

BEFORE

THE OHIO POWER SITING BOARD

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

ENTRY

The administrative law judge finds:

- (1) R.C. 111.15(B) 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.
- (2) R.C. 106.03(A) requires that the Board determine whether the rules:
  - (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
  - (b) Need amendment or rescission to give more flexibility at the local level;
  - (c) Need amendment or rescission to eliminate unnecessary paperwork;
  - (d) Incorporate 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;
  - (e) Duplicate, overlap with, or conflict with other rules;
  - (f) Have an adverse impact on businesses, as determined under R.C. 107.52; and

- (g) Contain words or phrases having meanings that, in contemporary usage, are understood as being derogatory or offensive.
- (3) 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.
- (4) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Board must conduct a business impact analysis (BIA) regarding the rules. If there will be an adverse impact on business, 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 (CSI) office the draft rules and the BIA.

#### History of Prior Rulemaking

- (5) In Case No. 12-1981-GE-BRO, 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.
- (6) On February 18, 2014, the Board issued a Finding and Order in which it adopted a number of revisions to the current administrative rules, including a reorganization of the rules in order to provide a better structure for the rules and to make it easier to follow the process and requirements for different types of cases. Additionally, the Board concluded 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, subject to the provisions of R.C. 111.15.

- (7) Thereafter, on September 15, 2014, House Bill 483 (H.B. 483) became effective, thus, amending R.C. 4906.20 and 4906.201, regarding the setback requirements for applications to construct wind-powered electric generation facilities that come before the Board.
- (8) The Board moved forward, in accordance with the provisions of R.C. 111.15, and filed the vast majority of the rules with the Joint Committee on Agency Rule Review (JCARR), in light of the new law contained in R.C. 4906.20 and 4906.201, but did not file at that time new Ohio Adm.Code 4906-4-08, which contained a consolidation of the rules found in Ohio Adm.Code 4906-13-04, 4906-13-07, 4906-17-05, and 4906-17-08. In addition, Ohio Adm.Code 4906-13-04, 4906-13-07, 4906-17-05, and 4906-17-08 were not filed with JCARR at that time. The rules not filed with JCARR address the health and safety, land use, and ecological information required in applications filed before the Board, including the provision regarding the statutory setback requirements for wind-powered electric generation facilities.
- (9) By Entry issued November 24, 2014, the Board requested comments on Staff's proposed revision to Ohio Adm.Code 4906-4-08, which revised the setback requirements for applications to construct wind-powered electric generation facilities in light of the amendments to R.C. 4906.20 and 4906.201 made in H.B. 483. Additionally, the Board noted that, until JCARR reviewed proposed Ohio Adm.Code 4906-4-08 and it became effective, Ohio Adm.Code 4906-13-04, 4906-13-07, 4906-17-05, and 4906-17-08 should remain in effect.
- (10) On November 12, 2015, the Board issued a Second Finding and Order (Second Order) in Case 12-1981-GE-BRO. In the Second Order, the Board found that revisions to proposed Ohio Adm.Code 4906-4-08(C)(2)(b) should be filed with JCARR, the Legislative Service Commission, and the Secretary of State, in order to ensure the most current statutory setback requirement was reflected in the rules as soon as possible. However, the Board found that further discussion was necessary on the topics raised in the comments regarding proposed Ohio Adm.Code 4906-4-08 as they related to wind-powered electric generation facilities. Consequently, the Board directed that Staff commence discussions with all interested stakeholders in January 2016 in order to obtain more information on stakeholders' proposals and

concerns and to develop potential solutions. The Board further found that, upon conclusion of the discussions, but no later than June 1, 2016, the Board should initiate a rulemaking docket in order to formally consider Staff's proposed revisions to Ohio Adm.Code 4906-4-08 resulting from the stakeholder deliberations.

#### Informal Stakeholder Workshop on Wind Rule

- (11) On January 29, 2016, Staff held an informal stakeholder workshop as directed in the Second Order, in order to gather information and obtain potential solutions to a range of concerns regarding the rule applicable to wind-powered electric generation facilities. At the workshop, stakeholders commented on the specific issues outlined in the Second Order and recommended revisions to proposed Ohio Adm.Code 4906-4-08. Additionally, multiple stakeholders submitted written comments, which were posted on the Board's website.

#### Current Proceeding

- (12) In the above-captioned case, the administrative law judge notes that the Board has initiated the rulemaking docket in which it will formally consider Staff's proposed revisions to Ohio Adm.Code 4906-4-08 resulting from the informal stakeholder workshop.
- (13) The administrative law judge finds that, prior to issuing Staff's proposed revisions to the rule for comment, it is appropriate to require Staff to hold a formal workshop with interested stakeholders. At the formal workshop, Staff may elicit feedback on any proposed revisions to the rule that Staff may have and may permit stakeholders to propose their own revisions to the rule for Staff's consideration. Interested stakeholders should come to the formal workshop prepared with necessary technical experts to provide appropriate feedback. An administrative law judge from the Board's legal department will serve as a moderator for the formal workshop. After Staff has an opportunity to consider the feedback received at the formal workshop, proposed rule amendments will be issued for comments and reply comments by interested parties.

- (14) Accordingly, the administrative law judge finds that, at this time, a formal workshop should be scheduled for June 9, 2016, at 10:00 a.m., 11th Floor, at the offices of the Board, 180 East Broad Street, Hearing Room B, Columbus, Ohio, to consider proposed revisions to Ohio Adm.Code 4906-4-08. The formal workshop is intended to be an opportunity for Staff to receive feedback from interested stakeholders before the draft rule is issued for comment. Any interested stakeholder that does not participate in the formal workshop may file formal comments with the Board once the draft rule has been issued.
- (15) The administrative law judge notes that comments provided for purposes of Staff's informal stakeholder workshop on January 29, 2016, or written comments submitted to the Board for purposes of the informal stakeholder workshop prior to the opening of this formal rulemaking, will not be transferred by the Board to this formal rulemaking docket for consideration of the Board in its final determination of the rule. Interested individuals who submitted comments as part of the informal stakeholder workshop who wish for their comments to be considered in this formal rulemaking docket should submit their comments at the June 9, 2016 workshop or as written formal comments once the draft rule has been issued in this proceeding. The Board Entry issuing the draft rule in this proceeding will include deadlines for submitting written formal comments.

It is, therefore,

ORDERED, That, in accordance with Finding (14), a formal workshop be scheduled for June 9, 2016. It is, further,

ORDERED, That notice of this Entry be served via the electric-energy and gas-pipeline industry service lists. It is, further,

ORDERED, That a copy of this Entry be served upon all interested persons of record.

THE OHIO POWER SITING BOARD

s/Mandy W. Chiles

By: Mandy Willey Chiles  
Administrative Law Judge

JRJ/sc

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 16-1109-GE-BRO**

Summary: Administrative Law Judge Entry scheduling a formal rulemaking workshop for June 9, 2016. - electronically filed by Sandra Coffey on behalf of Mandy Willey Chiles, Attorney Examiner, Public Utilities Commission of Ohio