request on or prior to the automatic approval date set forth in the staff report,

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the letter of notification or construction notice and/or waiver request shall be deemed automatically approved, subject to any conditions contained in the staff report, on the day after the date set forth in the staff report.

(C) Any conditions included in a staff report that are not objected to by an applicant prior to the automatic approval date established in paragraphs (A) and (B) of this rule, shall be deemed automatically adopted by the board, administrative law judge, or executive director as conditions on the certificate of environmental compatibility and public need. If an applicant files a written objection or proposes an alternative condition to any condition proposed in a staff report with the board at least three days prior to the automatic approval date, such condition shall only be effective if specifically recommended by the staff in an amended staff report and adopted by the board within the time permitted for consideration of the application provided in section 4906.03(F) of the Revised Code. No condition proposed in the staff report that is timely objected to by an applicant shall become effective unless the board specifically adopts such condition.

4906-6-11 Construction of approved projects and notification of construction.

(A) Applicants who file accelerated certificate applications with the board may begin construction of projects reported in the applications after the date that automatic approval occurs or upon the approval by the board.

(B) Applicants shall file a notice with the board at least seven days in advance of beginning construction of the involved project if construction will begin on a different date from that contained in the application.

(C) Prior to commencement of construction, the applicant shall inform affected property owners and tenants of the nature of the project, specific contact information of applicant personnel who are familiar with the project, the proposed schedule for project construction and restoration activities, and a complaint resolution process. Notification to affected property owners and tenants shall be given at least seven days prior to work on the affected property.

(D) Applicants shall file a notice with the board within seven days following completion of the involved project.

4906-6-12 Amendments and expiration of certificates.

(A) Unless otherwise ordered by the board, its executive director, or the administrative law judge, the filing, notifications, informational requirements, and processing timelines for an accelerated application for an amendment to a certificate issued under a letter of notification or construction notice application shall be determined by

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referring to the appropriate appendix to rule 4906-1-01 of the Administrative Code. Such amendment application shall use the letter of notification or construction notice docketing code. In such application, the applicant shall reference the case docket in which the certificate was granted.

(B) If a continuous course of construction has not commenced within three years of the accelerated application approval date, the board's approval of the project shall automatically expire. After the expiration of the board's approval, the applicant must submit the project for approval under the board's rules that exist at that time to commence construction.

Chapter 4906-7 Enforcement Investigations.

4906-7-01 Purpose and scope.

(A) This chapter sets forth the rules for enforcement investigations and payment of forfeitures.

(B) The board may, upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

4906-7-02 Enforcement investigations by the board.

(A) Upon finding reasonable grounds, the board shall initiate a proceeding to investigate an alleged violation of section 4906.98 of the Revised Code.

(B) The board shall conduct a violation proceeding under sections 4906.97 and 4906.98 of the Revised Code, and in accordance with Chapter 4906-2 of the Administrative Code to the extent not inconsistent with section 4906.97 of the Revised Code.

(C) While an alleged violation of section 4906.98 of the Revised Code is under board investigation, the board or its chairperson or designee may order the suspension of the involved activity. A suspension order may be terminated by the board or its chairperson or designee at any time during the board's investigation of the alleged violation.

(D) Unless otherwise ordered by the board or an administrative law judge, the staff of the board shall file with the board, and serve upon the person alleged to have violated section 4906.98 of the Revised Code and all other parties, a written report of investigation within twenty-one days after initiation of the involved proceeding. The report shall include the staff's findings on the alleged violation and staff's recommendations for board action.

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(E) The board may require an evidentiary hearing on the alleged violation. The hearing may include evidence on corrective action, forfeitures, and other remedies.

(F) The complaining party (which may include staff) shall have the burden to prove the occurrence of the violation, by a preponderance of the evidence.

(G) If, after a hearing, the board finds that a violation of section 4906.98 of the Revised Code occurred, the board may order appropriate remedies, which may include one or more of the following:

(1) Direct the person to cease the violation.

(2) Direct the person to comply with the certificate and/or a board order or suspension.

(3) Direct the person to take corrective action and include a date by which such corrective action must be taken or completed.

(4) Assess forfeitures in accordance with sections 4906.97 and 4906.99 of the Revised Code.

(5) Direct the attorney general to seek enforcement of board orders, including orders assessing forfeitures and appropriate remedies, in state or federal court.

(6) Approve other appropriate remedies.

(H) The board may request that the attorney general seek enforcement and other appropriate relief in common pleas court, if necessary to enforce its order.

4906-7-03 Payment of forfeitures, compromise forfeitures and payments made pursuant to stipulations in enforcement investigations.

(A) All forfeitures, compromise forfeitures and payments made pursuant to stipulations shall be paid by certified check or money order made payable to "Treasurer of the state of Ohio, general revenue fund," and shall be designated by case number.

(B) All forfeitures, compromise forfeitures and payments made pursuant to stipulations shall be mailed or delivered to: Ohio Power Siting Board, Fiscal Division, 180 East Broad Street, Columbus, Ohio 43215-3793."

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4906 Staff's Proposed Power Siting Rescinded Rules

~~4906-1-01 Definitions.~~

~~As used in Chapters 4906-1 to 4906-17 of the Administrative Code:~~

~~General - applicable to both gas and electric~~

~~(A) "Accepted, complete application" means an application which the chairman or individual designated by the chairman declares in writing to be accepted and in compliance with the content requirements of section 4906.06 of the Revised Code, pursuant to section 4906.07 of the Revised Code and paragraph (C) of rule 4906-5-05 of the Administrative Code.~~

~~(B) "Administrative law judge" means the attorney examiner of the public utilities commission or other representative of the board assigned to a case by the chairman.~~

~~(C) "Agricultural district" means any agricultural district established pursuant to Chapter 929. of the Revised Code.~~

~~(D) "Applicant" means any person filing an application for approval of a major utility facility under Chapter 4906. of the Revised Code.~~

~~(E) "Application" means an application filed with the board under the requirements of rules Chapters 4906-11 to 4906-17 of the Administrative Code.~~

~~(F) "Board" means the Ohio power siting board, as established by division (A) of section 4906.02 of the Revised Code.~~

~~(G) "Certificate" means a certificate of environmental compatibility and public need, issued by the board.~~

~~(H) "Chairman" means the chairman of the board as established by division (A) of section 4906.02 of the Revised Code.~~

~~(I) "Commence to construct" has the meaning set forth in division (C) of section 4906.01 of the Revised Code.~~

~~(J) "Construction notice" means a document filed with the board under the requirements of rule 4906-11-02 of the Administrative Code.~~

~~(K) "Letter of notification" means a document filed with the board under the requirements of rule 4906-11-01 of the Administrative Code.~~

~~(L) "Major utility facility" means:~~

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(1) An electric power generating plant and associated facilities designed for, or capable of operating at a net capacity of fifty megawatts or more. (Net capacity in this context means the estimated net demonstrated capability of the generating plant and associated facilities. Generally, the generated output at the switchyard busbar after reductions for generated power used and needed for plant operation is equivalent to the net demonstrated capability).

(2) An electric power transmission line and associated facilities.

(3) A gas or natural gas transmission line and associated facilities.

A major utility facility does not include electric power, gas, or natural gas distributing lines and gas or natural gas gathering lines and associated facilities, nor gas or natural gas transmission lines over which an agency of the United States has exclusive jurisdiction.

(M) "Person" means an individual, corporation, business trust, association, estate, trust, or partnership, or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity.

(N) "Replacement of an existing facility with a like facility" means replacing an existing major utility facility with a major utility facility of equivalent rating and operating characteristics.

(O) "Substantial addition," in the case of an electric power or gas or natural gas transmission line facility already in operation and not operating under a certificate, is any addition or modification of that facility which is listed in the "Application Requirement Matrix" contained in appendix A and appendix B to this rule. Construction necessary to restore service of a transmission line damaged by reason of natural disaster or human caused accident does not constitute a substantial addition and therefore does not require the filing of a certificate application, letter of notification, or construction notice.

Gas - applicable to gas only

(P) "Associated facility" or "associated facilities," where used in Chapters 4906-1 to 4906-15 of the Administrative Code in conjunction with a gas or natural gas transmission line, includes rights-of-way, land, structures, mains, valves, meters, compressors, regulators, tanks and other transmission items, and equipment used for the transmission of gas or natural gas from and to a gas or natural gas transmission line.

(Q) "Gas or natural gas transmission line" is defined as a gas or natural gas transmission line which is more than nine inches in outside diameter and is designed for, or capable of, transporting gas or natural gas at pressures in excess of one hundred

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~~twenty five pounds per square inch. A gas or natural gas transmission line does not include land, structures, or equipment used to maintain a site or facility for the storage of gas or natural gas, but may include a gas or natural gas transmission line used for purposes of transporting gas or natural gas to or from such a site or facility.~~

~~Electric - applicable to electric only~~

~~(R) "Associated facility" or "associated facilities", where used in Chapters 4906-1 to 4906-17 of the Administrative Code in conjunction with an electric power transmission line means any line, and associated facility of a design capacity of one hundred twenty-five kilovolts or more.~~

~~(1) Where poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys and rights-of-way shall be classified as transmission while the conductors, crossarms, braces, grounds, tiewires, insulators, etc., shall be classified as transmission or distribution according to the purposes for which they are used.~~

~~(2) Transmission voltage switching stations and stations which change electricity from one transmission voltage to another transmission voltage shall be classified as transmission stations. Those stations which change electricity from transmission voltage to distribution voltage shall be classified as distribution stations.~~

~~(3) Rights-of-way, land, structures, breakers, switches, transformers, and other transmission items and equipment used for the transmission of electricity at voltages of one hundred and twenty five kilovolts or greater shall be classified as transmission related.~~

~~(S) "Electric power transmission line" is defined as an electric power line which has a design capacity of one hundred twenty-five kilovolts or more.~~

~~(T) "Substantial addition," in the case of an electric power generating plant, is any modification of a utility facility not operating under a certificate, which modification in itself constitutes a major utility facility or wind farm. In general, the following examples apply to this definition:~~

~~(1) Addition of an electric power generating unit of fifty megawatts or greater to an existing plant.~~

~~(2) Addition of a fifty megawatts or greater electric power generating unit which is designed to operate in conjunction with an existing unit to establish a combined-cycle unit.~~

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(3) Addition of an electric power generating unit to an existing plant which is not a major utility facility, with the result that the combined capacity of the new facility is fifty megawatts or greater.

(4) Addition of a wind-powered electric generation turbine to an existing wind energy facility, with the result that the combined capacity of the new facility is five megawatts or greater.

(U) "Wind farm" means an economically significant wind-powered electric generation facility, including wind turbines and associated facilities, with a single interconnection to the electrical grid that is designed for, or capable of, operation at an aggregate capacity of five megawatts or more but less than fifty megawatts. Wind farm does not include any such wind-powered electric generation facility in operation as of June 24, 2008.

4906-1-02 Construction of rules.

These rules shall be construed by the board to secure just, efficient, and inexpensive determination of the issues presented in matters under Chapter 4906. of the Revised Code.

4906-1-03 Waiver of rules.

The board or the administrative law judge may, for good cause shown, as supported by a motion and supporting memorandum, waive any requirement, standard, or rule set forth in Chapters 4906-1 to 4906-17 of the Administrative Code, except where precluded by statute.

4906-1-04 Computation of time.

Unless otherwise provided by law or by the board, in computing any period of time prescribed or allowed by the board, the date of the event from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it falls on a Saturday, Sunday, or legal holiday, in which case the period of time shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

4906-1-05 Extensions or waiver of time limits.

For good cause shown, the board or the administrative law judge may extend or waive any time limit prescribed or allowed by Chapters 4906-1 to 4906-17 of the Administrative Code, except where precluded by statute. Any request for the extension or waiver of a time limit shall be made by motion.

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4906-1-06 Filing with the board.

(A) The principal office of the board is located within the offices of the public utilities commission of Ohio. The office of the board is open from eight a.m. to five-thirty p.m. each day except Saturdays, Sundays and legal holidays.

(B) All motions, petitions, applications, documents or other papers relating to matters requiring action by the board shall be filed with the board's docketing division at the principal office of the board.

4906-1-07 Date of filing, except for applications.

All orders, decisions, findings of fact, correspondence, motions, petitions and any other documents governed by Chapters 4906-1 to 4906-17 of the Administrative Code, except applications for certificates, shall be deemed to have been filed or received on the date on which they are issued or received by the board at its principal office.

4906-1-08 Form of document.

Except for such forms as may from time to time be provided by the board, and except as provided in rule 4906-5-03 of the Administrative Code, all motions, petitions, applications, documents, or other papers filed for the purpose of any proceeding before the board shall be printed or typewritten and reproduced on sheets of eight and one-half inches by eleven inches (except for foldouts and special exhibits). Widths of the margins shall not be less than one inch. The impression may be printed on both sides of the page, and shall have at least 1.5 spacing, except that quotations in excess of five typewritten lines shall be single-spaced and indented.

4906-1-09 Identification of communications.

(A) All communications shall contain the name, address, and telephone number of the communicator, the date of the communication, and the appropriate document reference, if any, pertaining to the subject of communication. When the subject matter pertains to a pending proceeding, the title of the proceeding and the docket number shall be included.

(B) All applications for certificates and forms shall include the name of the applicant filing such document with the board on each page of such document.

4906-1-10 Signatures.

(A) Every notice, motion, petition, complaint, brief, memorandum, or other paper filed for the purpose of any proceeding before the board, shall be signed by the person

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filing such document or by one or more attorneys in their individual names on behalf of that person.

(B) Each application for a certificate shall include a statement, signed by the chief executive officer of the company submitting such document, that the statements set forth in the document are true and correct to the best of his/her knowledge, information, and belief.

4906-1-11 Number of copies.

(A) Except as may otherwise be required by Chapters 4906-1 to 4906-17 of the Administrative Code or expressly requested by the board, at the time motions, petitions, documents or other papers are filed with the board, there shall be furnished to the board an original of such papers and ten copies.

(B) When an application for a certificate is submitted to the board, there shall be furnished to the board an original of such application and twenty-five copies.

4906-1-12 Board meetings.

(A) All meetings of the board at which official action is taken and deliberation upon official business is conducted shall be open to the public. For the purpose of this rule, the term "meeting" shall mean any prearranged discussion of the public business of the board by a majority of its members. All resolutions, rules, regulations or formal action of any kind shall be adopted in an open meeting of the board.

(B) The chairman shall cause to be made and preserve such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the board and for the protection of the legal and financial rights of the state and persons directly affected by the board's activities under Chapter 4906. of the Revised Code.

(C) The minutes of a regular or special meeting of the board shall be promptly recorded and such records shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) of section 121.22 of the Revised Code.

(D) Following a majority vote of its members, the board may hold an executive session only at a regular or special meeting for the sole purpose of the consideration of the matters contained in division (G) of section 121.22 of the Revised Code. Such executive session may be held only at a meeting for which notice has been given in accordance with the requirements of paragraph (E) of this rule.

(E) Board meetings

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~~(1) Any person may ascertain the time and place of each regularly scheduled meeting and the time, place and purpose of each special meeting in the following manner:~~

~~(a) Writing to the board's principal office.~~

~~(b) Calling the media office of the public utilities commission between eight a.m. and five-thirty p.m. except on Saturdays, Sundays, or legal holidays.~~

~~(c) Accessing the board's web site at www.opsb.ohio.gov.~~

~~(2) Notice of all meetings of the board shall be given to the following persons:~~

~~(a) All individuals on the board's notification of meeting distribution list shall be given notice of all regular meetings. This list shall consist of those persons who have requested notice of each board meeting.~~

~~(i) A request for placement on the notification of meeting distribution list shall be made to the board in writing.~~

~~(ii) A written record of all such requests shall be made and kept by the chairman.~~

~~(b) All news media routinely notified by the media office of the public utilities commission shall be given notice of all regular board meetings. No special meeting of the board shall be held unless the board gives twenty-four hours advance notice to the news media, except in the event of an emergency requiring immediate official action. In the event of an emergency, the board shall immediately notify the news media of the time, place and purpose of the meeting.~~

~~(3) Notice of all board meetings shall include but not be limited to the following information:~~

~~(a) Date, time and location of the meeting.~~

~~(b) Agenda for the meeting.~~

~~(c) Name of a person to be contacted for further information.~~

~~(4) When practicable, such notice shall be issued not less than seven days prior to any regular meeting of the board. Such notice shall be issued not less than twenty-four hours prior to a special meeting and immediately before a meeting in the event of an emergency.~~

~~**4906-1-13 Fees and payments.**~~

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(A) All duplication fees used to defray the cost of copying documents shall be charged by the board in accordance with applicable provisions of the Revised Code, including section 4903.23 of the Revised Code.

(B) All application fees shall be determined pursuant to rule 4906-5-11 of the Administrative Code.

(C) All payments of application fees shall be in the form of a check payable to "Treasurer of the State of Ohio, Ohio Power Siting Board, fund 561," and shall be designated by case number.

(D) All payments of forfeitures, compromise forfeitures, and other payments made pursuant to stipulation shall be made in accordance with rule 4906-9-02 of the Administrative Code.

4906-1-14 Site visits.

Persons proposing, owning or operating major utility facilities or wind farms should make all reasonable efforts to ensure that, upon prior notification, the board, its representatives, or staff may make visits to proposed or alternative sites or routes of a major utility facility or wind farm or a substantial addition in order to carry out board responsibilities pursuant to Chapter 4906. of the Revised Code.

General Provisions for Filings and Proceedings Before the Ohio Power Siting Board

4906-1-01 Appendix A - Application Requirement Matrix for Electric Power Transmission Facilities
Appendix B - Application Requirement Matrix for Gas Pipelines
Appendix C - Application Requirement Matrix for Electric Power Generating Facilities

APPENDIX A
APPLICATION REQUIREMENT MATRIX
FOR ELECTRIC POWER TRANSMISSION LINES

Description of the Proposed Electric Power Transmission Line and Associated Facilities	Certificate Application (BTX, BTA, or BSB)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-15	4906-11-01	4906-11-02
(1) New construction, extension, or relocation of single or multiple circuit electric power transmission line(s), or upgrading existing transmission or distributing line(s) for operation at a higher transmission voltage, as follows:			

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(a) Line(s) not greater than 0.2 miles in length.			X
(b) Line(s) greater than 0.2 miles in length but not greater than two miles in length.		X	
(c) Line(s) greater than two miles in length.	X		
(d) Line(s) primarily needed to attract or meet the requirements of a specific customer or customers, as follows:			
(i) The line is completely on property owned by the specific customer or the utility.			X
(ii) Any portion of the line is on property owned by someone other than the specific customer or utility.		X	
(e) Line(s) that are necessary to maintain reliable electric service as a result of the retirement or shutdown of an electric generating facility located within Ohio.		X	
(2) Adding new circuits on existing structures designed for multiple circuit use, replacing conductors on existing structures with larger or bundled conductors, adding structures to an existing transmission line, or replacing structures with a different type of structure, for a distance of:			
(a) Two miles or less.			X
(b) More than two miles.		X	
(3) Constructing a new electric power transmission station.		X	
(4) Constructing additions to existing electric power transmission stations or converting distribution stations to transmission stations where:			
(a) There is a twenty percent or less expansion of the fenced area.			X

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(b) There is a greater than twenty percent expansion of the fenced area.		X	
(5) Replacement or relocation of an electric power transmission line and associated facilities where the project is required by publicly funded entities and is located on or adjacent to right-of-way or land owned by the public entity requiring the project.			X

*The three-letter acronyms in the column header refer to the three-letter purpose codes that are assigned to these types of applications when filed with and given a case number by the Ohio Power Siting Board.

APPENDIX B
APPLICATION REQUIREMENT MATRIX
FOR GAS PIPELINES

Description of the Proposed Gas Pipelines and Associated Facilities	Certificate Application (BTX or BTA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-15	4906-11-01	4906-11-02
(1) New construction, extension, relocation, upgrade, or replacement (except with a like facility) of gas pipelines, as follows:			
(a) Pipelines not greater than one mile in length.			X
(b) Pipelines greater than one mile in length but not greater than five miles in length.		X	
(c) Pipelines greater than five miles in length.	X		
(d) Pipelines greater than one mile in length and primarily needed to meet the requirements of a specific customer or customers, as follows:			
(i) The pipeline is completely on property owned by the specific customer or the utility.			X
(ii) Any portion of the pipeline is on property owned by someone other than the specific customer or utility.		X	
(2) Adding a compressor station to an existing gas pipeline.		X	

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(3) Replacement or relocation of gas pipeline facilities where the project is required by publicly funded entities and is located on or adjacent to new right-of-way owned by the public entity requiring the project.			X

* The three-letter acronyms in the column header refer to the three-letter purpose codes that are assigned to these types of applications when filed with and given a case number by the Ohio Power Siting Board.

APPENDIX C
APPLICATION REQUIREMENT MATRIX
FOR ELECTRIC GENERATING FACILITIES

Description of the Proposed Electric Generating Facility	Certificate Application (BGN or BGA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-13	4906-11-01	4906-11-02
(1) An electric generating facility designed for, or capable of, operation at a capacity of fifty megawatts or more that uses waste heat or natural gas and is primarily within the current boundary of an existing industrial or electric generating facility.		X	
(2) A wind-powered electric generating facility designed for, or capable of, operation at a capacity of five megawatts or more.	X		
(3) An electric generating facility designed for, or capable of, operation at a capacity of fifty megawatts or more and not listed in one of the above categories.	X		

* The three-letter acronyms in the column header refer to the three-letter purpose codes that are assigned to these types of applications when filed with and given a case number by the Ohio Power Siting Board.

4906-5-01 Preapplication conference.

An applicant considering construction of a major utility facility or wind farm may request a preapplication conference with the board staff prior to submitting an application. The results of such conference(s) shall in no way constitute approval or

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~~disapproval of a particular site or route, and shall in no way predetermine the board's decision regarding subsequent certification or approval.~~

~~4906-5-02 Letter of notification and construction notice application requirements: form, content, and processing.~~

~~(A) A letter of notification shall be submitted for those projects listed under "letter of notification application (BLN) required" in appendix A or B of rule 4906-1-01 of the Administrative Code, or where otherwise directed by the board or its representatives. If a project falls under the requirements of both a "letter of notification application (BLN) required" and a "construction notice application (BNR) required" in appendix A or B of rule 4906-1-01 of the Administrative Code, a letter of notification application shall be filed.~~

~~(1) A letter of notification shall be filed not less than sixty-three days before planned commencement of construction. A letter of notification for which the applicant requests expedited processing shall be filed not less than twenty-eight days before planned commencement of construction. For good cause shown, such sixty-three or twenty-eight day time period may be waived by the board, its executive director, or an administrative law judge.~~

~~(2) The information contained within the letter of notification shall contain the information requested by rule 4906-11-01 of the Administrative Code.~~

~~(3) If the board does not act upon a letter of notification or any waiver requests filed with it within sixty-three days of the filing date, the letter of notification and/or waiver requests shall be deemed automatically approved, subject to any conditions contained in the board's staff report, on the sixty-fourth day after the filing date. If the board does not act upon an expedited letter of notification or any waiver requests filed with it within twenty-eight days of the filing date, the expedited letter of notification and/or waiver requests shall be deemed automatically approved, subject to any conditions contained in the board's staff report, on the twenty-ninth day after the filing date. Upon good cause, the board, its executive director, or an administrative law judge assigned by the board may suspend consideration of a letter of notification for up to ninety days. At the expiration of such time period, the letter of notification shall be deemed automatically approved unless the board, its executive director or the administrative law judge orders otherwise during the suspension period. If the board, its executive director, or an administrative law judge assigned by the board acts to suspend a letter of notification, the board, its executive director, or an administrative law judge will:~~

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(a) Docket its decision and notify the applicant of the reasons for such suspension and may direct the applicant to furnish any additional information as the board, its executive director, or the administrative law judge deems necessary to evaluate the letter of notification.

(b) If no time period is specified, act to approve or deny the letter of notification within ninety days from the date that the letter of notification was suspended.

(c) At its discretion, set the matter for hearing.

(4) Applicants who file letters of notification with the board may commence construction of projects reported in such letters upon the approval by the board. If a continuous course of construction has not commenced within two years of the letter of notification approval date, the board's approval of the letter of notification project shall automatically expire. After the expiration of the board's approval, the applicant must submit the project for approval under the board's rules that exist at that time to commence construction.

(5) Applicants shall file a notice with the board at least seven days in advance of beginning construction of the involved letter of notification project if construction will begin on a different date from that contained in the application.

(6) Applicants shall file a notice with the board within seven days following completion of the involved letter of notification project.

(B) A construction notice shall be submitted to the board for any project listed under "construction notice application (BNR) required" in appendix A or B of rule 4906-1-01 of the Administrative Code, or where otherwise directed by the board or its representatives. If a project falls under the requirements of both a "letter of notification application (BLN) required" and a "construction notice application (BNR) required" in appendix A or B of rule 4906-1-01 of the Administrative Code, a letter of notification application shall be filed.

(1) A construction notice shall be filed not less than forty two days before planned commencement of construction. A construction notice for which the applicant requests expedited processing shall be filed not less than twenty one days before planned commencement of construction. For good cause shown, such forty two or twenty one day time period may be waived by the board, its executive director, or an administrative law judge.

(2) The information contained within the construction notice shall include the information requested by rule 4906-11-02 of the Administrative Code.

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(3) If the board does not act upon a construction notice or any waiver requests filed with it within forty-two days of the filing date, the construction notice and/or waiver requests shall be deemed automatically approved, subject to any conditions contained in the board's staff report, on the forty third day after the filing date. If the board does not act upon an expedited construction notice or any waiver requests filed with it within twenty-one days of the filing date, the expedited construction notice and/or waiver requests shall be deemed automatically approved, subject to any conditions contained in the board's staff report, on the twenty second day after the filing date. Upon good cause, the board, its executive director, or an administrative law judge assigned by the board may suspend consideration of a construction notice for up to sixty days. At the expiration of such time period, the construction notice shall be deemed automatically approved unless the board, its executive director, or the administrative law judge orders otherwise during the suspension period. If the board, its executive director, or an administrative law judge assigned by the board acts to suspend a construction notice, the board, its executive director, or an administrative law judge will:

(a) Docket its decision and notify the applicant of the reasons for such suspension and may direct the applicant to furnish any additional information as the board, its executive director, or the administrative law judge deems necessary to evaluate the construction notice.

(b) If no time period is specified, act to approve or deny the construction notice within sixty days from the date that the construction notice was suspended.

(c) At its discretion, set the matter for hearing.

(4) Applicants who file construction notices with the board may begin construction of projects reported in the construction notices upon the approval by the board. If a continuous course of construction has not commenced within two years of the construction notice approval date, the board's approval of the construction notice project shall automatically expire. After the expiration of the board's approval, the applicant must submit the project for approval under the board's rules that exist at that time to commence construction.

(5) Applicants shall file a notice with the board at least seven days in advance of beginning construction of the involved construction notice project if construction will begin on a different date from that contained in the application.

(6) Applicants shall file a notice with the board within seven days following completion of the involved construction notice project.

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~~4906-5-03 Form and content of certificate applications.~~

~~(A) In addition to the requirements of Chapter 4906-1 of the Administrative Code, the following conditions apply to certificate applications:~~

~~(1) Each page of the certificate application shall be numbered.~~

~~(2) Copies of the certificate application shall be submitted in hard-cover, loose leaf binders labeled with the following information.~~

~~(a) Name of applicant.~~

~~(b) Name of the proposed facility or wind farm.~~

~~(c) Year of submittal of the certificate application.~~

~~(3) Each certificate application shall be accompanied by a cover letter containing the following information:~~

~~(a) Name and address of the applicant.~~

~~(b) Name and location of the proposed facility or wind farm.~~

~~(c) Name and address of the applicant's authorized representative.~~

~~(d) An explanation of any information that was presented by the applicant in the preapplication notification letter that has been revised by the applicant since the issuance of the letter.~~

~~(e) Notarized statement that the information contained in the certificate application is complete and correct to the best knowledge, information and belief of the applicant.~~

~~(B) The information contained within the certificate application shall conform to the requirements of Chapter 4906-13, 4906-15, or 4906-17 of the Administrative Code, whichever is applicable, except that a certificate application for a major utility facility which is related to a coal research and development project as defined in section 1555.01 of the Revised Code, or to a coal development project as defined in section 1551.30 of the Revised Code, submitted to the Ohio coal development office for review under division (B)(8) of section 1551.33 of the Revised Code, shall be the full final proposal as accepted by the Ohio coal development office.~~

~~(C) The scale of all maps required by Chapters 4906-13, 4906-15, and 4906-17 of the Administrative Code may be reduced in a scale not to exceed a factor of four times the required scale provided that the applicant supplies:~~

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(1) For staff review, five full scale copies of all maps required by Chapters 4906-13, 4906-15, and 4906-17 of the Administrative Code to the board at the time of submitting the certificate application.

(2) A full scale copy of all maps required by Chapters 4906-13, 4906-15, and 4906-17 of the Administrative Code to:

(a) All persons referenced in rule 4906-5-06 of the Administrative Code.

(b) All persons who shall thereafter become parties to the proceedings.

(3) All copies of the application that contain reduced size maps shall also contain information on how to request full size maps (e.g., name, address, telephone number, e-mail address).

(D) For purposes of Chapters 4906-13, 4906-15, and 4906-17 of the Administrative Code, the costs and benefits of the direct and indirect effects of siting decisions shall be expressed in monetary and quantitative terms whenever doing so is practicable. All responses shall be supported by:

(1) An indication of the source of data.

(2) The assumptions made.

(3) The methods of reaching the conclusions.

(4) The justification for selection of alternatives.

4906-5-04 Alternatives in certificate applications.

(A) All certificate applications for gas and electric power transmission facilities shall include fully developed information on two sites/routes. Applicants for electric power generating facilities (other than a major utility facility which is related to a coal research and development project as defined in section 1555.01 of the Revised Code, or a coal development project as defined in section 1551.30 of the Revised Code, submitted to the Ohio coal development office for review under division (B)(8) of section 1551.33 of the Revised Code) may choose to include fully developed information on two or more sites. Each proposed site/route shall be designated as a preferred or an alternate site/route. Each proposed site/route shall be actual and a viable alternative on which the applicant could construct the proposed facility. Two routes shall be considered as alternatives if not more than twenty per cent of the routes are in common. The percentage in common shall be calculated based on the shorter of the two routes. Certificate applications may include information on

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additional alternatives, which may include site, route, major equipment, or other alternatives.

(B) For good cause shown, the board or the administrative law judge may waive the requirement of fully developed information on the alternative site or route designated as alternate.

(C) The information contained within the certificate application, including information on alternatives as required by this rule, shall conform to the requirements of Chapters 4906-13, 4906-15, and 4906-17 of the Administrative Code, where applicable.

4906-5-05 Completeness of certificate applications and staff investigations and reports.

(A) Upon receipt of a certificate application for a wind farm or major utility facility which is not related to a coal research and development project as defined in section 1551.01 of the Revised Code, or to a coal development project as defined in section 1551.30 of the Revised Code, submitted to the Ohio coal development office for review under division (B)(8) of section 1551.33 of the Revised Code, the chairman shall examine the certificate application to determine compliance with Chapters 4906-1 to 4906-17 of the Administrative Code. Within sixty days following receipt, the chairman shall either:

(1) Accept the certificate application as complete and complying with the content requirements of section 4906.06 of the Revised Code and Chapters 4906-1 to 4906-17 of the Administrative Code.

(2) Reject said certificate application as incomplete, setting forth specific grounds on which the rejection is based.

The chairman shall mail a copy of the completeness decision to the applicant.

(B) Upon receipt of a certificate application for a major utility facility which is related to a coal research and development project as defined in section 1551.01 of the Revised Code, or to a coal development project as defined in section 1551.30 of the Revised Code, submitted to the Ohio coal development office for review under division (B)(8) of section 1551.33 of the Revised Code, the chairman shall promptly accept the certificate application as complete and shall notify the applicant to file the accepted, complete application in accordance with the provisions of rules 4906-5-06 and 4906-5-07 of the Administrative Code.

(C) Upon accepting a certificate application as complete, the chairman shall promptly notify the applicant to serve and file a certificate of service for the accepted, complete

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~~application in accordance with rules 4906-5-06 and 4906-5-07 of the Administrative Code.~~

~~(D) The chairman shall direct the staff to conduct an investigation of each accepted, complete application and to submit a written report as provided by division (C) of section 4906.07 of the Revised Code not less than fifteen days prior to the beginning of public hearings.~~

~~(1) The staff report for a wind farm or major utility facility which is not related to a coal research and development project as defined in section 1551.01 of the Revised Code, or to a coal development project as defined in section 1551.30 of the Revised Code, submitted to the Ohio coal development office for review under division (B)(8) of section 1551.33 of the Revised Code, shall set forth the nature of the investigation, and shall contain recommended findings with regard to division (A) of section 4906.10 of the Revised Code and all applicable rules contained in Chapters 4906-1 to 4906-17 of the Administrative Code.~~

~~(2) The staff report for a major utility facility which is related to a coal research and development project as defined in section 1551.01 of the Revised Code, or to a coal development project as defined in section 1551.30 of the Revised Code, submitted to the Ohio coal development office for review under division (B)(8) of section 1551.33 of the Revised Code, shall set forth the nature of the investigation and shall contain recommended findings with regard to divisions (A)(2), (A)(3), (A)(5), and (A)(7) of section 4906.10 of the Revised Code.~~

~~(3) The staff report shall become part of the record.~~

~~(4) Copies of the staff report shall be served upon the board members, the administrative law judge assigned to the case, the applicant, and all persons who have or shall thereafter become parties to the proceedings. Copies shall be made available to any person upon request.~~

~~(5) The chairman shall cause either a copy of such staff report or a notice of the availability of such staff report to be placed in the main public library of each political subdivision as referenced in division (B) of section 4906.06 of the Revised Code. If a notice is provided, that notice shall state that an electronic or paper copy of the staff report is available from the board staff (with instructions as to how to obtain an electronic or paper copy) and available for inspection at the board's main office. The staff will also maintain on the board's web site information as to how to request an electronic or paper copy of the staff report. Upon request for a paper copy of the staff report, the staff shall supply the report without cost.~~

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4906-5-06 Service and public distribution of accepted, complete certificate applications.

Upon receipt of notification from the chairman that the certificate application is accepted and in compliance with the content requirements of section 4906.06 of the Revised Code and Chapters 4906-1 to 4906-17 of the Administrative Code, the applicant shall serve a copy of the accepted, complete application on the chief executive officer of each municipal corporation, county, township, and the head of each public agency charged with the duty of protecting the environment or of planning land use in the area in which any portion of such facility is to be located. As used in this rule, "any portion" includes site or route alternatives as provided in paragraph (A) of rule 4906-5-04 of the Administrative Code. The applicant shall also either place a copy of the accepted, complete application or place a notice of the availability of such application in the main public library of each political subdivision as referenced in division (B) of 4906.06 of the Revised Code. If a notice is provided, that notice shall state that an electronic or paper copy of the accepted, complete application is available from the applicant (with instructions as to how to obtain an electronic or paper copy), available for inspection at the applicant's main office, available for inspection at the board's main office, and available at any other sites at which the applicant will maintain a copy of the accepted, complete application.

The applicant will also maintain on its web site, if it has a web site, information as to how to request an electronic or paper copy of the accepted, complete application. Upon request for a paper copy of the accepted, complete application, the applicant shall supply the copy within five business days and at no more than cost.

4906-5-07 Filing of accepted, complete certificate applications.

(A) Upon receipt of notification from the chairman that the certificate application is accepted and in compliance with the content requirements of section 4906.06 of the Revised Code and Chapters 4906-1 to 4906-17 of the Administrative Code, the applicant shall promptly:

(1) Supply the board with such additional copies of the accepted, complete application as the board shall require.

(2) Supply the board with a certificate of its service of such accepted, complete application, which shall include the name, address, and official title of each person so served, together with the date on which service was performed and a description of the method by which service was obtained.

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~~(B) For purposes of Chapters 4906-1 to 4906-17 of the Administrative Code, the accepted, complete application shall be deemed filed in a decision of the board or administrative law judge filed after the applicant has complied with paragraph (A) of this rule.~~

~~(C) Upon an accepted, complete application being deemed filed, the board or administrative law judge shall promptly fix the date(s) for the public hearing(s) and notify the parties.~~

~~4906-5-08 Public notice of accepted, complete certificate applications.~~

~~(A) At least fifteen days prior to the date of any public informational meeting held pursuant to paragraph (B) of this rule, the applicant shall file a pre-application notification letter with the board. The pre-application notification letter shall include the following information:~~

~~(1) A basic description of the project that shall include information about the anticipated function, equipment size, approximate areal extent, general location, and purpose of the project.~~

~~(2) The date, time, and location of the public informational meeting to be held pursuant to paragraph (B) of this rule.~~

~~(3) A list of any anticipated waivers of the board's rules that the applicant will be requesting for the project.~~

~~(B) Prior to submitting a certificate application to the board, the applicant shall conduct at least one informational meeting open to the public to be held in the area in which the project is located. The applicant will give one public notice of the informational meeting in newspapers of general circulation in the project area, to be published not more than fourteen days or fewer than seven days before the date for the meeting. The notice shall occupy not less than one-fourth of a standard newspaper page, with letters not less than ten point type, and shall bear the heading "Notice of Public Information Meeting for Proposed Major Utility Facility" in bold letters not less than one-fourth inch high or thirty-point type. The information provided shall address the need for the project, the project schedule, the design of the facility, and other pertinent data.~~

~~(C) After filing an accepted, complete application with the board, the applicant shall give at least two public notices of the proposed utility facility in newspapers of general circulation in those municipal corporations and counties in which the chief executive received service of a copy of the application pursuant to rule 4906-5-06 of the Administrative Code.~~

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~~(1) The initial public notice shall be published within fifteen days of the filing of the accepted, complete application and shall include the publication of a summary of the accepted, complete application. The notice shall occupy not less than one-fourth of a standard newspaper page, with letters not less than ten point type, shall bear the heading "notice of proposed major utility facility" in bold letters not less than one-fourth inch high or thirty point type, and shall contain the following information.~~

~~(a) The name and a brief description of the proposed facility, including type and capacity.~~

~~(b) A map showing the location and general layout of the proposed facility.~~

~~(c) A list of officials served with copies of the accepted, complete application pursuant to rule 4906-5-06 of the Administrative Code.~~

~~(d) A list of public libraries that were sent paper copies or notices of availability of the accepted, complete application, and other readily accessible sites (including any web sites and the address of the board) where copies of the accepted, complete application are available for public inspection.~~

~~(e) A statement, including the assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is now pending before the board.~~

~~(f) A statement setting forth the eight criteria listed in division (A) of section 4906.10 of the Revised Code used by the board to review an application.~~

~~(g) Section 4906.07 of the Revised Code, including the time and place of the public hearing.~~

~~(h) Division (C) of section 4906.08 of the Revised Code, including the deadline for filing a notice of intervention or petition for leave to intervene as established by the board or administrative law judge.~~

~~(2) The second public notice shall be published at least seven days but no more than twenty-one days before the public hearing. The notice shall be published with letters not less than ten point type, shall bear the heading "notice of proposed major utility facility" in bold type not less than one-fourth inch high or thirty point type and shall contain the following information:~~

~~(a) The name and a brief description of the project.~~

~~(b) A map showing the location and general layout of the proposed facility.~~

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(c) A statement, including the assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is now pending before the board.

(d) The date, time, and location of the public hearing.

(e) A statement that the public will be given an opportunity to comment on the proposed facility.

(f) A reference to the date of the first public notice.

(3) At least thirty days before the public hearing, the applicant shall send a letter describing the facility to each property owner and affected tenant. The letter shall briefly describe the certification process and shall include the date of the public hearing. The letter shall be sent by first class mail. The name and address of each landowner on the mailing list shall be submitted to the board and to each public official entitled to service of the application pursuant to rule 4906-5-06 of the Administrative Code. The letter shall be sent to each property owner and affected tenant:

(a) Within the planned site or along the preferred or alternate route(s) of the proposed facility.

(b) Contiguous to the planned site or along the preferred or alternate route(s) of the proposed facility.

(c) Who may be approached by the applicant for any additional easement necessary for the construction, operation, or maintenance of the facility.

(d) If the property owner's address is not the same as the address affected by the proposed facility, then the applicant shall also send a letter to the affected property.

(D) Inability or inadvertent failure to notify the persons described in this rule shall not constitute a failure to give public notice, provided substantial compliance with these requirements is met.

4906-5-09 Proof of publication of accepted, complete certificate applications.

(A) The applicant shall file proof of the first public notice, together with a copy of the notice, with the board within fourteen days of publication.

(B) The applicant shall provide proof of the second public notice to the board at least three days before the public hearing by providing a copy of the actual notice from the newspaper(s) in which the notice was published.

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(C) Inadvertent failure of service on, or notice to, any of the persons entitled to receive service pursuant to rules 4906-5-06, 4906-5-07 and 4906-5-08 of the Administrative Code, may be cured pursuant to orders of the board or the administrative law judge, designed to afford such persons adequate notice to enable their effective participation in the proceeding. In addition, the board or the administrative law judge may, after filing, require the applicant to serve notice of the accepted, complete application or copies thereof, or both, upon such other persons, and file proof thereof, as the board or the administrative law judge considers appropriate.

4906-5-10 Amendments of accepted, complete certificate applications and of certificates.

(A) The applicant shall submit to the board any applications for amendment to a pending accepted, complete application in accordance with rule 4906-5-03 of the Administrative Code.

(1) Each application for amendment shall specifically identify the portion of the pending accepted, complete application which has been amended.

(2) The applicant shall serve a copy of the application for amendment upon all persons previously entitled to receive a copy of the application, and shall supply the board with proof of such service, pursuant to rules 4906-5-06 and 4906-5-07 of the Administrative Code.

(3) The applicant shall place a copy of such application for amendment or notice of its availability in all libraries consistent with of rule 4906-5-06 of the Administrative Code, and shall supply the board with proof of such action.

(4) Upon review, the board or the administrative law judge may require such additional action as is determined necessary to inform the general public of the proposed amendment, including, but not limited to:

(a) Ordering the applicant to issue public notice pursuant to rule 4906-5-08 of the Administrative Code.

(b) Postponing public hearings on the pending, accepted, complete application and/or application for amendment up to ninety days after receipt of said application for amendment.

(5) The board staff shall review the application for amendment pursuant to paragraph (D) of rule 4906-5-05 of the Administrative Code.

(6) Unless otherwise ordered by the board or administrative law judge, modifications to a proposed route that are introduced into the record by the applicant during

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review of the accepted, complete application and during the hearing process shall not be considered amendments if such modifications are within the two thousand foot study corridor and do not impact additional landowners by requiring easements for construction, operation, or maintenance or create further impacts within the planned right of way of the proposed facility.

Unless otherwise ordered by the board or administrative law judge, modifications to the footprint of an electric power generating facility that are introduced into the record by the applicant during review of the accepted, complete application and during the hearing process shall not be considered amendments if such modifications do not create further impacts for each property owner or within the planned site, or within the right-of-way of the proposed facility.

(B) Applications for amendments to certificates shall be submitted in the same manner as if they were applications for a certificate unless such amendment falls under a letter of notification or construction notice pursuant to the appendices to rule 4906-1-01 of the Administrative Code.

(1) The board staff shall review applications for amendments to certificates pursuant to rule 4906-5-05 of the Administrative Code and make appropriate recommendations to the board and the administrative law judge.

(a) If the board, its executive director, or the administrative law judge determines that the proposed change in the certified facility would result in any significant adverse environmental impact of the certified facility or a substantial change in the location of all or a portion of such certified facility other than as provided in the alternates set forth in the application, then a hearing shall be held in the same manner as a hearing is held on a certificate application.

(b) If the board, its executive director, or the administrative law judge determines that a hearing is not required, as defined in paragraph (B)(1)(a) of this rule, the applicant shall be directed to take such steps as are necessary to notify all parties of that determination.

(2) The applicant shall:

(a) Serve a copy of the application for amendment to a certificate upon:

(i) The persons entitled to service pursuant to rule 4906-5-06 of the Administrative Code.

(ii) All parties to the original certificate application proceedings.

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(b) File with the board proof of service and, if required, proof of notice pursuant to rules 4906-5-06 to 4906-5-08 of the Administrative Code.

(C) Unless otherwise ordered by the board, its executive director, or administrative law judge, the filing, notifications, informational requirements and processing timelines for a letter of notification or construction notice application for an amendment to a certificate issued for a transmission facility shall be determined by referring to the appropriate appendix to rule 4901-1-01 of the Administrative Code. Such application shall use the letter of notification or construction notice docketing code. In such application, the applicant shall reference the case docket in which the certificate was granted.

4906-5-11 Application fees and board expenses.

(A) The board's expenses associated with the review, analysis, processing, and monitoring of applications made pursuant to Chapters 4906-1 to 4906-17 of the Administrative Code shall be borne by the person submitting the application and shall include all expenses associated with monitoring, construction, operation of the facility and compliance with certificate conditions. Application fees submitted to the board shall be utilized for all direct expenses associated with the consideration of an application and granting of a certificate and monitoring of construction and initial operation of the facility. The chairman shall provide, annually to each applicant, a current summary of the applicant's active cases showing case numbers, fees received, and board expenses.

(B) The application filing fee for a certificate for a single or multiple unit electric power generating plant and associated facilities, or substantial additions thereto, shall consist of the product of fifty cents times the maximum kilowatt electric capacity, as determined by the estimated net demonstrated capability of the highest capacity alternative. The maximum application filing fee shall be one hundred thousand dollars.

(1) After accepting an application as complete, the chairman, using paragraph (B) of this rule, shall determine the amount of the application filing fee, advise the applicant of the fee amount and advise the applicant that it is payable upon filing the accepted, complete application.

(2) Board expenses associated with a preapplication conference will be included as part of the application review expenses. If applicant fails to file an application within twelve months of the preapplication conference, the chairman shall invoice the applicant for the board's expenses incurred as a result of the preapplication conference.

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~~(C) The application filing fee for a certificate for a gas or natural gas transmission line and associated facilities or an electric power transmission line and associated facilities shall consist of:~~

~~(1) An amount based on the estimated construction cost of the most costly alternative route as follows:~~

~~Construction cost~~	~~Fee~~
~~up to - $500,000~~	~~$10,000~~
~~$500,000 -1,000,000~~	~~20,000~~
~~1,000,001 -2,000,000~~	~~30,000~~
~~2,000,001 -5,000,000~~	~~40,000~~
~~5,000,001 - up~~	~~50,000~~

~~(2) After accepting an application as complete, the chairman, using paragraph (C)(1) of this rule, shall determine the amount of the application filing fee, advise the applicant of the fee amount, and advise the applicant that it is payable upon filing the accepted, complete application.~~

~~(3) Board expenses associated with a preapplication conference will be included as part of the application review expenses. If applicant fails to file an application within twelve months of the preapplication conference, the chairman shall invoice the applicant for the expenses the board incurred as a result of the preapplication conference.~~

~~(D) The application filing fee for an amendment to a certificate shall consist of:~~

~~(1) An amount based on the estimated construction cost of the amended portion of the facility estimated as follows:~~

~~Construction cost~~	~~Fee~~
~~up to - $500,000~~	~~$ 3,000~~
~~$500,000 -1,000,000~~	~~6,000~~
~~1,000,001 -2,000,000~~	~~9,000~~
~~2,000,001 -5,000,000~~	~~12,000~~
~~5,000,001 - up~~	~~15,000~~

~~(2) After accepting an amendment application as complete, the chairman, using paragraph (D)(1) of this rule, shall determine the amount of the application filing fee, advise the applicant of the fee amount, and advise the applicant that it is payable upon filing the accepted, complete amendment application.~~

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(E) If the chairman determines that the initial application fee paid under paragraph (B), (C) or (D) of this rule will not be adequate to pay for the board's expenses associated with the application prior to the end of the year in which the certificate is issued, the chairman may charge the applicant a supplemental application fee in an amount necessary to cover such expenses.

(F) At the end of the calendar year in which the certificate is issued, the chairman shall determine if the application filing fee was adequate to pay the actual expenses for review of the application. If the fee was inadequate, the chairman shall invoice the applicant for the amount of the shortage, and shall do so, at least, annually thereafter to cover the board's expenses until the project has been completed. If there are adequate funds, no annual invoicing will be required until a shortage occurs. The review will be done annually. Final reconciliation, including refunds in cases where fees paid exceed the amount needed to cover the board's expenses, will be done at the end of the calendar year in which the applicant notifies the board that the project has been completed. If a certificate application is withdrawn, the chairman shall cause a refund to be issued in the amount of the application fee in excess of the costs incurred to date.

(G) For purposes of this rule, "construction cost" shall include all costs of the project including rights of way, land acquisition, clearing, material and equipment, erection of the facility and any other capital cost applicable to that project.

(H) Except as set forth in paragraph (I) of this rule, board expenses for the resolution of jurisdictional issues, letters of notification, construction notices, and all other incidental services will be invoiced at cost. Payment shall be due upon receipt of an invoice.

(I) An applicant requesting expedited processing of a letter of notification or construction notice shall pay a fee of two thousand dollars due at the time of the filing. This payment is in addition to the payment due pursuant to paragraph (H) of this rule.

(J) The board shall publish annually a report accounting for the collection and expenditure of fees. The annual report shall be published not later than the last day of June of the year following the calendar year to which the report applies.

4906-7-01 Hearings.

(A) Unless otherwise ordered, all hearings shall be held at the principal office of the board. However, where practicable, the board shall schedule a session of the hearing for the purpose of taking public testimony in the vicinity of the project. Reasonable notice of each hearing shall be provided to all parties.

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~~(B) The administrative law judge shall regulate the course of the hearing and conduct of the participants. Unless otherwise provided by law, the administrative law judge may without limitation:~~

~~(1) Administer oaths and affirmations.~~

~~(2) Determine the order in which the parties shall present testimony and the order in which witnesses shall be examined.~~

~~(3) Issue subpoenas.~~

~~(4) Rule on objections, procedural motions, and other procedural matters.~~

~~(5) Examine witnesses.~~

~~(6) Grant continuances.~~

~~(7) Require expert or factual testimony to be offered in board proceedings to be reduced to writing, filed with the board, and served upon all parties and the staff prior to the time such testimony is to be offered and according to a schedule to be set by the administrative law judge.~~

~~(8) Take such actions as are necessary to:~~

~~(a) Avoid unnecessary delay.~~

~~(b) Prevent the presentation of irrelevant or cumulative evidence.~~

~~(c) Prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The administrative law judge may, upon motion of any party, direct that a portion of the hearing be conducted in camera and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information or confidential research, development, or commercial materials and information. The party requesting such protection shall have the burden of establishing that such protection is required.~~

~~(d) Assure the hearing proceeds in an orderly and expeditious manner.~~

~~(C) Members of the public to offer testimony shall be sworn in or affirmed at the portion or session of the hearing designated for the taking of public testimony.~~

~~(D) Formal exceptions to rulings or orders of the administrative law judge are unnecessary if, at the time any ruling or order is made, the party makes known the~~

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~~action which he or she desires the presiding hearing officer to take, or his or her objection to action which has been taken and the basis for that objection.~~

~~4906-7-02 Ex parte discussion of cases.~~

~~After a case has been assigned a formal docket number, neither any board member nor any administrative law judge assigned to the case shall discuss the merits of the case with any party or intervenor to the proceeding, unless all parties and intervenors have been notified and have been given the opportunity of being present or a full disclosure of the communication insofar as it pertains to the subject matter of the case has been made..~~

~~When an ex parte discussion occurs, a representative of the party or parties at the discussion shall prepare a document listing the parties in attendance and providing a full disclosure of the communications made. Within two business days of the occurrence of the ex parte discussion, the document shall be provided to the chairman or board member or to an administrative law judge present at the discussion for review. Upon completion of the review, the final document shall be filed with the board's docketing division and served upon the parties to the case within two business days and the filer shall serve a copy upon the parties to the case and to each participant in the discussion. The document filed and served shall include the following language: Any participant in the discussion who believes that any representation made in this document is inaccurate or that the communications made during the discussion have not been fully disclosed shall prepare a letter explaining the participant's disagreement with the document and shall file the letter with the board and serve the letter upon all parties and participants in the discussion within two business days of receipt of this document.~~

~~4906-7-03 Parties.~~

~~(A) The parties to a board proceeding concerning an application for a certificate shall include:~~

~~(1) Any person who files an application or a petition for a jurisdictional determination.~~

~~(2) Any person who is designated as the subject of a board investigation.~~

~~(3) Any person granted leave to intervene under rule 4906-7-04 of the Administrative Code.~~

~~(4) Any other person expressly made a party by order of the board or administrative law judge.~~

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(B) If any owner of a major utility facility is operated by a receiver or trustee, the receiver or trustee shall also be made a party.

(C) Except for purposes of rules 4906-7-05, 4906-7-06, paragraph (C of rule 4906-7-07, paragraph (I of rule 4906-7-07, and rules 4906-7-09, 4906-7-11, 4906-7-12, 4906-7-14, 4906-7-15, and 4906-7-16 of the Administrative Code, the board staff shall not be considered a party to any proceeding.

4906-7-04 Intervention.

(A) Persons who desire to intervene in a board proceeding shall comply with the following requirements:

(1) The chief executive officer of each municipal corporation and county and the head of each public agency charged with the duty of protecting the environment or of planning land use in the area in which any portion of such facility is to be located may intervene by preparing and filing with the board, within thirty days after the date he or she was served with a copy of the application under division (B) of section 4906.06 of the Revised Code, a notice of intervention containing the following information:

(a) A certification or affirmation as to the legal title and authority of such official.

(b) A statement demonstrating the fact that all or part of the proposed facility is to be located within the area under the jurisdiction of such official.

(c) A statement indicating that such official intends to intervene in the proceedings, together with the grounds for which intervention is sought.

(2) All other persons may petition for leave to intervene by:

(a) Preparing a petition for leave to intervene setting forth the grounds for the proposed intervention and the interest of the petitioner in the proceedings.

(b) Filing said petition within thirty days after the date of publication of the notice required in accordance with paragraph (C)(1 of rule 4906-5-08 of the Administrative Code or in accordance with division (B of section 4906.08 of the Revised Code.

(3) Copies of all notices of intervention and petitions for leave to intervene shall be sent to all parties by the prospective intervenor, and a certificate of service shall be filed with the board at the time of filing said notice or petition pursuant to rule 4906-7-06 of the Administrative Code.

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~~(B) The board or the administrative law judge shall grant petitions for leave to intervene only upon a showing of good cause.~~

~~(1) In deciding whether to permit intervention under this paragraph, the board or the administrative law judge may consider:~~

~~(a) The nature and extent of the person's interest.~~

~~(b) The extent to which the person's interest is represented by existing parties.~~

~~(c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.~~

~~(d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.~~

~~(C) The board or the administrative law judge may, in extraordinary circumstances and for good cause shown, grant a petition for leave to intervene in subsequent phases of the proceeding, filed by a person identified in paragraph (A)(1 or (A)(2 of this rule, who failed to file a timely notice of intervention or petition for leave to intervene. Any petition filed under this paragraph must contain, in addition to the information set forth in paragraph (A)(2 of this rule, a statement of good cause for failing to timely file the notice or petition and shall be granted only upon a finding that:~~

~~(1) Extraordinary circumstances justify the granting of the petition;.~~

~~(2) The intervenor agrees to be bound by agreements, arrangements, and other matters previously made in the proceeding.~~

~~(D) Unless otherwise provided by law, the board or the administrative law judge may:~~

~~(1) Grant limited participation, which permits a person to participate with respect to one or more specific issues, if:~~

~~(a) The person has no real and substantial interest with respect to the remaining issues.~~

~~(b) The person's interest with respect to the remaining issues is adequately represented by existing parties.~~

~~(2) Require intervenors with substantially similar interests to consolidate their examination of witnesses or presentation of testimony.~~

~~**4906-7-05 Role of participants in public hearings.**~~

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~~At the public hearing, the board or the administrative law judge shall accept written or oral testimony from any person regardless of that person's status. However, the right to examine witnesses is reserved exclusively for parties and the staff.~~

~~4906-7-06 Service of pleadings and other papers.~~

~~(A) Unless otherwise ordered by the board or the administrative law judge, all pleadings or papers filed with the board subsequent to the original filing or board entry initiating the proceeding shall be served upon all parties no later than the date of filing. Such pleadings or other papers shall contain a certificate of service. The certificate of service shall state the date and manner of service, identify the names of the persons served, and be signed by the attorney or the party who files the document. The certificate of service for a document served by mail or personal service also shall include the address of the person served. The certificate of service for a document served by facsimile transmission also shall include the facsimile number of the person to whom the document was transmitted. The certificate of service for a document served by electronic message also shall include the e-mail address of the person to whom the document was sent.~~

~~(B) If a party has entered an appearance through an attorney, service of pleadings or other papers shall be made upon the attorney instead of the party. If the party is represented by more than one attorney, service need only be made upon the "trial attorney" designated under rule 4906-7-11 of the Administrative Code. If a spokesperson has been designated under rule 4906-7-11 of the Administrative Code, service upon the spokesperson constitutes service upon all of the persons in such group.~~

~~(C) Service upon an attorney or party may be personal, by mail, by facsimile transmission, or by electronic message. Personal, facsimile transmission, or electronic message service made after five-thirty p.m. shall be considered complete on the next business day.~~

~~(1) Personal service is complete by delivery of the copy to the attorney or to a responsible person at the office of the attorney. Personal service to a party not represented by an attorney is complete by delivery to the party or to a responsible person at the address provided by the party in its pleadings.~~

~~(2) Service by mail to an attorney or party is complete by mailing a copy to his or her last known address. If the attorney or party to be served has previously filed and served one or more pleadings or other papers in the proceeding, the term "last known address" means the address set forth in the most recent such pleading or other paper.~~

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(3) Service of a document to an attorney or party by facsimile transmission may be made only if the person to be served has consented to receive service of the document by facsimile transmission. Service by facsimile transmission is complete upon the sender receiving a confirmation generated by the sender's facsimile equipment that the facsimile transmission has been sent. The sender shall retain the confirmation as proof of service until the case is completed.

(4) Service of a document by electronic message to an attorney or party may be made only if the person to be served has consented to receive service of the document by electronic message. Service by electronic message is complete upon the sender receiving a confirmation generated by the sender's computer that the electronic message has been sent. The sender shall retain the confirmation as proof of service until the case is completed.

(D) For purposes of this rule, the term "party" includes all persons who have filed notices or petitions to intervene which are pending at the time a pleading or paper is to be served, provided that the person serving the pleading or other paper has been served with a copy of the notice or petition to intervene.

4906-7-07 Discovery.

(A) Scope of discovery.

(1) The purpose of this rule is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in board proceedings.

(2) Except as otherwise provided in paragraph (A)(7 of this rule, any party to a board proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of that proceeding. It is not grounds for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained through interrogatories, requests for the production of documents and things or permission to enter upon land or other property, depositions and requests for admission. The frequency of using these discovery methods is not limited unless the board orders otherwise under paragraph (H of this rule.

(3) Any party may, through interrogatories, require any other party to identify each expert witness expected to testify at the hearing and to state the subject matter on which the expert is expected to testify. Thereafter, any party may discovery from the expert or other party facts or data known or opinions held by the expert which are relevant to the stated subject matter. A party who has retained or specially employed an expert may, with the approval of the board, require the party

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~~conducting discovery to pay the expert a reasonable fee for the time spent responding to discovery requests.~~

~~(4) Discovery responses which are complete when made need not be supplemented with subsequently acquired information unless:~~

~~(a) The response fully identified each expert witness expected to testify at the hearing and stated the subject matter upon which each expert was expected to testify.~~

~~(b) The responding party later learned that the response was incorrect or otherwise materially deficient.~~

~~(c) The response indicated that the information sought was unknown or nonexistent and such information subsequently became known or existent.~~

~~(d) An order of the board or agreement of the parties provides for the supplementation of responses.~~

~~(e) Requests for the supplementation of responses are submitted prior to the commencement of the hearing.~~

~~(5) The supplementation of responses required under paragraph (A)(4 of this rule and requests for supplementation of responses submitted pursuant to paragraph (A)(4)(e of this rule shall be provided within five business days of discovery of the new information.~~

~~(6) Nothing in this rule precludes parties from conducting informal discovery by mutually agreeable methods or by stipulation.~~

~~(7) A discovery request under this rule may not seek information from any party which is available in prefiled testimony, prehearing data submissions, or other documents which that party has filed with the board in the pending proceeding. Before serving any discovery request, a party must first make a reasonable effort to determine whether the information sought is available from such sources.~~

~~(8) For purposes of this rule, the term "party" includes any person who has filed a notice or petition to intervene which is pending at the time a discovery request or motion is to be served or filed.~~

~~(9) The staff shall be deemed a "party" under this rule for purposes of conducting discovery, but no party shall conduct discovery against the staff.~~

~~(10) Discovery may not be used to harass or delay existing procedural schedules.~~

~~(B) Time period for discovery.~~

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(1) Discovery may begin immediately after an application is filed or a proceeding is commenced and should be completed as expeditiously as possible. Unless otherwise ordered for good cause shown, discovery must be completed prior to the commencement of the hearing.

(2) The board or the administrative law judge may shorten or extend the time period for discovery upon their own motion or upon motion of any party for good cause shown.

(C) Filing and service of discovery requests and responses.

Except as otherwise provided in paragraphs (H) and (I) of this rule and unless otherwise ordered for good cause shown, discovery requests shall be served upon the party from whom discovery is sought and filed with the board. Upon a showing of good cause, the board or the administrative law judge may determine that the responding party may recover the reasonable cost of providing copies from the party making the request. For purposes of this rule the term "response" includes written responses or objections to interrogatories, requests for the production of documents or tangible things, requests for permission to enter upon land or other property, and requests for admission.

(D) Interrogatories.

(1) Any party may serve upon any other party written interrogatories, to be answered by the party served. If the party served is a corporation, partnership, association, government agency, or municipal corporation, it shall designate one or more of its officers, agents, or employees to answer the interrogatories, who shall furnish such information as is available to the party. Each interrogatory shall be answered separately and fully, in writing and under oath, unless it is objected to, in which case the reason for the objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers or objections upon the party submitting the interrogatories and all other parties within twenty days after the service thereof, or within such shorter or longer time as the board or the administrative law judge may allow. The party submitting the interrogatories may move for an order under paragraph (I of this rule with respect to any objection or other failure to answer an interrogatory.

(2) Subject to the scope of discovery set forth in paragraph (A of this rule, interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served. An interrogatory which is otherwise proper is not objectionable merely because it calls for an

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opinion, contention, or legal conclusion, but the board or the administrative law judge may direct that such interrogatory need not be answered until certain designated discovery has been completed, or until some other designated time. The answers to interrogatories may be used to the extent permitted by the rules of evidence, but such answers are not conclusive and may be rebutted or explained by other evidence.

(3) Where the answer to an interrogatory may be derived or ascertained from public documents on file in this state, or from documents which the party served with the interrogatory has furnished to the party submitting the interrogatory within the preceding twelve months, it is a sufficient answer to such interrogatory to specify the title of the document, the location of the document or the circumstances under which it was furnished to the party submitting the interrogatory, and the page or pages from which the answer may be derived or ascertained.

(4) Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, and the burden of deriving the answer is substantially the same for the party submitting the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party submitting the interrogatory a reasonable opportunity to examine, audit, or inspect such records.

(E) Depositions.

(1) Any party to a board proceeding may take the testimony of any other party or person, other than a member of the board staff, by deposition upon oral examination with respect to any matter within the scope of discovery set forth in paragraph (A of this rule. The attendance of witnesses and production of documents may be compelled by subpoena as provided in rule 4906-7-08 of the Administrative Code.

(2) Any party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to the deponent, to all parties, and to the board. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient for identification. If a subpoena duces tecum is to be served upon the person to be examined, a designation of the materials to be produced thereunder shall be attached to or included in the notice.

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~~(3) If any party shows that he or she was unable with the exercise of due diligence to obtain counsel to represent him or her at the taking of a deposition, the deposition may not be used against such party.~~

~~(4) The board or the administrative law judge may, upon motion, order that a deposition be recorded by other than stenographic means, in which case the order shall designate the manner of recording the deposition, and may include provisions to assure that the recorded testimony will be accurate and trustworthy. If such an order is made, any party may arrange to have a stenographic transcription made at his or her own expense.~~

~~(5) A party may, in the notice and in a subpoena, name a corporation, partnership, association, government agency, or municipal corporation and designate with reasonable particularity the matters on which examination is requested. The organization so named shall choose one or more of its officers, agents, employees, or other persons duly authorized to testify on its behalf, and shall set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.~~

~~(6) Depositions may be taken before any person authorized to administer oaths under the laws of the jurisdiction in which the deposition is taken, or before any person appointed by the board or the administrative law judge. Unless all of the parties expressly agree otherwise, no deposition shall be taken before any person who is a relative, employee, or attorney of any party, or a relative or employee of such attorney.~~

~~(7) The person before whom the deposition is to be taken shall put the witness on oath or affirmation, and shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness. Examination and cross examination may proceed as permitted in board hearings. The testimony shall be recorded stenographically or by any other means ordered under paragraph (E)(4) of this rule. If requested by any of the parties, the testimony shall be transcribed at the expense of the party making the request.~~

~~(8) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope upon the party taking the deposition, who shall transmit them to the officer, who in turn shall propound them to the witness and record the answers verbatim.~~

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(9) At any time during the taking of a deposition, the board or the administrative law judge may, upon motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass, or oppress the deponent or party, order the person conducting the examination to cease taking the deposition, or may limit the scope and manner of taking the deposition as provided in paragraph (H) of this rule. Upon demand of the objecting party or deponent, the taking of the depositions shall be suspended for the time necessary to make a motion for such an order.

(10) If and when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him or her, unless such examination and reading are expressly waived by the witness and the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making the changes. The deposition shall then be signed by the witness unless the signing is expressly waived by the parties or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within ten days after its submission to him or her, the officer shall sign it and state on the record the fact of the waiver or the illness or absence of the witness, or the fact of the refusal to sign together with the reason, if any, given for such refusal. The deposition may then be used as fully as though signed, unless the administrative law judge upon motion to suppress, holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(11) The officer shall certify on the deposition that the witness was duly sworn by him or her and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(12) Documents and things produced for inspection during the examination of the witness shall, upon request of any party, be marked for identification and annexed to the deposition, except that:

(a) The person producing the materials may substitute copies to be marked for identification, if all parties are afforded a fair opportunity to verify the copies by comparison with the originals.

(b) If the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to deposition.

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~~(13) Depositions may be used in board hearings to the same extent permitted in civil actions in courts of record. Unless otherwise ordered for good cause shown, any depositions to be used as evidence must be filed with the board at least three days prior to the commencement of the hearing.~~

~~(14) The notice to a party deponent may be accompanied by a request made in compliance with paragraph (F of this rule for the production of documents or tangible things at the taking of the deposition.~~

~~(F) Production of documents and things, entry upon land or other property.~~

~~(1) Subject to the scope of discovery set forth in paragraph (A of this rule, any party may serve upon any other party a written request to:~~

~~(a) Produce and permit the party making the request, or someone acting on his or her behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, or data compilations, which are in the possession, custody, or control of the party upon whom the request is served.~~

~~(b) Produce for inspection, copying, sampling, or testing any tangible things which are in the possession, control, or custody of the party upon whom the request is served.~~

~~(c) Permit entry upon designated land or other property for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.~~

~~(2) The request shall set forth the items to be inspected either by individual item or by category, and shall describe each category with reasonable particularity. The request shall also specify a reasonable time, place, and manner for conducting the inspection and performing the related acts.~~

~~(3) The party upon whom the request is served shall serve a written response within twenty days after the service of the request, or within such shorter or longer time as the board or the administrative law judge may allow. The response shall state, with respect to each item or category, that the inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reason for the objection shall be stated. If an objection is made to part of an item or category, that part shall be specified. The party submitting the request may move for an order under paragraph (I of this rule with respect to any objection or other failure to respond to a request or any part thereof, or any failure to permit inspection as requested.~~

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(4) Where a request calls for the production of a public document on file in this state, or a document which the party upon whom the request is served has furnished to the party submitting the request within the preceding twelve months, it is a sufficient response to such request to specify the location of the document or the circumstances under which the document was furnished to the party submitting the request.

(C) Request for admission.

(1) Any party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any specific matter within the scope of discovery set forth in paragraph (A) of this rule, including the genuineness of any documents described in the request. Copies of any such documents shall be served with the request unless they are or have been otherwise furnished for inspection or copying.

(2) Each matter for which an admission is requested shall be separately set forth. The matter is admitted unless, within twenty days after the service of the request, or within such shorter or longer time as the board or the administrative law judge may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection, signed by the party or by his or her attorney. If an objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully make an admission or denial. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only part of the matter of which an admission is requested, the party shall specify that portion which is true and qualify or deny the remainder. An answering party may not give lack of information as a reason for failure to admit or deny a matter unless the party states that he or she has made reasonable inquiry and that information known or readily obtainable is insufficient to enable him or her to make an admission or denial. A party who considers the truth of a matter of which an admission has been requested to be a genuine issue for the hearing may not, on that basis alone, object to the request, but may deny that matter or set forth the reasons why an admission or denial cannot be made.

(3) Any party who has requested an admission may move for an order under paragraph (I of this rule with respect to any answer or objection. Unless it appears that an objection is justified, the board or the administrative law judge shall order that an answer be served. If an answer fails to comply with the requirements of this rule, the board or the administrative law judge may:

(a) Order that the matter be admitted for purposes of the pending proceeding.

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(b) Order that an amended answer be served.

(c) Determine that final disposition of the matter should be deferred until a prehearing conference or some other designated time prior to the commencement of the hearing.

(4) Unless otherwise ordered by the board or the administrative law judge, any matter admitted under this rule is conclusively established against the party making the admission, but such admission may be rebutted by evidence offered by any other party. An admission under this rule is an admission for the purposes of the pending proceeding only and may not be used for any other purposes.

(H) Motions for protective orders.

(1) Upon motion of any party or person from whom discovery is sought, the board or the administrative law judge may issue any order which is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such a protective order may provide that:

(a) Discovery not be had.

(b) Discovery may be had only on specified terms and conditions.

(c) Discovery may be had only by a method of discovery other than that selected by the party seeking discovery.

(d) Certain matters not be inquired into.

(e) The scope of discovery be limited to certain matters.

(f) Discovery be conducted with no one present except persons designated by the board or the administrative law judge.

(g) A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way;.

(h) Information acquired through discovery be used only for purposes of the pending proceeding, or that such information be disclosed only to designated persons or classes of persons.

(2) No motion for a protective order shall be filed under this rule until the person or party seeking the order has exhausted all other reasonable means of resolving any differences with the party seeking discovery. A motion for a protective order shall be accompanied by:

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(a) A memorandum in support, setting forth the specific basis of the motion and citations to any authorities relied upon.

(b) Copies of any specific discovery request which are the subject of the request for a protective order.

(c) An affidavit of counsel, or of the person seeking a protective order if such person is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party seeking discovery.

(3) If a request for a protective order is denied in whole or in part, the board or the administrative law judge may require that the party or person seeking the order provide or permit discovery on such terms and conditions as are just.

(4) Upon motion of any party or person filing a document with the board's docketing division relative to a case before the board, the board or the administrative law judge assigned to the case may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where it is determined that both of the following criteria are met: The information is deemed by the board or administrative law judge assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure. The following requirements apply to a motion filed under this paragraph.

(a) All documents submitted pursuant to paragraph (H of this rule should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information. Such redacted documents should be filed with the otherwise required number of copies for inclusion in the public case file.

(b) Three unredacted copies of the allegedly confidential information shall be filed under seal, along with a motion for protection of the information, with the chief of the docketing division, or the chief's designee. Each page of the allegedly confidential material filed under seal must be marked as "Confidential," "Proprietary", or "Trade Secret".

(c) The motion for protection of allegedly confidential information shall be accompanied by a memorandum in support setting forth the specific basis of the motion, including a detailed discussion of the need for protection from disclosure, and citations of any authorities relied upon. The motion and

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~~memorandum in support shall be made part of the public record of the proceeding.~~

~~(5) Pending a ruling on a motion filed in accordance with paragraph (H of this rule, the information filed under seal will not be included in the public record of the proceeding or disclosed to the public until otherwise ordered or released pursuant to this rule. The board and its employees will undertake reasonable efforts to maintain the confidentiality of the information pending a ruling on the motion. A document or portion of a document filed with the docketing division that is marked "Confidential", "Proprietary", "Trade Secret", or with any other such marking, will not be afforded confidential treatment and protected from disclosure unless it is filed in accordance with paragraph (H of this rule.~~

~~(6) Unless otherwise ordered, any order prohibiting public disclosure pursuant to paragraph (E)(4 of this rule shall automatically expire eighteen months after the date of its issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond eighteen months shall file an appropriate motion and shall include a detailed discussion of the need for continued protection from disclosure.~~

~~(I) Motions to compel discovery.~~

~~(1) Any party, upon reasonable notice to all other parties and any persons affected thereby, may move for an order compelling discovery, with respect to:~~

~~(a) Any failure of a party to answer an interrogatory served under paragraph (D of this rule.~~

~~(b) Any failure of a party to produce a document or tangible thing or permit entry upon land or other property as requested under paragraph (F of this rule.~~

~~(c) Any failure of a deponent to appear or to answer a question propounded under paragraph (E of this rule.~~

~~(d) Any other failure to answer or respond to a discovery request made under paragraphs (D to (G of this rule.~~

~~(2) For purposes of this rule, an evasive or incomplete answer shall be treated as a failure to answer.~~

~~(3) No motion to compel discovery shall be filed under this rule until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought. A motion to compel discovery shall be accompanied by:~~

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~~(a) A memorandum in support, setting forth:~~

~~(i) The specific basis of the motion, and citations of any authorities relied upon.~~

~~(ii) A brief explanation of how the information sought is relevant to the pending proceeding.~~

~~(iii) Responses to any objections raised by the party or person from whom discovery is sought.~~

~~(b) Copies of any specific discovery requests which are the subject of the motion to compel, and copies of any responses or objections thereto.~~

~~(c) An affidavit of counsel, or of the party seeking to compel discovery if such party is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party or person from whom discovery is sought.~~

~~(4) The board or the administrative law judge may grant or deny the motion in whole or in part. If the motion is denied in whole or in part, the board or the administrative law judge may issue such protective order as would be appropriate under paragraph (H of this rule.~~

~~(5) Any order of the administrative law judge granting a motion to compel discovery in whole or in part may be appealed to the board in accordance with rule 4906-7-15 of the Administrative Code. If no application for review is filed within the time limit set forth in that rule, the order of the administrative law judge becomes the order of the board.~~

~~(6) If any party or person disobeys an order of the board compelling discovery, the board may:~~

~~(a) Seek appropriate judicial relief against the disobedient person or party under section 4903.04 of the Revised Code.~~

~~(b) Prohibit the disobedient party from further participation in the pending proceeding.~~

~~(c) Prohibit the disobedient party from supporting or opposing designated claims or defenses, or from introducing evidence or conducting cross-examination on designated matters.~~

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(d) Dismiss the pending proceeding if such proceeding was initiated by an application or petition, unless such a dismissal would unjustly prejudice any other party.

(e) Take such other action as the board considers appropriate.

4906-7-08 Subpoenas.

(A) The board, any board member empowered to vote, or the administrative law judge assigned to a case may issue subpoenas, upon their own motion or upon motion of any party or the staff. A subpoena shall command the person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command such a person to produce the books, papers, documents, or other tangible things described therein. A copy of the motion for a subpoena and the subpoena itself should be submitted to the board, any board member entitled to vote, or the administrative law judge assigned to the case for signature of the subpoena. A copy of the motion for a subpoena and a copy of the signed subpoena shall be docketed and served upon the parties of the case.

(B) Arranging for service of a signed subpoena is the responsibility of the requesting person. A subpoena may be served by a sheriff, deputy sheriff, or any other person who is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy to such person, or by reading it to him or her in person, or by leaving a copy at his or her place of work or residence. A subpoena may be served at any place within this state. The person serving the subpoena shall file a return thereof with the docketing division.

(C) The board or the administrative law judge may, upon their own motion or upon motion of any party, quash a subpoena if it is unreasonable or oppressive, or condition the denial of such a motion upon the advancement by the party on whose behalf the subpoena was issued of the reasonable costs of producing the books, papers, documents, or other tangible things described therein.

(D) A subpoena may require a person, other than a member of the board staff, to attend and give testimony at a deposition, and to produce designated books, papers, documents, or other tangible things within the scope of discovery set forth in paragraph (A) of rule 4906-7-07 of the Administrative Code. Such a subpoena is subject to the provisions of paragraph (H) of rule 4906-7-07 of the Administrative Code as well as paragraph (C) of this rule.

(E) Unless otherwise ordered for good cause shown, all motions for subpoenas requiring the attendance of witnesses at a hearing must be filed with the board no later than five days prior to the commencement of the hearing.

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~~(F) Any persons subpoenaed to appear at a board hearing, other than a party or an officer, agent, or employee of a party, shall receive the same witness fees and mileage expenses provided in civil actions in courts of record. For purposes of this paragraph, the term "employee" includes consultants and other persons retained or specially employed by a party for purposes of the proceeding. If the witness is subpoenaed at the request of one or more parties, the witness fees and mileage expenses shall be paid by such party or parties. If the witness is subpoenaed upon motion of the board, any board member entitled to vote, or the administrative law judge, the witness fees and mileage expenses shall be paid by the state, in accordance with section 4903.05 of the Revised Code. Unless otherwise ordered, an application for a subpoena requiring the attendance of a witness at a hearing shall be accompanied by a deposit sufficient to cover the required witness fees and mileage expenses for one day's attendance. The deposit shall be tendered to the fiscal officer of the board, who shall retain it until the hearing is completed, at which time the officer shall pay the witness the necessary fees and expenses, and shall either charge the party making the deposit for any deficiency or refund to such party any surplus remaining from the deposit.~~

~~(G) If any person fails to obey a subpoena issued by the board, any board member entitled to vote or an administrative law judge, the board may seek appropriate judicial relief against such person under section 4903.02 or 4903.04 of the Revised Code.~~

~~(H) A sample subpoena is provided in the appendix to this rule.~~

~~**4906-7-09 Stipulations.**~~

~~Any two or more parties may enter into a written or oral stipulation concerning issues of fact or the authenticity of documents.~~

~~(A) A written stipulation must be signed by all of the parties joining therein, and must be filed with the board and served upon all parties to the proceeding.~~

~~(B) An oral stipulation may be made only during a public hearing or record prehearing conference, and all parties joining in such a stipulation must acknowledge their agreement thereto on the record. The board or the administrative law judge may require that an oral stipulation be reduced to writing and filed and served in accordance with paragraph (A) of this rule.~~

~~(C) No stipulation shall be considered binding upon the board.~~

~~**4906-7-10 Prehearing conferences.**~~

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(A) In any proceeding, the board or the administrative law judge may, upon motion of any party or upon their own motion, hold one or more prehearing conferences for the purpose of:

(1) Resolving outstanding discovery matters, including:

(a) Ruling on pending motions to compel discovery or motions for protective orders.

(b) Establishing a schedule for the completion of discovery.

(2) Ruling on any other pending procedural motions.

(3) Identifying the witnesses to be presented in the proceeding and the subject matter of their testimony.

(4) Identifying and marking exhibits to be offered in the proceeding;.

(5) Discussing possible admissions or stipulations regarding issues of fact or the authenticity of documents.

(6) Clarifying the issues involved in the proceeding.

(7) Discussing or ruling on any other procedural matter which the board or the administrative law judge considers appropriate.

(B) Reasonable notice of any prehearing conference shall be provided to all parties. Unless otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at such conference.

(C) Following the conclusion of a prehearing conference, the board or the administrative law judge may issue an appropriate prehearing order, reciting or summarizing any agreements reached or rulings made at such conference. Unless otherwise ordered for good cause shown, such order shall be binding upon all persons who are or subsequently become parties, and shall control the subsequent course of the proceeding.

4906-7-11 Practice before the board and designation of trial attorney and spokesperson.

(A) Except as otherwise provided in paragraphs (B), (C), and (D of this rule, each party shall be represented by an attorney at law authorized to practice before the courts of this state, with the exception of an individual person who is appearing on his or her own behalf.

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(B) Persons authorized to practice law in other jurisdictions may be permitted to appear before the board in a particular proceeding upon motion of an attorney of this state.

(C) Certified legal interns may appear before the board under the direction of a supervising attorney in accordance with rule II of the "Supreme Court Rules for the Government of the Bar of Ohio." No legal intern shall participate in a board hearing in the absence of the supervising attorney without:

(1) The written consent of the supervising attorney.

(2) The approval of the board or the administrative law judge.

(D) In cases where there are numerous parties whose interests are substantially similar, the board or the administrative law judge may permit or require the designation of a spokesperson or consolidation of representation.

(E) Where a party is represented by more than one attorney, one of the attorneys shall be designated as the "trial attorney," who shall have principal responsibility for the party's participation in the proceeding. The designation "trial attorney" shall appear following the name of that attorney on all pleadings or papers submitted on behalf of the party.

(F) No attorney shall withdraw from a board proceeding without prior written notice to the board and shall serve a copy of the notice upon the parties to the proceeding.

4906-7-12 Motions.

(A) All motions, unless made at a public hearing or transcribed prehearing conference, or unless otherwise ordered for good cause shown, shall be in writing and shall be accompanied by a memorandum in support. The memorandum in support shall contain a brief statement of the grounds for the motion and citations of any authorities relied upon.

(B) Except as otherwise provided in paragraphs (C and (F of this rule:

(1) Any party may file a memorandum contra within fifteen days after the service of a motion, or such other period as the board or the administrative law judge requires.

(2) Any party may file a reply memorandum within seven days after the service of a memorandum contra, or such other period as the board or the administrative law judge requires.

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(C) Any motion may include a specific request for an expedited ruling. The grounds for such a request shall be set forth in the memorandum in support. If the motion requests an extension of time to file pleadings or other papers of five days or less, an immediate ruling may be issued without the filing of memoranda. In all other cases, the party requesting an expedited ruling must first contact all other parties to determine whether any party objects to the issuance of such a ruling without the filing of memoranda. If the moving party certifies that no party objects to the issuance of such a ruling, an immediate ruling may be issued. If any party objects to the issuance of such a ruling, or if the moving party fails to certify that no party has any objections, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the board or the administrative law judge requires. No reply memoranda shall be filed in such cases unless specifically requested by the board or the administrative law judge.

(D) All written motions and memoranda shall be filed with the board and served upon all parties in accordance with rule 4906-7-06 of the Administrative Code.

(E) For purposes of this rule, the term "party" includes all persons who have filed notices or petitions to intervene which are pending at the time a motion or memorandum is to be filed or served.

(F) Notwithstanding paragraphs (B) and (C) of this rule, the board or the administrative law judge may, upon their own motion, issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party.

(G) The administrative law judge may direct that any motion made at a public hearing or transcribed prehearing conference be reduced to writing and filed and served in accordance with this rule.

4906-7-13 Continuances and extensions of time.

(A) Except as otherwise provided by law, and notwithstanding any other provision in this chapter, continuances of hearings and extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown, or upon motion of the board or the administrative law judge.

(B) A motion for an extension of time to file a document must be timely filed so as to permit the board or administrative law judge sufficient time to consider the request and to make a ruling prior to the established filing date. If two or more parties have similar documents due the same day and a party intends to seek an extension of the filing date, the moving party must file its motion for an extension sufficiently in advance of the existing filing date so that other parties who might be disadvantaged

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by submitting their filing prior to the movant submitting its filing will not be disadvantaged. If two or more parties have similar documents due the same day and the motion for an extension is filed fewer than five business days before the document is scheduled to be filed, then the moving party, in addition to regular service of the motion for an extension, must provide a brief summary of the request to all other parties orally, by facsimile transmission, or by electronic message by no later than five thirty p.m. on the day the motion is filed.

(C) A copy of any written ruling granting or denying a request for a continuance or extension of time shall be served upon all parties to the proceeding.

(D) Nothing in this rule restricts or limits the authority of the administrative law judge to issue oral rulings during public hearings or transcribed prehearing conferences.

4906-7-14 Procedural rulings.

The board or the administrative law judge may rule, in writing, upon any procedural motion or other procedural matter. A copy of any such ruling shall be served upon all parties to the proceeding.

4906-7-15 Interlocutory appeals.

(A) Any party who is adversely affected thereby may take an immediate interlocutory appeal to the board from any ruling issued under rule 4906-7-14 of the Administrative Code or any oral ruling issued during a hearing or prehearing conference which:

(1) Grants a motion to compel discovery or denies a motion for a protective order.

(2) Denies a motion to intervene or terminates a party's right to participate in a proceeding.

(3) Refuses to quash a subpoena.

(4) Requires the production of documents or testimony over an objection based on privilege.

(B) Except as provided in paragraph (A of this rule, no party may take an interlocutory appeal from any ruling issued under rule 4906-7-14 of the Administrative Code or any oral ruling issued during a hearing or prehearing conference unless the appeal is certified to the board by the administrative law judge. The administrative law judge shall not certify such an appeal unless he or she finds that:

(1) The appeal presents a new or novel question of law or policy.

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(2) An immediate determination by the board is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the board ultimately reverse the ruling in question.

(C) Any party wishing to take an interlocutory appeal from any ruling must file an application for review with the board within five days after the ruling is issued. An extension of time for the filing of an interlocutory appeal may be granted only under extraordinary circumstances. The application for review shall set forth the basis of the appeal and citations of any authorities relied upon. A copy of the ruling or the portion of the record which contains the ruling shall be attached to the application for review. If the record is unavailable, the application for review must set forth the date the ruling was issued and must describe the ruling with reasonable particularity.

(D) Unless otherwise ordered by the board, any party may file a memorandum contra within five days after the filing of any application for review.

(E) Upon consideration of an interlocutory appeal, the board may, in its discretion:

(1) Affirm, reverse, or modify the ruling of the administrative law judge.

(2) Dismiss the appeal, if the board is of the opinion that:

(a) The issues presented are moot.

(b) The party taking the appeal lacks the requisite standing to raise the issues presented or has failed to show prejudice as a result of the ruling in question.

(c) The issues presented should be deferred and raised at some later point in the proceeding.

(F) Any party that is adversely affected by a ruling issued under rule 4906-7-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference and that (1 elects not to take an interlocutory appeal from the ruling or (2 files an interlocutory appeal that is not certified by the administrative law judge may still raise the propriety of that ruling as an issue for the board's consideration by discussing the matter as a distinct issue in its initial brief or in any other appropriate filing prior to the issuance of the board's order in the case.

4906-7-16 Administrative law judge reports and exceptions thereto.

(A) If ordered by the board, the administrative law judge shall prepare a written report of his or her findings, conclusions, and recommendations following the conclusion of the hearing. Such report shall be filed with the board and served upon all parties.

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~~(B) Any party may file exceptions to an administrative law judge's report within twenty days after such report is filed with the board. Exceptions shall be stated and numbered separately, and shall be accompanied by a memorandum in support, setting forth the basis of the exceptions and citations of any authorities relied upon. If any exception relates to one or more findings of fact, the memorandum in support should, where practicable, include specific citations to any portions of the record relied upon in support of the exception.~~

~~(C) Any party may file a reply to another party's exceptions within fifteen days after the service of those exceptions.~~

~~**4906-7-17 Decision by the board.**~~

~~(A) Within a reasonable time after the conclusion of the hearing, service of the report of the administrative law judge, if any, and the filing of any exceptions and replies to the exceptions, the board shall issue a final decision based only on the record, including such additional evidence as it shall order admitted.~~

~~(1) The board may determine that the location of all or part of the proposed facility should be modified.~~

~~(a) If it so finds, it may condition its certificate upon such modifications.~~

~~(b) Persons and municipal corporations shall be given reasonable notice thereof, in accordance with the provisions of paragraph (A)(3 of this rule.~~

~~(2) Specific citation in Chapters 4906-13, 4906-15, and 4906-17 of the Administrative Code with regard to a certificate application complying with building codes and boiler pressure piping, and elevator inspections and evaluations conducted by a statutorily empowered state agency, shall not be deemed to prohibit the board from issuing a certificate conditioned upon an applicant complying with other state or local statutes, ordinances, and regulations which are designed to protect the public health, welfare, and safety.~~

~~(3) The decision of the board shall be entered on the board journal and into the record of the hearing. Copies of the decision or order shall be served on all attorneys of record and all unrepresented parties in the proceedings by ordinary mail.~~

~~(B) In its deliberations, the board may order the parties to submit briefs on such issues as it addresses to the parties within such time limits as the board shall prescribe. The board may also schedule oral arguments before it.~~

~~(C) Applications for reopening a proceeding after final submission but before a final order has been issued shall be by petition, and shall set forth specifically the grounds~~

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upon which such application is based. If such application is to reopen the proceeding for further evidence, the nature and purpose of such evidence must be briefly stated, including a statement why such evidence was not available at the time of hearing, and the evidence must not be merely cumulative.

(D) Any party or any affected person, firm, or corporation may file an application for rehearing, within thirty days after the issuance of a board order, in the manner and form and circumstances set forth in section 4903.10 of the Revised Code. An application for rehearing must set forth the specific ground or grounds upon which the applicant considers the board order to be unreasonable or unlawful. An application for rehearing must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the application for rehearing and which shall be filed no later than the application for rehearing.

(E) Any party may file a memorandum contra within ten days after the filing of an application for rehearing.

(F) As provided in section 4903.10 of the Revised Code, all applications for rehearing must be submitted within thirty days after an order has been journalized by the secretary of the board.

(G) A party or any affected person, firm, or corporation may only file one application for rehearing to a board order within thirty days following the entry of the order upon the journal of the board.

(H) An application for rehearing filed under section 4903.10 of the Revised Code, or a memorandum contra an application for rehearing filed pursuant to this rule may not be delivered via facsimile transmission.

(I) The board, the chairman of the board, or the administrative law judge may issue an order granting rehearing for the purpose of affording the board more time to consider the issues raised in an application for rehearing.

4906-7-18 Supreme court appeals.

Consistent with the requirements of section 4903.13 of the Revised Code, a notice of appeal of a board order to the Ohio supreme court must be filed with the board's docketing division within the time period prescribed by the court and served upon the chairman of the board or, in his absence, upon any voting board member, or by leaving a copy at the offices of the board. A notice of appeal of a board order to the Ohio supreme court may not be delivered via facsimile transmission.

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4906-7-19 General provisions.

(A) This chapter sets forth the procedural standards which apply to all persons or entities participating in cases before the board.

(B) The board may, for good cause shown, waive any requirement, standard, or rule set forth in this chapter or prescribe different practices or procedures to be followed in a case.

4906-9-01 Enforcement investigations by the board.

(A) Upon finding reasonable grounds, the board shall initiate a proceeding to investigate an alleged violation of section 4906.98 of the Revised Code.

(B) The board shall conduct a violation proceeding under sections 4906.97 and 4906.98 of the Revised Code, and in accordance with Chapter 4906-7 of the Administrative Code to the extent not inconsistent with section 4906.97 of the Revised Code.

(C) While an alleged violation of section 4906.98 of the Revised Code is under board investigation, the board or its chairperson or designee may order the suspension of the involved activity. A suspension order may be terminated by the board or its chairperson or designee at any time during the board's investigation of the alleged violation.

(D) Unless otherwise ordered by the board or an administrative law judge, the staff of the board shall file with the board, and serve upon the person alleged to have violated section 4906.98 of the Revised Code and all other parties, a written report of investigation within twenty one days after initiation of the involved proceeding. The report shall include the staff's findings on the alleged violation and staff's recommendations for board action.

(E) The board shall require an evidentiary hearing on the alleged violation. The hearing may include evidence on corrective action, forfeitures, and other remedies.

(F) The complaining party (which may include staff) shall have the burden to prove the occurrence of the violation by a preponderance of the evidence.

(G) If, after a hearing, the board finds that a violation of section 4906.98 of the Revised Code occurred, the board may order appropriate remedies, which may include one or more of the following:

(1) Direct the person to cease the violation.

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(2) Direct the person to comply with the certificate and/or a board order or suspension.

(3) Direct the person to take corrective action and include a date by which such corrective action must be taken or completed.

(4) Assess forfeitures in accordance with sections 4906.97 and 4906.99 of the Revised Code.

(5) Direct the attorney general to seek enforcement of board orders, including orders assessing forfeitures and appropriate remedies, in state or federal court.

(6) Approve other appropriate remedies.

(H) The board may request that the attorney general seek enforcement and other appropriate relief in common pleas court, if necessary to enforce its order.

4906-9-02 Payment of forfeitures, compromise forfeitures and payments made pursuant to stipulations in enforcement investigations.

(A) All forfeitures, compromise forfeitures and payments made pursuant to stipulations shall be paid by certified check or money order made payable to "Treasurer of the state of Ohio, general revenue fund," and shall be designated by case number.

(B) All forfeitures, compromise forfeitures and payments made pursuant to stipulations shall be mailed or delivered to:

"Attorney General of Ohio, Public Utilities Section

180 East Broad Street, 9th Floor

Columbus, Ohio 43215-3793"

4906-11-01 Letter of notification requirements.

(A) A letter of notification filed with the board shall contain the information described in paragraphs (B) to (E) of this rule. If the applicant requests expedited processing of the letter of notification, in addition to filing the letter with the docketing department, the applicant shall also serve a copy of the letter of notification directly with the board's executive director or the executive director's designee at or before the filing of the expedited letter of notification by hand delivery or overnight courier service.

(B) General information containing the following information:

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(1) The name of the project and applicant's reference number, if any, names and reference number(s) of resulting circuits and a brief description of the project, and why the project meets the requirements for a letter of notification.

(2) If the proposed letter of notification project is an electric power transmission line or gas or natural gas transmission line, a statement explaining the need for the proposed facility.

(3) The location of the project in relation to existing or proposed lines and stations shown on the maps and overlays provided to the public utilities commission of Ohio in the applicant's most recent long term forecast report.

(4) The alternatives considered and reasons why the proposed location or route is best suited for the proposed facility. The discussion shall include, but not be limited to impacts associated with socioeconomic, natural environment, construction, or engineering aspects of the project.

(5) The anticipated construction schedule and proposed in-service date of project.

(6) An area map of not less than 1:24,000 scale clearly depicting the facility's centerline with clearly marked streets, roads, and highways, and clearly written instructions for locating and viewing the facility.

(7) A list of properties for which the applicant has obtained easements, options, and/or land use agreements necessary to construct and operate the facility and a list of the additional properties for which such agreements have not been obtained.

(C) Technical features of the project. This description shall contain the following information:

(1) Operating characteristics, estimated number and types of structures required, and right-of-way and/or land requirements.

(2) For electric power transmission lines, the production of electric and magnetic fields during the operation of the proposed electric power transmission line. The discussion shall include:

(a) Calculated electric and magnetic field strength levels at one meter above ground under the lowest conductors and at the edge of the right-of-way for:

(i) Normal maximum loading.

(ii) Emergency line loading.

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~~(iii) Winter normal conductor rating.~~

~~(b) A discussion of the company's consideration of design alternatives with respect to electric and magnetic fields and their strength levels, including alternate conductor configuration and phasing, tower height, corridor location, and right-of-way width.~~

~~(3) The estimated cost of the project by federal energy regulatory commission account, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital costs classified in the accounting format ordinarily used by the applicant in its normal course of business).~~

~~(D) Socioeconomic data. Describe the social and ecological impacts of the project. This description shall contain the following information:~~

~~(1) A brief, general description of land use within the vicinity of the proposed project, including: (a) a list of municipalities, townships, and counties affected; and (b) estimates of population density adjacent to rights-of-way within the study corridor (the U.S. census information may be used to meet this requirement).~~

~~(2) The location and general description of all agricultural land (including agricultural district land) existing at least sixty days prior to submission of the letter of notification within the proposed electric power transmission line right-of-way, or within the proposed electric power transmission substation fenced in area, or within the construction site boundary of a proposed compressor station.~~

~~(3) A description of the applicant's investigation (concerning the presence or absence of significant archeological or cultural resources that may be located within the area likely to be disturbed by the project), a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.~~

~~(4) Documentation that the chief executive officer of each municipal corporation and county, and the head of each public agency charged with planning land use in the area in which any portion of the facility is to be located have been notified of the project and have been provided a copy of the letter of notification. The applicant shall describe the company's public information program used in the siting of the proposed facility. The information submitted shall include either a copy of the material distributed to the public or a copy of the agenda and summary of the meeting(s) held by the applicant.~~

~~(5) A brief description of any current or pending litigation involving the project known to the applicant at the time of the letter of notification.~~

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(6) A listing of the local, state, and federal governmental agencies known to have requirements that must be met in connection with the construction of the project, and a list of documents that have been or are being filed with those agencies in connection with siting and constructing the project.

(E) Environmental data. Describe the environmental impacts of the proposed project. This description shall include the following information:

(1) A description of the applicant's investigation concerning the presence or absence of federal and state designated species (including endangered species, threatened species, rare species, species proposed for listing, species under review for listing, and species of special interest) that may be located within the area likely to be disturbed by the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.

(2) A description of the applicant's investigation concerning the presence or absence of areas of ecological concern (including national and state forests and parks, floodplains, wetlands, designated or proposed wilderness areas, national and state wild and scenic rivers, wildlife areas, wildlife refuges, wildlife management areas, and wildlife sanctuaries) that may be located within the areas likely to be disturbed by the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.

(3) Any known additional information that will describe any unusual conditions resulting in significant environmental, social, health, or safety impacts.

4906-11-02 Construction notice requirements.

(A) A construction notice filed with the board shall contain the information described in paragraphs (B) and (C) of this rule. If the applicant requests expedited processing of the construction notice, in addition to filing the notice with the docketing department, the applicant shall also serve a copy of the construction notice directly with the executive director or the executive director's designee at or before the filing of the expedited construction notice by hand delivery or overnight courier service.

(B) A construction notice shall contain the following information:

(1) The name of the project.

(2) A brief description of the project, including a map depicting the facility's location and the reason why the project meets the requirements for a construction notice.

(3) If the proposed construction notice project is an electric power transmission line or gas or natural gas transmission line, a statement explaining the need for the proposed facility.

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~~(4) The anticipated construction schedule and proposed in-service date of the project.~~

~~(5) The estimated capital costs of the project.~~

~~(6) A description of the operating characteristics, estimated number and types of structures required, and right-of-way requirements.~~

~~(7) An area map of not less than 1:24,000 scale clearly depicting the facility's centerline, with clearly marked streets, roads, and highways, and clearly written instructions for locating and viewing the facility.~~

~~(8) A list of properties for which the applicant has obtained easements, options, and/or land use agreements necessary to construct and operate the facility and a list of the additional properties for which such agreements have not been obtained.~~

~~(C) Documentation that the chief executive officer of each municipal corporation and county, and the head of each public agency charged with protecting the environment or of planning land use in the area in which any portion of the facility is to be located have been notified of the project and have been provided a copy of the construction notice.~~

~~4906-13-01 Project summary and general instructions.~~

~~(A) An applicant for a certificate to site an electric power generating facility shall provide a project summary and overview of the proposed project. In general, the summary should be suitable as a reference for state and local governments and for the public. The summary and overview shall include the following:~~

~~(1) A statement explaining the general purpose of the facility.~~

~~(2) A description of the proposed facility.~~

~~(3) A description of the site selection process, including descriptions of the major alternatives considered.~~

~~(4) A discussion of the principal environmental and socioeconomic considerations of the preferred and alternate sites.~~

~~(5) An explanation of the project schedule (a bar chart is acceptable).~~

~~(B) Information filed by the applicant in response to the requirements of this section shall not be deemed responses to any other section of the application requirements.~~

~~(C) If the applicant has prepared the required hard copy maps using digital, geographically referenced data, an electronic copy of all such data, excluding data~~

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~~obtained by the applicant under a licensing agreement which prohibits distribution, shall be provided to the board staff on computer disk concurrent with submission of the application.~~

~~(D) If an applicant for a generation facility asserts that a particular requirement in this chapter is not applicable to the proposed facility, the applicant must provide an explanation why the requirement is not applicable. Further, an applicant for a generation facility which is not powered by coal, gas, natural gas, or wind shall provide in its application all relevant technological, financial, environmental, social, and ecological information that is generally known in the industry to be of potential concern for the particular type of facility proposed.~~

~~4906-13-02 Project description in detail and project schedule in detail.~~

~~(A) An applicant for a certificate to site an electric power generating facility under this chapter shall provide a detailed description of the proposed generation and associated facility.~~

~~(1) The applicant shall submit for each alternative:~~

~~(a) Type, number of units, and estimated net demonstrated capability, heat rate, annual capacity factor and hours of annual generation.~~

~~(b) Land area requirement.~~

~~(c) Fuel quantity and quality (i.e., ash, sulfur, and British thermal unit value).~~

~~(d) A list of types of pollutant emissions.~~

~~(e) Water requirement, source of water, treatment, quantity of any discharge and names of receiving streams.~~

~~(2) The applicant shall submit a description of the major equipment.~~

~~(3) The applicant shall submit a brief description of the need for new transmission line(s) associated with the proposed facility.~~

~~(B) Detailed project schedule.~~

~~(1) Schedule. The applicant shall provide a proposed schedule in bar chart format covering all applicable major activities and milestones, including:~~

~~(a) Acquisition of land and land rights.~~

~~(b) Preparation of the application.~~

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~~(c) Submittal of the application for certificate.~~

~~(d) Issuance of the certificate.~~

~~(e) Preparation of the final design.~~

~~(f) Construction of the facility.~~

~~(g) Placement of the facility in service.~~

~~(2) Delays. The applicant shall describe the impact of critical delays on the eventual in service date.~~

~~4906-13-03 Site alternatives analyses.~~

~~(A) The applicant shall conduct a site selection study prior to submitting an application for an electric power generating facility. The study shall be designed to evaluate all practicable sites for the proposed facility area.~~

~~(1) The applicant shall provide the following:~~

~~(a) A description of the study area or geographic boundaries selected, including the rationale for the selection.~~

~~(b) A map of suitable scale which includes the study area and which depicts the general sites which were evaluated.~~

~~(c) A comprehensive list and description of all qualitative and quantitative siting criteria, factors, or constraints utilized by the applicant, including any evaluation criteria or weighting values assigned to each.~~

~~(d) A description of the process by which the applicant utilized the siting criteria to determine the proposed site and any proposed alternative site(s).~~

~~(e) A description of the sites selected for evaluation, their final ranking, and the factors and rationale used by the applicant for selecting the proposed site and any proposed alternative site(s).~~

~~(f) A description of the sites selected for evaluation, their final ranking, and the rationale for selecting the proposed site and any proposed alternative site(s).~~

~~(g) A description of any qualitative or other factor utilized by the applicant in the selection of the proposed site and any proposed alternative site(s).~~

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(2) The applicant shall provide one copy of any constraint map utilized for the study directly to the board staff for review.

(B) The applicant shall provide a summary table comparing the sites, utilizing the technical, financial, environmental, socioeconomic, and other factors identified in the study. Design and equipment alternatives shall be included where the use of such alternatives influenced the siting decision.

(C) The applicant may provide a copy of any site selection study produced by or for the applicant for the proposed project as an attachment to the application. The study may be submitted in response to paragraphs (A) and (B) of this rule, provided that the information contained therein is responsive to the requirements of paragraphs (A) and (B) of this rule.

4906-13-04 Technical data.

(A) Site. Information on the location, major features, and the topographic, geologic, and hydrologic suitability of the proposed site and any proposed alternative site(s) shall be submitted by the applicant. If this information is derived from reference materials, it shall be derived from the best available and current reference materials. The applicant shall provide the following for each site alternative.

(1) Geography and topography. The applicant shall provide a map of 1:24,000 scale containing a five mile radius from the proposed facility and showing the following features:

(a) The proposed facility.

(b) Major population centers and geographic boundaries.

(c) Major transportation routes and utility corridors.

(d) Bodies of water which may be directly affected by the proposed facility.

(e) Topographic contours.

(f) Major institutions, parks, recreational areas.

(g) Residential, commercial and industrial buildings and installations.

(2) An aerial photograph containing a one mile radius from the proposed facility, indicating the location of the proposed facility in relation to surface features.

(3) A map of 1:4,800 scale of the site, showing the following existing features:

(a) Topographic contours.

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~~(b) Existing vegetative cover.~~

~~(c) Land use and classifications.~~

~~(d) Individual structures and installations.~~

~~(e) Surface bodies of water.~~

~~(f) Water and gas wells.~~

~~(g) Vegetative cover that may be removed during construction.~~

~~(4) Geology and seismology. The applicant shall provide a map of suitable scale and a corresponding cross-sectional view, showing the geological features of the proposed facility site and the location of test borings. The applicant shall also:~~

~~(a) Describe the suitability of the site geology and plans to remedy any inadequacies.~~

~~(b) Describe the suitability of soil for grading, compaction, and drainage, and describe plans to remedy any inadequacies.~~

~~(5) Hydrology and wind. The applicant shall:~~

~~(a) Provide the natural and the man-affected water budgets, including the ten-year mean and critical (lowest seven-day flow in ten years) surface flows and the mean and extreme water tables during the past ten years for each body of water likely to be directly affected by the proposed facility.~~

~~(b) Provide an analysis of the prospects of floods and high winds for the area, including the probability of occurrences and likely consequences of various flood stages and wind velocities, and describe plans to mitigate any likely adverse consequences.~~

~~(c) Provide existing maps of aquifers which may be directly affected by the proposed facility.~~

~~(B) Layout and construction. The applicant shall provide information on the proposed layout and preparation of the proposed site and any proposed alternative site(s) and the description of proposed major structures and installations located thereon.~~

~~(1) Site activities. The applicant shall describe the proposed site preparation and reclamation operations, including:~~

~~(a) Test borings.~~

~~(b) Removal of vegetation.~~

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~~(c) Grading and drainage provisions.~~

~~(d) Access roads.~~

~~(e) Removal and disposal of debris.~~

~~(f) Post construction reclamation.~~

~~(2) Layout. The applicant shall supply a map of 1:4,800 scale of the proposed electric power generating plant site, showing the following features of the proposed and existing facility and associated facilities:~~

~~(a) Electric power generating plant.~~

~~(b) Fuel, waste, and other storage facilities.~~

~~(c) Fuel and waste processing facilities, if any.~~

~~(d) Water supply and sewage lines.~~

~~(e) Transmission lines.~~

~~(f) Substations.~~

~~(g) Transportation facilities and access roads.~~

~~(h) Security facilities.~~

~~(i) Grade elevations where modified during construction.~~

~~(j) Other pertinent installations.~~

~~(3) Structures. The applicant shall describe, in as much detail as is available at the time of submission of the application, all major proposed structures, including the following:~~

~~(a) Estimated overall dimensions.~~

~~(b) Construction materials.~~

~~(c) Color and texture of facing surfaces.~~

~~(d) Artist's pictorial sketches of the proposed facility from public vantage points.~~

~~(e) Any unusual features.~~

~~(4) Plans for construction. The applicant shall describe the proposed construction sequence.~~

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(5) Future plans. The applicant shall describe any plans for future additions of electric power generating units for the site (including the type and timing) and the maximum electric power generating capacity anticipated for the site.

(C) Equipment.

(1) Electric power generating equipment. The applicant shall describe the proposed major electric power generating equipment for the proposed site and any proposed alternative site(s).

(2) Emission control and safety equipment. The applicant shall describe:

(a) All proposed major flue gas emission control equipment, including tabulations of expected efficiency, power consumption, and operating costs for supplies and maintenance.

(b) The reliability of the equipment and the reduction in efficiency for partial failure.

(c) The equipment proposed for control of effluents discharged into bodies of water and receiving streams.

(d) All proposed major public safety equipment.

(3) The applicant shall describe any other major equipment not discussed in paragraphs (C)(2)(a) to (C)(2)(d) of this rule.

(D) Regional electric power system. The applicant shall provide the following information on interconnection of the facility to the regional electric power grid.

(1) Interconnection queue(s). The applicant shall provide the following information relating to their generation interconnection request.

(a) Name of queue.

(b) Web link of queue.

(c) Queue number.

(d) Queue date.

(2) System studies. The applicant shall provide system studies on their generation interconnection request. The studies shall include, but are not limited to, the following:

(a) Feasibility study.

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(b) System impact study.

4906-13-05 Financial data.

(A) The applicant shall state the current and proposed ownership status of the proposed facility, including site(s), rights of way, structures, and equipment. Such information shall include type of ownership.

(B) Capital and intangible costs. The applicant shall:

(1) Submit estimates of applicable capital and intangible costs for the various alternatives. The data submitted shall be classified according to federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital and intangible costs classified in the accounting format ordinarily used by the applicant in its normal course of business).

(2) Compare the total costs per kilowatt with the applicant's similar facilities, and explain any substantial differences.

(3) Tabulate the present worth and annualized cost for capital costs and any additional cost details as required to compare capital cost of alternates (using the start of construction date as reference date), and describe techniques and all factors used in calculating present worth and annualized costs.

(C) Operation and maintenance expenses. The applicant shall:

(1) Supply applicable estimated annual operation and maintenance expenses for the first two years of commercial operation. The data submitted shall be classified according to federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the operation and maintenance expenses classified in the accounting format ordinarily used by the applicant in its normal course of business).

(2) Compare the total operation and maintenance cost per kilowatt with applicant's similar facilities and explain any substantial differences.

(3) Tabulate the present worth and annualized expenditures for operating and maintenance costs as well as any additional cost breakdowns as required to

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~~compare alternatives, and describe techniques and factors used in calculating present worth and annualized costs.~~

~~(D) Delays. The applicant shall submit an estimate of the cost for a delay prorated to a monthly basis beyond the projected in-service date.~~

~~**4906-13-06 Environmental data.**~~

~~(A) General. The information requested in this rule shall be used to assess the environmental effects of the proposed facility. Where appropriate, the applicant may substitute all or portions of documents filed to meet federal, state, or local regulations. Existing data may be substituted for physical measurements.~~

~~(B) Air.~~

~~(1) Preconstruction. The applicant shall:~~

~~(a) Submit available information concerning the ambient air quality of the proposed site and any proposed alternative site(s).~~

~~(b) Describe the air pollution control equipment for the proposed facility. Stack gas parameters including temperature, sulfur dioxide, nitrogen oxides, volatile organic compounds, particulates, and other pollutants shall be described for each proposed fuel. These parameters shall be included for each electric power generating unit proposed for the facility.~~

~~(c) Describe applicable federal and/or Ohio new source performance standards (NSPS), applicable air quality limitations, applicable national ambient air quality standards (NAAQS), and applicable prevention of significant deterioration (PSD) increments.~~

~~(d) Provide a list of all required permits to install and operate air pollution sources. If any such permit(s) have been issued more than thirty days prior to the submittal of the certificate application, the applicant shall provide a list of all special conditions or concerns attached to the permit(s).~~

~~(e) Provide a map of 1:100,000 scale containing:~~

~~(i) The location and elevation (ground and sea level) of Ohio environmental protection agency primary and secondary air monitoring stations or mobile vans which supplied data used by the applicant in assessing air pollution potential.~~

~~(ii) The location of major present and anticipated air pollution point sources.~~

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(f) Describe how the proposed facility will achieve compliance with the requirements identified in paragraphs (B)(1)(c) and (B)(1)(d) of this rule.

(2) Construction. The applicant shall describe plans to control emissions during the site clearing and construction phase.

(3) Operation. The applicant shall:

(a) Describe ambient air quality monitoring plans for the following, if applicable:

(i) Sulfur oxides.

(ii) Nitric oxides.

(iii) Volatile organic compounds.

(iv) Particulates.

(v) Carbon monoxide.

(vi) Other pollutants.

(b) On a map of 1:24,000 scale, show three isopleths of estimated concentrations of each of the five principle air pollutants listed in paragraph (B)(3)(a) of this rule, that would be in excess of the U.S. environmental protection agency-defined "significant emission rates" when the facility is operating at its maximum rated output. The intervals between the isopleths shall depict the concentrations within a five mile radius of the proposed facility. A screening analysis may be used to estimate the concentrations.

(c) Describe procedures to be followed in the event of failure of air pollution control equipment, including consideration of the probability of occurrence, expected duration and resultant emissions.

(C) Water.

(1) Preconstruction. The applicant shall:

(a) Provide a list of all permits required to install and operate water pollution control equipment and treatment processes.

(b) On a map of 1:24,000 scale, show the location and sampling depths of all water monitoring and gauging stations used in collecting preconstruction survey data. Samples shall be collected by standard sampling techniques and only in bodies of water likely to be affected by the proposed facility. Information from U.S. geological survey (USGS), Ohio environmental

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~~protection agency, and similar agencies may be used where available, but the applicant shall identify all such sources of data.~~

~~(c) Describe the ownership, equipment, capability, and sampling and reporting procedures of each station.~~

~~(d) Describe the existing water quality of the receiving stream based on at least one year of monitoring data, using appropriate Ohio environmental protection agency reporting requirements.~~

~~(e) Provide available data necessary for completion of any application required for a water discharge permit from any state or federal agency for this project. Comparable information shall be provided for the proposed site and any proposed alternative site(s).~~

~~(2) Construction. The applicant shall:~~

~~(a) Indicate, on a map of 1:24,000 scale, the location of the water monitoring and gauging stations to be utilized during the construction.~~

~~(b) Estimate the quality and quantity of aquatic discharges from the site clearing and construction operations, including runoff and siltation from dredging, filling, and construction of shoreside facilities.~~

~~(c) Describe any plans to mitigate the above effects in accordance with current federal and Ohio regulations.~~

~~(d) Describe any changes in flow patterns and erosion due to site clearing and grading operations.~~

~~(3) Operation. In order to assess the effects of facility operation on water quality, the applicant shall:~~

~~(a) Indicate on a map of 1:24,000 scale, the location of the water quality monitoring and gauging stations to be utilized during operation,~~

~~(b) Describe the water pollution control equipment and treatment processes planned for the proposed facility,~~

~~(c) Describe the schedule for receipt of the national pollution discharge elimination system permit,~~

~~(d) Provide a quantitative flow diagram or description for water and water borne wastes through the proposed facility, showing the following potential sources of pollution, including:~~

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~~(i) Sewage.~~

~~(ii) Blow-down.~~

~~(iii) Chemical and additive processing.~~

~~(iv) Waste water processing.~~

~~(v) Run-off and leachates from fuels and solid wastes.~~

~~(vi) Oil/water separators.~~

~~(vii) Run-off from soil and other surfaces.~~

~~(e) Describe how the proposed facility incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives.~~

~~(D) Solid waste.~~

~~(1) Preconstruction. The applicant shall:~~

~~(a) Describe the nature and amount of debris and solid waste on the site.~~

~~(b) Describe any plans to deal with such wastes.~~

~~(2) Construction. The applicant shall:~~

~~(a) Estimate the nature and amounts of debris and other solid waste generated during construction operations.~~

~~(b) Describe the proposed method of storage and disposal of these wastes.~~

~~(3) Operation. The applicant shall:~~

~~(a) Estimate the amount, nature, and composition of solid wastes generated during the operation of the proposed facility.~~

~~(b) Describe proposed methods for storage, treatment, transport, and disposal of these wastes.~~

~~(4) Licenses and permits. The applicant shall describe its plans and activities leading toward acquisition of waste generation, storage, treatment, transportation and/or disposal permits. If any such permit(s) have been issued more than thirty days prior to the submittal of the certificate application, the applicant shall provide a list of all special conditions or concerns attached to the permit(s).~~

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~~4906-13-07 Social and ecological data.~~

~~(A) Health and safety.~~

~~(1) Demographic. The applicant shall provide existing and ten-year projected population estimates for communities within five miles of the proposed site.~~

~~(2) Atmospheric emissions. The applicant shall describe in conceptual terms the probable impact to the population due to failures of air pollution control equipment.~~

~~(3) Noise. The applicant shall:~~

~~(a) Describe the construction noise levels expected at the nearest property boundary. The description shall address:~~

~~(i) Dynamiting activities.~~

~~(ii) Operation of earth moving equipment.~~

~~(iii) Driving of piles.~~

~~(iv) Erection of structures.~~

~~(v) Truck traffic.~~

~~(vi) Installation of equipment.~~

~~(b) Describe the operational noise levels expected at the nearest property boundary. The description shall address:~~

~~(i) Generating equipment.~~

~~(ii) Processing equipment.~~

~~(iii) Associated road traffic.~~

~~(c) Indicate the location of any noise-sensitive areas within one mile of the proposed facility.~~

~~(d) Describe equipment and procedures to mitigate the effects of noise emissions from the proposed facility during construction and operation.~~

~~(4) Water. The applicant shall estimate the impact to public and private water supplies due to:~~

~~(a) Construction and operation of the proposed facility.~~

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~~(b) Pollution control equipment failures.~~

~~(B) Ecological impact.~~

~~(1) Site information. The applicant shall:~~

~~(a) Provide a map of 1:24,000 scale containing a one half-mile radius from the proposed facility, showing the following:~~

~~(i) The facility boundary.~~

~~(ii) Undeveloped or abandoned land such as wood lots, wetlands, or vacant fields.~~

~~*(b) Provide the results of a survey of the vegetation within the site boundary and* within a one fourth mile distance from the site perimeter.~~

~~(c) Provide the results of a survey of the animal life within the site boundary and within a one fourth mile distance from the site perimeter.~~

~~(d) Provide a summary of any studies which have been made by or for the applicant addressing the ecological impact of the proposed facility.~~

~~(e) Provide a list of major species from the surveys of biota. "Major species" are those which are of commercial or recreational value, or species designated as endangered or threatened in accordance with U.S. and Ohio threatened and endangered species lists.~~

~~(2) Construction. The applicant shall:~~

~~(a) Estimate the impact of construction on the undeveloped areas shown in response to paragraph (B)(1)(a) of this rule.~~

~~(b) Estimate the impact of construction on the major species listed under the paragraph (B)(1)(e) of this rule.~~

~~(c) Describe the mitigation procedures to be utilized to minimize both the short term and long term impacts due to construction.~~

~~(3) Operation. The applicant shall:~~

~~(a) Estimate the impact of operation on the undeveloped areas shown in response to paragraph (B)(1)(a) of this rule.~~

~~(b) Estimate the impact of operation on the major species listed under paragraph (B)(1)(e) of this rule.~~

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~~(C) Economics, land use and community development.~~

~~(1) Land uses. The applicant shall:~~

~~(a) Provide a map of 1:24,000 scale indicating general land uses, depicted as areas on the map, within a five mile radius of the site, including such uses as residential and urban, manufacturing and commercial, mining, recreational, transport, utilities, water and wetlands, forest and woodland, pasture and cropland.~~

~~(b) Provide the number of residential structures within one thousand feet of the boundary of the proposed facility, and identify all residential structures for which the nearest edge of the structure is within one hundred feet of the boundary of the proposed facility.~~

~~(c) Estimate the impact of the proposed facility on the above land uses within a one mile radius.~~

~~(d) Identify structures that will be removed or relocated.~~

~~(e) Describe formally adopted plans for future use of the site and surrounding lands for anything other than the proposed facility.~~

~~(f) Describe the applicant's plans for concurrent or secondary uses of the site.~~

~~(2) Economics. The applicant shall:~~

~~(a) Estimate the annual total and present worth of construction and operation payroll.~~

~~(b) Estimate the construction and operation employment and estimate the number that will be employed from the region.~~

~~(c) Estimate the increase in county, township, and city tax revenue accruing from the facility.~~

~~(d) Estimate the economic impact of the proposed facility on local commercial and industrial activities.~~

~~(3) Public services and facilities. The applicant shall describe the probable impact of the construction and operation on public services and facilities.~~

~~(4) Impact on regional development. The applicant shall:~~

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(a) Describe the impact of the proposed facility on regional development, including housing, commercial and industrial development, and transportation system development.

(b) Assess the compatibility of the proposed facility and the anticipated resultant regional development with current regional plans.

(D) Cultural impact.

(1) The applicant shall indicate, on the 1:24,000 map referenced in paragraph (C)(1)(a) of this rule, any registered landmarks of historic, religious, archaeological, scenic, natural or other cultural significance within five miles of the proposed site.

(2) The applicant shall estimate the impact of the proposed facility on the preservation and continued meaningfulness of these landmarks and describe plans to mitigate any adverse impact.

(3) Landmarks to be considered for purposes of paragraphs (D)(1) and (D)(2) of this rule are those districts, sites, buildings, structures and objects which are recognized by, registered with, or identified as eligible for registration by the national registry of natural landmarks, the Ohio historical society, or the Ohio department of natural resources.

(4) The applicant shall indicate, on the 1:24,000 map referenced in paragraph (C)(1)(a) of this rule, existing and formally adopted land and water recreation areas within five miles of the proposed site.

(5) The applicant shall describe the identified recreational areas within one mile of the proposed site in terms of their proximity to population centers, uniqueness, topography, vegetation, hydrology, and wildlife. Estimate the impact of the proposed facility on identified recreational areas within one mile of the proposed site and describe plans to mitigate any adverse impact.

(6) The applicant shall describe measures that will be taken to minimize any adverse visual impacts created by the facility.

(E) *Public responsibility. The applicant shall:*

(1) Describe the applicant's program for public interaction for the siting, construction, and operation of the proposed facility, i.e., public information programs.

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(2) Describe any insurance or other corporate programs for providing liability compensation for damages to the public resulting from construction or operation of the proposed facility.

(F) Agricultural district impact. The applicant shall:

(1) Identify on a map of 1:24,000 scale all agricultural land, and separately all agricultural district land existing at least sixty days prior to submission of the application located within the proposed facility site boundaries.

(2) Provide, for all agricultural land identified under paragraph (F)(1) of this rule, the following:

(a) A quantification of the acreage impacted, and an evaluation of the impact of the construction, operation, and maintenance of the proposed facility on the following agricultural practices within the proposed facility site boundaries:

(i) Field operations (i.e., plowing, planting, cultivating, spraying, harvesting, etc.).

(ii) Irrigation.

(iii) Field drainage systems.

(b) A description of any mitigation procedures to be utilized by the applicant during construction, operation, and maintenance to reduce impacts to the agricultural land.

(3) Provide, for all agricultural land identified under paragraph (F)(1) of this rule, an evaluation of the impact of the construction and maintenance of the proposed facility on the viability as agricultural land of any land so identified. The evaluation shall include impacts to cultivated lands, permanent pasture land, managed woodlots, orchards, nurseries, livestock and poultry confinement areas and agriculturally related structures. Changes in land use and changes in methods of operation made necessary by the proposed facility shall be evaluated.

4906-15-01 Project summary and facility overview.

(A) An applicant for a certificate to site a major electric power, gas, or natural gas transmission facility shall provide a project summary and overview of the proposed project. In general, the summary should be suitable as a reference for state and local governments and for the public. The summary and overview shall include the following:

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(1) A statement explaining the general purpose of the facility.

(2) A description of the proposed facility.

(3) A description of the site or route selection process, including descriptions of the major alternatives considered.

(4) A discussion of the principal environmental and socioeconomic considerations of the preferred and alternate routes or sites.

(5) An explanation of the project schedule (a bar chart is acceptable).

(B) Information filed by the applicant in response to the requirements of this section shall not be deemed responses to any other section of the application requirements.

(C) If the applicant has prepared the required hard copy maps using digital, geographically referenced data, an electronic copy of all such data, excluding data obtained by the applicant under a licensing agreement which prohibits distribution, shall be provided to the board staff on computer disk concurrent with submission of the application.

4906-15-02 Review of need for proposed project.

(A) The applicant shall provide a statement explaining the need for the proposed facility, including a listing of the factors upon which it relied to reach that conclusion and references to the most recent long term forecast report (if applicable). The statement shall also include but not be limited to, the following:

(1) A statement of the purpose of the proposed facility.

(2) Specific projections of system conditions, local requirements or any other pertinent factors that impacted the applicant's opinion on the need for the proposed facility.

(3) Relevant load flow studies and contingency analyses, if appropriate, identifying the need for system improvement.

(4) For electric power transmission facilities, load flow data shall be presented in the form of transcription diagrams depicting system performance with and without the proposed facility.

(5) For gas or natural gas transmission projects, one copy in electronic format of the relevant base case system data on diskette, in a format acceptable to the board staff, with a description of the analysis program and the data format.

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~~(B) Expansion plans.~~

~~(1) For the electric power transmission lines and associated facilities, the applicant shall provide a brief statement of how the proposed facility and site/route alternatives fit into the applicant's most recent long-term electric forecast report and the regional plans for expansion, including, but not limited to, the following:~~

~~(a) Reference to any description of the proposed facility and site/route alternatives in the most recent long-term electric forecast report of the applicant.~~

~~(b) If no description was contained in the most recent long-term electric forecast report, an explanation as to why none was filed in the most recent long-term electric forecast report.~~

~~(c) Reference to regional expansion plans, including East Central Area Reliability Coordination Agreement bulk power plans, when applicable (if the transmission project will not affect regional plans, the applicant shall so state).~~

~~(2) For gas transmission lines and associated facilities, the applicant shall provide a brief statement of how the proposed facility and site/route alternatives fit into the applicant's most recent long-term gas forecast report, including the following:~~

~~(a) Reference to any description of the proposed facility and site/route alternatives in the most recent long-term gas forecast report of the applicant.~~

~~(b) If no description was contained in the most recent long-term gas forecast report, an explanation as to why none was filed in the most recent long-term gas forecast report.~~

~~(C) For electric power transmission facilities, the applicant shall provide an analysis of the impact of the proposed facility on the electric power system economy and reliability. The impact of the proposed facility on all interconnected utility systems shall be evaluated, and all conclusions shall be supported by relevant load flow studies.~~

~~(D) For electric power transmission lines, the applicant shall provide an analysis and evaluation of the options considered which would eliminate the need for construction of an electric power transmission line, including electric power generation options and options involving changes to existing and planned electric power transmission substations.~~

~~(E) The applicant shall describe why the proposed facility was selected to meet the projected need.~~

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~~(F) Facility schedule.~~

~~(1) Schedule. The applicant shall provide a proposed schedule in bar chart format covering all applicable major activities and milestones, including:~~

~~(a) Preparation of the application.~~

~~(b) Submittal of the application for certificate.~~

~~(c) Issuance of the certificate.~~

~~(d) Acquisition of rights-of-way and land rights for the certified facility.~~

~~(e) Preparation of the final design.~~

~~(f) Construction of the facility.~~

~~(g) Placement of the facility in service.~~

~~(2) Delays. The applicant shall describe the impact of critical delays on the eventual in-service date.~~

~~4906-15-03 Site and route alternatives analyses.~~

~~(A) The applicant shall conduct a site and route selection study prior to submitting an application for an electric power transmission line, electric power transmission substation, gas or natural gas transmission line, or a gas compressor station. The study shall be designed to evaluate all practicable sites, routes, and route segments for the proposed facility identified within the project area.~~

~~(1) The applicant shall provide the following:~~

~~(a) A description of the study area or geographic boundaries selected, including the rationale for the selection.~~

~~(b) A map of suitable scale which includes the study area and which depicts the general routes, route segments, and sites which were evaluated.~~

~~(c) A comprehensive list and description of all qualitative and quantitative siting criteria, factors, or constraints utilized by the applicant, including any evaluation criteria or weighting values assigned to each.~~

~~(d) A description of the process by which the applicant utilized the siting criteria to determine the preferred and alternate routes and sites.~~

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(e) A description of the routes and sites selected for evaluation, their final ranking, and the factors and rationale used by the applicant for selecting the preferred and alternate routes and sites.

(2) The applicant shall provide one copy of any constraint map utilized for the study directly to the board staff for review.

(B) The applicant shall provide a summary table comparing the routes, route segments, and sites, utilizing the technical, financial, environmental, socioeconomic, and other factors identified in the study. Design and equipment alternatives shall be included where the use of such alternatives influenced the siting decision.

(C) The applicant may provide a copy of any route and site selection study produced by or for the applicant for the proposed project as an attachment to the application. The study may be submitted in response to paragraphs (A) and (B) of this rule, provided that the information contained therein is responsive to the requirements of paragraphs (A) and (B) of this rule.

4906-15-04 Technical data.

(A) Site/route alternatives. Information on the location, major features, and the topographic, geologic, and hydrologic suitability of site/route alternatives shall be submitted by the applicant. If this information is derived from reference materials, it shall be derived from the best available and current reference materials.

(1) Geography and topography. The applicant shall provide map(s) of not less than 1:24,000 scale, including the area one thousand feet on each side of a transmission line alignment, and the area within the immediate vicinity of a substation site or compressor station site, which shall include the following features:

(a) The proposed transmission line alignments, including proposed turning points.

(b) The proposed substation or compressor station site locations.

(c) Major highway and railroad routes.

(d) Identifiable air transportation facilities, existing or proposed.

(e) Utility corridors.

(f) Proposed permanent access roads.

(g) Lakes, ponds, reservoirs, streams, canals, rivers, and swamps.

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~~(h) Topographic contours.~~

~~(i) Soil associations or series.~~

~~(j) Population centers and legal boundaries of cities, villages, townships, and counties.~~

~~(2) Slope and soil mechanics. The applicant shall:~~

~~(a) Provide a brief, but specific description of the soils in the areas depicted on the above map(s) where slopes exceed twelve per cent. This information may be extracted from published sources.~~

~~(b) Discuss the rationales as to suitability of the soils for foundation construction.~~

~~(B) Layout and construction. The applicant shall provide information on the poposed layout and preparation of route/site alternatives, and the description of the proposed major structures and their installation as detailed below.~~

~~(1) Site activities. The applicant shall describe the proposed site clearing, construction methods and reclamation operations, including:~~

~~(a) Surveying and soil testing.~~

~~(b) Grading and excavation.~~

~~(c) Construction of temporary and permanent access roads and trenches.~~

~~(d) Stringing of cable and/or laying of pipe.~~

~~(e) Post-construction reclamation.~~

~~(2) Layout for associated facilities. The applicant shall:~~

~~(a) Provide a map of 1:2,400 scale of the site of major transmission line associated facilities such as substations, compressor stations and other stations, showing the following proposed features:~~

~~(i) Final grades after construction, including the site and access roads.~~

~~(ii) Proposed location of major structures and buildings.~~

~~(iii) Fenced-in or secured areas.~~

~~(iv) Estimated overall dimensions.~~

~~(b) Describe reasons for the proposed layout and any unusual features.~~

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(e) Describe plans for any future modifications in the proposed layout, including the nature and approximate timing of contemplated changes.

(C) Transmission equipment. The applicant shall provide a description of the proposed transmission lines, as well as switching, capacity, metering, safety and other equipment pertinent to the operation of the proposed electric power and gas transmission lines and associated facilities. Include any provisions for future expansion.

(1) Provide the following data for electric power transmission lines:

(a) Design voltage.

(b) Tower designs, pole structures, conductor size and number per phase, and insulator arrangement.

(c) Base and foundation design.

(d) Cable type and size, where underground.

(e) Other major equipment or special structures.

(2) Provide a description for electric power transmission substations that includes a single-line diagram and a description of the proposed major equipment, such as:

(a) Breakers.

(b) Switchgear.

(c) Bus arrangement and structures.

(d) Transformers.

(e) Control buildings.

(f) Other major equipment.

(3) Provide the following data for gas transmission lines:

(a) Maximum allowable operating pressure.

(b) Pipe material.

(c) Pipe dimensions and specifications.

(d) Other major equipment.

(4) Provide a description of gas transmission facilities such as:

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~~(a) Control buildings.~~

~~(b) Heaters, odorizers, and above-ground facilities.~~

~~(c) Any other major equipment.~~

~~(D) Environmental and aviation compliance information. The applicant shall provide:~~

~~(1) A list and brief discussion of all permits that will be required for construction of the facility.~~

~~(2) A description, quantification and characterization of debris that will result from construction of the facility, and the plans for disposal of the debris.~~

~~(3) A discussion of the process that will be used to control storm water and minimize erosion during construction and restoration of soils, wetlands, and streams disturbed as a result of construction of the facility.~~

~~(4) A discussion of plans for disposition of contaminated soil and hazardous materials generated or encountered during construction.~~

~~(5) The height of tallest anticipated above ground structures. For construction activities within the vicinity of airports or landing strips, provide the maximum possible height of construction equipment as well as all installed above ground structures.~~

~~(6) A description of the plans for construction during excessively dusty or excessively muddy soil conditions.~~

~~**4906-15-05 Financial data.**~~

~~(A) Ownership. The applicant shall state the current and proposed ownership status of the proposed facility, including sites, rights-of-way, structures, and equipment. The information shall cover sole and combined ownerships, any leases, options to purchase, or franchises, and shall specify the extent, terms, and conditions of ownership, or other contracts or agreements.~~

~~(B) Electric capital costs. The applicant shall submit estimates of applicable capital and intangible costs for the various components of electric power transmission facility alternatives. The data submitted shall be classified according to the federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for the utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital costs classified~~

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in the accounting format ordinarily used by the applicant in its normal course of business). The estimates shall include:

(1) Land and land rights.

(2) Structures and improvements.

(3) Substation equipment.

(4) Poles and fixtures.

(5) Towers and fixtures.

(6) Overhead conductors.

(7) Underground conductors and insulation.

(8) Underground to overhead conversion equipment.

(9) Right-of-way clearing and roads, trails, or other access.

(C) Gas capital cost. The applicant shall submit estimates of applicable capital and intangible costs for the various components of gas transmission facility alternatives. The data submitted shall be classified according to the federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital costs classified in the accounting format ordinarily used by the applicant in its normal course of business. The estimates shall include:

(1) Land and land rights.

(2) Structures and improvements.

(3) Pipes.

(4) Valves, meters, boosters, regulators, tanks, and other equipment.

(5) Roads, trails, or other access.

4906-15-06 Socioeconomic and land use impact analysis.

(A) The applicant shall conduct a literature search and map review for the area within one thousand feet on each side of each proposed transmission line centerline and within one thousand feet of the perimeter of each substation or compressor station designed to identify specific land use areas as required in paragraph (B)(3) of this

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rule. On site investigations shall be conducted within one hundred feet of each side of each proposed transmission line centerline and within one hundred feet of the perimeter of each substation or compressor station to characterize the potential effects of construction, operation, and maintenance of the proposed facility.

(B) The applicant shall provide, for each of the site/route alternatives and adjacent areas, map(s) of not less than 1:24,000 scale, including the area one thousand feet on each side of a transmission alignment, and the area within the immediate vicinity of a substation site, which map(s) shall include the following features:

(1) Proposed approximate centerline for each transmission line alternative being proposed.

(2) Proposed substation or compressor station locations.

(3) General land use, depicted as areas on the maps, including, but not limited to:

(a) Residential use.

(b) Commercial use.

(c) Industrial use.

(d) Cultural use (as identified in paragraph (F) of this rule).

(e) Agricultural use.

(f) Recreational use.

(g) Institutional use (e.g., schools, hospitals, churches, government facilities, etc.).

(4) Transportation corridors.

(5) Existing utility corridors.

(6) Noise-sensitive areas.

(7) Agricultural land (including agricultural district land) existing at least sixty days prior to submission of the application located within each transmission line right-of-way or within each site boundary.

(C) The applicant shall provide for each of the site/route alternatives, a description of the impact of the proposed facility on each land use identified in paragraph (B)(3) of this rule. As it relates to agricultural land, the description shall include the acreage impacted and the applicant's evaluation of impacts to cultivated land, permanent

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~~pasture land, managed wood lots, orchards, nurseries, and agricultural related structures.~~

~~(1) Provide the number of residential structures within one thousand feet of the proposed facility, and identify all residential structures for which the nearest edge of the structure is within one hundred feet of the proposed facility.~~

~~(2) Construction: The applicant shall estimate the probable impact of the proposed facility on each land use (including: (a) buildings that will be destroyed, acquired, or removed as the result of the planned facility and criteria for owner compensation; and (b) field operations [such as plowing, planting, cultivating, spraying, and harvesting], irrigation, and field drainage systems).~~

~~(3) Operation and maintenance: The applicant shall estimate the probable impact of the operation and maintenance of the proposed facility on each land use.~~

~~(4) Mitigation procedures: The applicant shall describe the mitigation procedures to be used during the construction of the proposed facility and during the operation and maintenance of the proposed facility to minimize impact to land use, such as effects on subsurface field drainage systems.~~

~~(D) The applicant shall provide the following public interaction information for each of the site/route alternatives:~~

~~(1) A list of counties, townships, villages, and cities within one thousand feet on each side of the centerline or facility perimeter.~~

~~(2) A list of the public officials contacted regarding the application, their office addresses, and office telephone numbers.~~

~~(3) A description of the program or company/public interaction planned for the siting, construction, and operation of the proposed facility, i.e. public information programs.~~

~~(4) A description of any insurance or other corporate program, if any, for providing liability compensation for damages, if such should occur, to the public resulting from construction or operation of the proposed facility.~~

~~(5) A description of how the facility will serve the public interest, convenience, and necessity.~~

~~(6) An estimate of the increase in tax revenues as a result of facility placement.~~

~~(7) A description of the impact of the facility on regional development, referring to pertinent formally adopted regional development plans.~~

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(E) The applicant shall provide the following health, safety, and aesthetic information for each site/route alternative:

(1) The applicant shall provide a description of how the facility will be constructed, operated, and maintained to comply with the requirements of applicable state and federal statutes and regulations, including the 2002 edition of the "National Electrical Safety Code", applicable occupational safety and health administration regulations, U.S. department of transportation gas pipeline safety standards, and Chapter 4901:1-16 of the Administrative Code.

(2) For electric power transmission facilities, the applicant shall discuss the production of electric and magnetic fields during operation of the preferred and alternate site/route. If more than one conductor configuration is to be used on the proposed facility, information shall be provided for each configuration that constitutes more than ten per cent of the total line length, or more than one mile of the total line length being certificated. Where an alternate structure design is submitted, information shall also be provided on the alternate structure. The discussion shall include:

(a) Calculated electric and magnetic field strength levels at one meter above ground, under the conductors and at the edge of the right-of-way for:

(i) Winter normal conductor rating.

(ii) Emergency line loading.

(iii) Normal maximum loading.

Provide corresponding current flows, conductor ground clearance for normal maximum loading and distance from the centerline to the edge of the right-of-way. Estimates shall be made for minimum conductor height. The applicant shall also provide typical cross section profiles of the calculated electric and magnetic field strength levels at the normal maximum loading conditions.

(b) References to the current state of knowledge concerning possible health effects of exposure to electric and magnetic field strength levels.

(c) Description of the company's consideration of electric and magnetic field strength levels, both as a general company policy and specifically in the design and siting of the transmission line project including: alternate conductor configurations and phasing, tower height, corridor location and right-of-way width.

(d) Description of the company's current procedures for addressing public inquiries regarding electric and magnetic field strength levels, including

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~~copies of informational materials and company procedures for customer electric and magnetic field strength level readings.~~

~~(3) The applicant shall discuss the aesthetic impact of the proposed facility with reference to plans and sketches, including the following:~~

~~(a) The views of the proposed facility from such sensitive vantage points as residential areas, lookout points, scenic highways, and waterways.~~

~~(b) Structure design features, as appropriate.~~

~~(c) How the proposed facility will likely affect the aesthetic quality of the site and surrounding area.~~

~~(d) Measures that will be taken to minimize any visual impacts created by the proposed facility.~~

~~(4) For electric power transmission facilities, the applicant shall provide an estimate of the level of radio and television interference from operation of the proposed facility, identify the most severely impacted areas, if any, and discuss methods of mitigation.~~

~~(F) The applicant shall provide, for each of the site/route alternatives, a description of the impact of the proposed facility on cultural resources. This description shall include potential and identified recreational areas and those districts, sites, buildings, structures, and objects which are recognized by, registered with, or identified as eligible for registration by the Ohio historical society or the Ohio department of natural resources. It shall include but not be limited to the following:~~

~~(1) Location studies: The applicant shall describe studies used to determine the location of cultural resources within the study corridor. Correspondence with the Ohio historical preservation office shall be included.~~

~~(2) Construction: The applicant shall estimate the probable impact of the construction of the proposed facility on cultural resources.~~

~~(3) Operation and maintenance: The applicant shall estimate the probable impact of the operation and maintenance of the proposed facility on cultural resources.~~

~~(4) Mitigation procedures: The applicant shall describe the mitigation procedures to be used during the operation and maintenance of the proposed facility to minimize impact to cultural resources.~~

~~(G) The applicant shall submit data and related information on noise emissions generated by the proposed transmission line and associated facilities. Construction noise~~

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~~information shall be submitted for only those portions of transmission line routes requiring more than four months of actual construction time to complete in residential, commercial, and other noise-sensitive areas.~~

~~(1) Construction: To assure noise control during construction, the applicant shall estimate the nature of any intermittent, recurring, or particularly annoying sounds from the following sources:~~

~~(a) Dynamiting or blasting activities.~~

~~(b) Operation of earth moving and excavating equipment.~~

~~(c) Driving of piles.~~

~~(d) Erection of structures.~~

~~(e) Truck traffic.~~

~~(f) Installation of equipment.~~

~~(2) Operation and maintenance: The applicant shall estimate the effect of noise generation due to the operation or maintenance of the transmission line and associated facilities.~~

~~(3) Mitigation procedures: The applicant shall describe any equipment and procedures designed to mitigate noise emissions during both the site clearing and construction phase, and during the operation and maintenance of the facility to minimize noise impact.~~

~~(H) The applicant shall provide site specific information that may be required in a particular case to adequately describe other significant issues of concern that were not addressed above. The applicant shall describe measures that were taken and/or will be taken to avoid or minimize adverse impact. The applicant shall describe public safety related equipment and procedures that were and/or will be taken.~~

~~4906-15-07 Ecological impact analysis.~~

~~(A) The applicant shall provide a summary of any studies that have been made by or for the applicant on the natural environment in which the proposed facility will be located. The applicant shall conduct and report the results of a literature search, including map review, for the area within one thousand feet on each side of a transmission line alignment and the area within the immediate vicinity of a substation or compressor station site. On site investigations shall be conducted within one hundred feet on each side of a transmission line centerline or within one hundred~~

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~~feet of a substation or compressor station site to characterize the potential effects of construction, operation, or maintenance of the proposed facility.~~

~~(B) The applicant shall provide for each of the site/route alternatives a map(s) of not less than 1:24,000 scale, including the area one thousand feet on each side of the transmission line alignment and the area within the immediate vicinity of a substation site or compressor station site. The map(s) shall include the following:~~

~~(1) Proposed transmission line alignments.~~

~~(2) Proposed substation or compressor station locations.~~

~~(3) All areas currently not developed for agricultural, residential, commercial, industrial, institutional, or cultural purposes including:~~

~~(a) Streams and drainage channels.~~

~~(b) Lakes, ponds, and reservoirs.~~

~~(c) Marshes, swamps, and other wetlands.~~

~~(d) Woody and herbaceous vegetation land.~~

~~(e) Locations of threatened or endangered species.~~

~~(4) Soil associations in the corridor.~~

~~(C) The applicant shall provide for each of the site/route alternatives a description of each stream or body of water (and associated characteristics including floodplain) that is present and may be affected by the proposed facility, including but not limited to the following:~~

~~(1) Construction: The applicant shall estimate the probable impact of the construction of the proposed facility on streams and bodies of water. This shall include the impacts from route clearing.~~

~~(2) Operation and maintenance: The applicant shall estimate the probable impact of the operation and maintenance of the proposed facility after construction on streams and bodies of water. This shall include the permanent impacts from route clearing.~~

~~(3) Mitigation procedures: The applicant shall describe the mitigation procedures to be used during construction of the proposed facility and during the operation and maintenance of the proposed facility to minimize the impact on streams and bodies of water.~~

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~~(D) The applicant shall provide for each of the site/route alternatives a description of each wetland that is present and may be affected by the proposed facility. The applicant shall describe the probable impact on these wetlands, including but not limited to the following:~~

~~(1) Construction: The applicant shall estimate the probable impact of the construction of the proposed facility on wetlands and wildlife habitat.~~

~~(2) Operation and maintenance: The applicant shall estimate the probable impact of the operation and maintenance of the proposed facility after construction on wetlands and wildlife habitat. This would include the permanent impacts from route clearing and any impact to natural nesting areas.~~

~~(3) Mitigation procedures: The applicant shall describe the mitigation procedures to be used during construction of the proposed facility and during the operation and maintenance of the proposed facility to minimize the impact on wetlands and wildlife habitat.~~

~~(E) The applicant shall provide for each of the site/route alternatives a description of the naturally occurring vegetation that is present and may be affected by the proposed facility. The applicant shall describe the probable impact to the environment from the clearing and disposal of this vegetation, including but not limited to the following:~~

~~(1) Construction: The applicant shall estimate the probable impact of the construction of the proposed facility on the vegetation. This would include the impacts from route clearing, types of vegetation waste generated, and the method of disposal or dispersal.~~

~~(2) Operation and maintenance: The applicant shall estimate the probable impact of the operation and maintenance of the proposed facility after construction on species described above. This would include the permanent impact from route clearing and any impact to natural nesting areas.~~

~~(3) Mitigation procedures: The applicant shall describe the mitigation procedures to be used during construction of the proposed facility and during the operation and maintenance of the proposed facility to minimize the impact on species described above.~~

~~(F) The applicant shall provide for each of the site/route alternatives a description of each major species of commercial or recreational value and species designated as endangered or threatened, in accordance with U.S. and Ohio species lists, that is present and may be affected. The applicant shall describe the probable impact to the habitat of the species described above, including but not limited to the following:~~

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(1) Construction: The applicant shall estimate the probable impact of the construction of the proposed facility on commercial, recreational, threatened, or endangered species. This would include the impacts from route clearing and any impact to natural nesting areas.

(2) Operation and maintenance: The applicant shall estimate the probable impact of the operation and maintenance of the proposed facility after construction on species described above. This would include the permanent impact from route clearing and any impact to natural nesting areas.

(3) Mitigation procedures: The applicant shall describe the mitigation procedures to be used during construction of the proposed facility and during the operation and maintenance of the proposed facility to minimize the impact on species described above.

(G) The applicant shall provide for each of the site/route alternatives a description of the areas with slopes and/or highly erodible soils (according to the natural resource conservation service and county soil surveys) that are present and may be affected by the proposed facility. The applicant shall describe the probable impact to these areas, including but not limited to the following:

(1) Construction: The applicant shall provide a description of the measures that will be taken to avoid or minimize erosion and sedimentation during the site clearing, access road construction, facility construction process, and any other temporary grading. If a storm water pollution prevention plan is required for the proposed facility, the applicant shall include the schedule for the preparation of this plan.

(2) Operation and maintenance: The applicant shall describe and estimate the probable impact of the operation and maintenance of the proposed facility after construction on the environment. This would include permanent impacts from sites where grading has taken place.

(3) Mitigation procedures: The applicant shall describe the mitigation procedures to be used during construction of the proposed facility and during operation and maintenance of the proposed facility to minimize the impact on the environment due to erosion from storm water run-off.

(H) The applicant shall provide site specific information that may be required in this particular case to adequately describe other significant issues of concern that were not addressed above. The applicant shall describe measures that were taken and/or will be taken to avoid or minimize adverse impacts. The applicant shall describe public safety related equipment and procedures that were and/or will be taken.

4906-17-01 Applicability and definitions.

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(A) This chapter details the application filing requirements for all wind-powered electric generation facilities consisting of wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of five megawatts or more.

(B) As used in this chapter:

(1) "Project area" means the total wind-powered electric generation facility, including associated setbacks.

(2) "Wind-powered electric generation facility" or "wind energy facility" or facility means all the turbines, collection lines, any associated substations, and all other associated equipment.

(C) With regard to certification applications under this chapter, the board shall approve, or modify and approve, a certification application for the construction, operation, and maintenance of a wind farm or shall deny, grant or grant upon such terms, conditions, or modifications as the board considers appropriate a certification application for a major utility facility, pursuant to the requirements set forth in section 4906.10 of the Revised Code.

4906-17-02 Project summary and general instructions.

(A) An applicant for a certificate to site a wind powered electric generation facility shall provide a project summary and overview of the proposed project. In general, the summary should be suitable as a reference for state and local governments and for the public. The summary and overview shall include the following:

(1) A statement explaining the general purpose of the facility.

(2) A description of the proposed facility.

(3) A description of the project area selection process, including descriptions of the primary factors considered.

(4) A discussion of the principal environmental and socioeconomic considerations of the preferred project area and any alternate project area sites.

(5) An explanation of the project schedule (a bar chart is acceptable).

(B) Information filed by the applicant in response to the requirements of this rule shall not be deemed responses to any other section of the application requirements.

(C) If the applicant has prepared the required hard copy maps using digital, geographically referenced data, an electronic copy of all such data, excluding data

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~~obtained by the applicant under a licensing agreement which prohibits distribution, shall be provided to the board staff on computer disk concurrently with the filing of the application.~~

~~(D) If the applicant for a wind-powered electric generation facility asserts that a particular requirement in Chapter 4906-17 of the Administrative Code is not applicable, the applicant must provide an explanation of why the requirement is not applicable. Further, the applicant shall provide in its application all relevant technological, financial, environmental, social, and ecological information that is generally known in the industry to be of potential concern for the particular type of facility proposed.~~

~~4906-17-03 Project description in detail and project schedule in detail.~~

~~(A) An applicant for a certificate to site a wind-powered electric generation facility under this chapter shall provide a detailed description of the proposed facility.~~

~~(1) For its proposed project area and any alternative project area(s), the applicant shall submit:~~

~~(a) Type(s) of turbines or, if a specific model of turbine has not yet been selected, the potential type(s), estimated number of turbines, estimated net demonstrated capability, annual capacity factor, hours of annual generation, and the project developer to be utilized for construction and operation of the facility, if different than the applicant.~~

~~(b) Land area requirement or, for off-shore projects, the off-shore boundaries, the construction impact area in acres and the basis of how such estimate was calculated, and the size of the permanent project area in acres.~~

~~(2) The applicant shall submit a description of the major equipment including, but not limited to, the footprint of the turbine, the height of the turbine measured from the tower's base, excluding the subsurface foundation, and the blade length.~~

~~(3) The applicant shall submit a brief description of any new transmission line(s) required for the proposed project.~~

~~(B) Detailed project schedule.~~

~~(1) Schedule. The applicant shall provide a proposed schedule in bar chart format covering all applicable major activities and milestones, including:~~

~~(a) Acquisition of land and land rights.~~

~~(b) Wildlife surveys/studies.~~

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~~(c) Preparation of the application.~~

~~(d) Submittal of the application for certificate.~~

~~(e) Issuance of the certificate.~~

~~(f) Preparation of the final design.~~

~~(g) Construction of the facility.~~

~~(h) Placement of the facility in service.~~

~~(2) Delays. The applicant shall describe the impact of critical delays on the eventual in-service date.~~

~~**4906-17-04 Project area analyses.**~~

~~(A) The applicant shall conduct a project area site selection study prior to submitting an application for a wind-powered electric generation facility. The study shall be designed to evaluate all practicable project area sites for the proposed facility.~~

~~(1) The applicant shall provide the following:~~

~~(a) A description of the study area or geographic boundaries selected, including the rationale for the selection.~~

~~(b) A map of suitable scale which includes the study area and which depicts the general project areas which were evaluated.~~

~~(c) A comprehensive list and description of all qualitative and quantitative siting criteria, factors, or constraints utilized by the applicant, including any evaluation criteria or weighting values assigned to each.~~

~~(d) A description of the process by which the applicant utilized the siting criteria to determine the proposed project area and any proposed alternative project area site(s).~~

~~(e) A description of the project area sites selected for evaluation, their final ranking, and the factors and rationale used by the applicant for selecting the proposed project area site and any proposed alternative project area site(s).~~

~~(2) The applicant shall provide one copy of any constraint map showing setbacks from residences, property lines, and public rights of way utilized for the study directly to the board staff for review.~~

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~~(B) The applicant shall provide a summary table comparing the project area sites, utilizing the technical, financial, environmental, socioeconomic, and other factors identified in the study. Design and equipment alternatives shall be included where the use of such alternatives influenced the siting decision.~~

~~(C) The applicant may provide a copy of any project area site selection study produced by or for the applicant for the proposed facility as an attachment to the application. The study may be submitted in response to paragraphs (A) and (B) of this rule, provided that the information contained therein is responsive to the requirements of paragraphs (A) and (B) of this rule.~~

~~**4906-17-05 Technical data.**~~

~~(A) Project area site. Information on the location, major features, and the topographic, geologic, and hydrologic suitability of the proposed project area site and any proposed alternative project area site(s) shall be submitted by the applicant. If this information is derived from reference materials, it shall be derived from the best available and current reference materials. The applicant shall provide the following for each project area site alternative.~~

~~(1) Geography and topography. The applicant shall provide a map(s) of 1:24,000 scale containing a five-mile radius from the proposed facility and showing the following features:~~

~~(a) The proposed facility.~~

~~(b) Major population centers and geographic boundaries.~~

~~(c) Major transportation routes and utility corridors.~~

~~(d) Bodies of water which may be directly affected by the proposed facility.~~

~~(e) Topographic contours.~~

~~(f) Major institutions, parks, and recreational areas.~~

~~(g) Residential, commercial, and industrial buildings and installations.~~

~~(h) Air transportation facilities, existing or proposed.~~

~~(2) An aerial photograph containing a one mile radius from the proposed facility, indicating the location of the proposed facility in relation to surface features.~~

~~(3) A map(s) of 1:12,000 scale of the project area site, showing the following existing features:~~

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~~(a) Topographic contours.~~

~~(b) Existing vegetative cover.~~

~~(c) Land use and classifications.~~

~~(d) Individual structures and installations.~~

~~(e) Surface bodies of water.~~

~~(f) Water and gas wells.~~

~~(g) Vegetative cover that may be removed during construction.~~

~~(4) Geology and seismology. The applicant shall provide a map(s) of suitable scale and a corresponding cross-sectional view, showing the geological features of the proposed project area and the location of proposed test borings. The applicant shall also:~~

~~(a) Describe the suitability of the site geology and plans to remedy any inadequacies.~~

~~(b) Describe the suitability of soil for grading, compaction, and drainage, and describe plans to remedy any inadequacies.~~

~~(5) Hydrology and wind. The applicant shall:~~

~~(a) Provide the natural and the man-affected water budgets, including the ten-year mean and critical (lowest seven day flow in ten years) surface flows and the mean and extreme water tables during the past ten years for each body of water likely to be directly affected by the proposed facility.~~

~~(b) Provide an analysis of the prospects of floods and high winds for the project area, including the probability of occurrences and likely consequences of various flood stages and wind velocities, and describe plans to mitigate any likely adverse consequences. Identify any portion of the proposed facility to be located in a one hundred-year flood plain area.~~

~~(c) Provide existing maps of aquifers which may be directly affected by the proposed facility.~~

~~(B) Layout and construction. The applicant shall provide information on the proposed layout and preparation of the proposed project area site and any proposed alternative project area site(s) and the description of proposed major structures and installations located thereon.~~

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~~(1) Project area site activities. The applicant shall describe the proposed project area site preparation and reclamation operations, including:~~

~~(a) Test borings, including closure plans for such borings.~~

~~(b) Removal of vegetation.~~

~~(c) Grading and drainage provisions.~~

~~(d) Access roads.~~

~~(e) Removal and disposal of debris.~~

~~(f) Post-construction reclamation.~~

~~(2) Layout. The applicant shall supply a map(s) of 1:12,000 scale of the proposed wind-powered electric generation facility, showing the following features of the proposed (and existing) facility and associated facilities:~~

~~(a) Wind-powered electric generation turbines.~~

~~(b) Transformers and collection lines.~~

~~(c) Construction laydown area(s).~~

~~(d) Transmission lines.~~

~~(e) Substations.~~

~~(f) Transportation facilities and access roads.~~

~~(g) Security facilities.~~

~~(h) Grade elevations where modified during construction.~~

~~(i) Other pertinent installations.~~

~~(3) Structures. The applicant shall describe, in as much detail as is available at the time of submission of the application, all major proposed structures, including the following:~~

~~(a) Estimated overall dimensions.~~

~~(b) Construction materials.~~

~~(c) Color and texture of facing surfaces.~~

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(d) Photographic interpretation or artist's pictorial sketches of the proposed facility from public vantage points within five miles of the proposed facility.

(e) Any unusual features.

(4) Plans for construction. The applicant shall describe the proposed construction sequence.

(5) Future plans. The applicant shall describe any plans for future additions of turbines to the proposed facility (including the type and timing) and the maximum electric capacity anticipated for the facility.

(C) Equipment.

(1) Wind-powered electric generation equipment. The applicant shall describe the proposed major wind-powered electric generation equipment for the proposed project area and any proposed alternative project area(s).

(2) Safety equipment. The applicant shall describe:

(a) All proposed major public safety equipment.

(b) The reliability of the equipment.

(c) Turbine manufacturer's safety standards. Include a complete copy of the manufacturer's safety manual or similar document.

(3) The applicant shall describe any other major equipment not discussed in paragraphs (C)(2)(a) to (C)(2)(c) of this rule.

(D) Regional electric power system. The applicant shall provide the following information on interconnection of the facility to the regional electric power grid.

(1) Interconnection queue(s). The applicant shall provide the following information relating to its generation interconnection request:

(a) Name of queue.

(b) Web link of queue.

(c) Queue number.

(d) Queue date.

(2) System studies. The applicant shall provide system impact studies on its generation interconnection request. The studies shall include, but are not limited to, the following:

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~~(a) Feasibility study.~~

~~(b) System impact study.~~

~~**4906-17-06 Financial data.**~~

~~(A) The applicant shall state the current and proposed ownership status of the proposed project area, including rights of way, structures, and equipment. Such information shall include type of ownership.~~

~~(B) Capital and intangible costs. The applicant shall:~~

~~(1) Submit estimates of applicable capital and intangible costs for the various alternatives. The data submitted shall be classified according to federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company, or a natural gas company, as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital and intangible costs classified in the accounting format ordinarily used by the applicant in its normal course of business).~~

~~(2) Compare the total costs per kilowatt with the applicant's similar facilities, and explain any substantial differences.~~

~~(3) Tabulate the present worth and annualized cost for capital costs and any additional cost details as required to compare capital cost of alternates (using the start of construction date as reference date), and describe techniques and all factors used in calculating present worth and annualized costs.~~

~~(C) Operation and maintenance expenses. The applicant shall:~~

~~(1) Supply applicable estimated annual operation and maintenance expenses for the first two years of commercial operation. The data submitted shall be classified according to federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company, or a natural gas company, as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the operation and maintenance expenses classified in the accounting format ordinarily used by the applicant in its normal course of business).~~

~~(2) Compare the total operation and maintenance cost per kilowatt with applicant's similar facilities and explain any substantial differences.~~

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(3) Tabulate the present worth and annualized expenditures for operation and maintenance costs as well as any additional cost breakdowns as required to compare alternatives, and describe techniques and factors used in calculating present worth and annualized costs.

(D) Delays. The applicant shall submit an estimate of the cost for a delay prorated on a monthly basis beyond the projected in-service date.

4906-17-07 Environmental data.

(A) General. The information requested in this rule shall be used to assess the environmental effects of the proposed facility. Where appropriate, the applicant may substitute all or portions of documents filed to meet federal, state, or local regulations. Existing data may be substituted for physical measurements.

(B) Air.

(1) Preconstruction. The applicant shall:

(a) Submit available information concerning the ambient air quality of the proposed project area site and any proposed alternative site(s).

(b) Describe applicable federal and/or Ohio new source performance standards, applicable air quality limitations, applicable national ambient air quality standards, and applicable prevention of significant deterioration increments.

(c) Provide a list of all required permits to install and operate air pollution sources. If any such permit(s) has been issued more than thirty days prior to the submittal of the certificate application, the applicant shall provide a list of all special conditions or concerns attached to the permit(s).

(d) Describe how the proposed facility will achieve compliance with the requirements identified in paragraphs (B)(1)(b) and (B)(1)(c) of this rule, if applicable.

(2) Construction. The applicant shall describe plans to control emissions during the project area site clearing and construction phase.

(C) Water.

(1) Preconstruction. The applicant shall provide a list of all permits required to install and operate the proposed facility.

(2) Construction. The applicant shall:

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~~(a) Describe the schedule for receipt of the national pollution discharge elimination system permit.~~

~~(b) Estimate the quality and quantity of aquatic discharges from the project area site clearing and construction operations, including run-off and siltation from dredging, filling, and construction of shore side facilities.~~

~~(c) Describe any plans to mitigate the above effects in accordance with current federal and Ohio regulations.~~

~~(d) Describe any changes in flow patterns and erosion due to project area site clearing and grading operations.~~

~~(3) Operation. In order to assess the effects of facility operation on water quality, the applicant shall:~~

~~(a) Provide a quantitative flow diagram or description for water and waterborne wastes resulting from run-off from soil or other surfaces at the proposed project area(s).~~

~~(b) Describe how the proposed facility incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives.~~

~~(D) Solid waste.~~

~~(1) Preconstruction. The applicant shall:~~

~~(a) Describe the nature and amount of debris and solid waste on the project area site.~~

~~(b) Describe any plans to deal with such wastes.~~

~~(2) Construction. The applicant shall:~~

~~(a) Estimate the nature and amounts of debris and other solid waste generated during construction operations.~~

~~(b) Describe the proposed method of storage and disposal of these wastes.~~

~~(3) Operation. The applicant shall:~~

~~(a) Estimate the amount, nature, and composition of solid wastes generated during the operation of the proposed facility.~~

~~(b) Describe proposed methods for storage, treatment, transport, and disposal of these wastes.~~

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(4) Licenses and permits. The applicant shall describe its plans and activities leading toward acquisition of waste generation, storage, treatment, transportation, and/or disposal permits. If any such permit(s) has been issued more than thirty days prior to the submittal of the certificate application, the applicant shall provide a list of all special conditions or concerns attached to the permit(s).

4906-17-08 Social and ecological data.

(A) Health and safety.

(1) Demographic. The applicant shall provide existing and ten-year projected population estimates for communities within five miles of the proposed project area site(s).

(2) Noise. The applicant shall:

(a) Describe the construction noise levels expected at the nearest property boundary. The description shall address:

(i) Dynamiting activities.

(ii) Operation of earth moving equipment.

(iii) Driving of piles.

(iv) Erection of structures.

(v) Truck traffic.

(vi) Installation of equipment.

(b) For each turbine, evaluate and describe the operational noise levels expected at the property boundary closest to that turbine, under both day and nighttime conditions. Evaluate and describe the cumulative operational noise levels for the wind facility at each property boundary for each property adjacent to the project area, under both day and nighttime operations. The applicant shall use generally accepted computer modeling software (developed for wind turbine noise measurement) or similar wind turbine noise methodology, including consideration of broadband, tonal, and low-frequency noise levels.

(c) Indicate the location of any noise sensitive areas within one mile of the proposed facility.

(d) Describe equipment and procedures to mitigate the effects of noise emissions from the proposed facility during construction and operation.

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~~(3) Water. The applicant shall estimate the impact to public and private water supplies due to construction and operation of the proposed facility.~~

~~(4) Ice throw. The applicant shall evaluate and describe the potential impact from ice throw at the nearest property boundary, including its plans to minimize potential impacts if warranted.~~

~~(5) Blade shear. The applicant shall evaluate and describe the potential impact from blade shear at the nearest property boundary, including its plans to minimize potential impacts if warranted.~~

~~(6) Shadow flicker. The applicant shall evaluate and describe the potential impact from shadow flicker at adjacent residential structures and primary roads, including its plans to minimize potential impacts if warranted.~~

~~(B) Ecological impact.~~

~~(1) Project area site information. The applicant shall:~~

~~(a) Provide a map of 1:24,000 scale containing a half mile radius from the proposed facility, showing the following:~~

~~(i) The proposed project area boundary.~~

~~(ii) Undeveloped or abandoned land such as wood lots, wetlands, or vacant fields.~~

~~(iii) Recreational areas, parks, wildlife areas, nature preserves, and other conservation areas.~~

~~(b) Provide the results of a survey of the vegetation within the facility boundary and within a quarter-mile distance from the facility boundary.~~

~~(c) Provide the results of a survey of the animal life within the facility boundary and within a quarter mile distance from the facility boundary.~~

~~(d) Provide a summary of any studies which have been made by or for the applicant addressing the ecological impact of the proposed facility.~~

~~(e) Provide a list of major species from the surveys of biota. "Major species" are those which are of commercial or recreational value, or species designated as endangered or threatened in accordance with the United States and Ohio threatened and endangered species lists.~~

~~(2) Construction. The applicant shall:~~

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(a) Estimate the impact of construction on the areas shown in response to paragraph (B)(1)(a) of this rule.

(b) Estimate the impact of construction on the major species listed under paragraph (B)(1)(e) of this rule.

(c) Describe the procedures to be utilized to avoid, minimize, and mitigate both the short- and long-term impacts due to construction.

(3) Operation. The applicant shall:

(a) Estimate the impact of operation on the areas shown in response to paragraph (B)(1)(a) of this rule.

(b) Estimate the impact of operation on the major species listed under paragraph (B)(1)(e) of this rule.

(c) Describe the procedures to be utilized to avoid, minimize, and mitigate both the short- and long-term impacts of operation.

(d) Describe any plans for post-construction monitoring of wildlife impacts.

(C) Economics, land use and community development.

(1) Land uses. The applicant shall:

(a) Provide a map of 1:24,000 scale indicating general land uses, depicted as areas on the map, within a five-mile radius of the facility, including such uses as residential and urban, manufacturing and commercial, mining, recreational, transport, utilities, water and wetlands, forest and woodland, and pasture and cropland.

(b) Provide the number of residential structures within one thousand feet of the boundary of the proposed facility, and identify all residential structures for which the nearest edge of the structure is within one hundred feet of the boundary of the proposed facility.

(c) Describe proposed locations for wind turbine structures in relation to property lines and habitable residential structures, consistent with no less than the following minimum requirements:

(i) The distance from a wind turbine base to the property line of the wind farm property shall be at least one and one-tenth times the total height of the turbine structure as measured from its tower's base (excluding the subsurface foundation) to the tip of its highest blade.

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(ii) The wind turbine shall be at least seven hundred fifty feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest habitable residential structure, if any, located on adjacent property at the time of the certification application.

(iii) Minimum setbacks may be waived in the event that all owners of property adjacent to the turbine agree to such waiver, pursuant to rule 4906-1-03 of the Administrative Code.

(d) Estimate the impact of the proposed facility on the above land uses within a one-mile radius.

(e) Identify structures that will be removed or relocated.

(f) Describe formally adopted plans for future use of the site and surrounding lands for anything other than the proposed facility.

(g) Describe the applicant's plans for concurrent or secondary uses of the project area.

(2) Economics. The applicant shall:

(a) Estimate the annual total and present worth of construction and operation payroll.

(b) Estimate the construction and operation employment and estimate the number that will be employed from the region.

(c) Estimate the increase in county, township, city, and school district tax revenue accruing from the facility.

(d) Estimate the economic impact of the proposed facility on local commercial and industrial activities.

(3) Public services and facilities. The applicant shall describe the probable impact of the construction and operation on public services and facilities.

(4) Impact on regional development. The applicant shall:

(a) Describe the impact of the proposed facility on regional development, including housing, commercial and industrial development, and transportation system development.

(b) Assess the compatibility of the proposed facility and the anticipated resultant regional development with current regional plans.

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~~(D) Cultural impact.~~

~~(1) The applicant shall indicate, on the 1:24,000 map referenced in paragraph (C)(1)(a) of this rule, any registered landmarks of historic, religious, archaeological, scenic, natural, or other cultural significance within five miles of the proposed facility.~~

~~(2) The applicant shall estimate the impact of the proposed facility on the preservation and continued meaningfulness of these landmarks and describe plans to mitigate any adverse impact.~~

~~(3) Landmarks to be considered for purposes of paragraphs (D)(1) and (D)(2) of this rule are those districts, sites, buildings, structures, and objects which are recognized by, registered with, or identified as eligible for registration by the national registry of natural landmarks, the Ohio historical society, or the Ohio department of natural resources.~~

~~(4) The applicant shall indicate, on the 1:24,000 map referenced in paragraph (C)(1)(a) of this rule, existing and formally adopted land and water recreation areas within five miles of the proposed facility.~~

~~(5) The applicant shall describe the identified recreational areas within one mile of the proposed project area in terms of their proximity to population centers, uniqueness, topography, vegetation, hydrology, and wildlife; estimate the impact of the proposed facility on the identified recreational areas; and describe plans to avoid, minimize, or mitigate any adverse impact.~~

~~(6) The applicant shall describe measures that will be taken to minimize any adverse visual impacts created by the facility, including, but not limited to, project area location, lighting, and facility coloration. In no event shall these measures conflict with relevant safety requirements.~~

~~(E) Public responsibility. The applicant shall:~~

~~(1) Describe the applicant's program for public interaction for the siting, construction, and operation of the proposed facility, i.e., public information programs.~~

~~(2) Describe any insurance or other corporate programs for providing liability compensation for damages to the public resulting from construction or operation of the proposed facility.~~

~~(3) Evaluate and describe the potential for the facility to interfere with radio and TV reception and, if warranted, describe measures that will be taken to minimize interference.~~

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~~(4) Evaluate and describe the potential for the facility to interfere with military radar systems and, if warranted, describe measures that will be taken to minimize interference.~~

~~(5) Evaluate and describe the anticipated impact to roads and bridges associated with construction vehicles and equipment delivery. Describe measures that will be taken to repair roads and bridges to at least the condition present prior to the project.~~

~~(6) Describe the plan for decommissioning the proposed facility, including a discussion of any financial arrangements designed to assure the requisite financial resources.~~

~~(F) Agricultural district impact. The applicant shall:~~

~~(1) Separately identify on a map(s) of 1:24,000 scale all agricultural land and all agricultural district land located within the proposed project area boundaries, where such land is existing at least sixty days prior to submission of the application.~~

~~(2) Provide, for all agricultural land identified under paragraph (F)(1) of this rule, the following:~~

~~(a) A quantification of the acreage impacted, and an evaluation of the impact of the construction, operation, and maintenance of the proposed facility on the following agricultural practices within the proposed facility boundaries:~~

~~(i) Field operations (i.e., plowing, planting, cultivating, spraying, harvesting, etc.).~~

~~(ii) Irrigation.~~

~~(iii) Field drainage systems.~~

~~(b) A description of any mitigation procedures to be utilized by the applicant during construction, operation, and maintenance to reduce impacts to the agricultural land.~~

~~(3) Provide, for all agricultural land identified under paragraph (F)(1) of this rule, an evaluation of the impact of the construction and maintenance of the proposed facility on the viability as agricultural land of any land so identified. The evaluation shall include impacts to cultivated lands, permanent pasture land, managed woodlots, orchards, nurseries, livestock and poultry confinement areas, and agriculturally related structures. Changes in land use and changes in methods of operation made necessary by the proposed facility shall be evaluated.~~