

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Ohio Power Siting)
Board's Review of Rule 4906-4-08 of the)
Ohio Administrative Code.)

Case No. 16-1109-GE-BRO

**APPLICATION FOR REHEARING OF
GREENWICH NEIGHBORS UNITED
AND
MEMORANDUM IN SUPPORT**

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JUNE 5, 2017

ATTORNEYS FOR GREENWICH NEIGHBORS UNITED

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CERTIFICATE OF SERVICE

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**APPLICATION FOR REHEARING OF
GREENWICH NEIGHBORS UNITED**

Greenwich Neighbors United ("GNU") is a nonprofit corporation formed for the purpose of promoting the safety and well-being of the community in and around Greenwich, Ohio. Among other things, it works to proactively address issues relating to the siting of industrial wind turbines. In addition to GNU's participation in this proceeding, GNU or its members have actively participated in Case Nos. 12-1981-GE-BRO, 13-990-EL-BGN, and 15-1921-EL-BGA before the Ohio Power Siting Board ("OPSB").

In its Initial and Reply Comments in this proceeding, GNU identified legal, procedural and substantive defects in the proposed rules as relevant to applications by economically significant wind farms. In response and on May 4, 2017, the OPSB adopted the defective and deficient rules.¹ The *May 4 Order* is unlawful and unreasonable in the following respects.

- I. THE *MAY 4 ORDER* IS UNLAWFUL AND UNREASONABLE BECAUSE THE OPSB FAILED TO "...PRESCRIBE REASONABLE REGULATIONS REGARDING ANY WIND TURBINES AND ASSOCIATED FACILITIES OF AN ECONOMICALLY SIGNIFICANT WIND FARM, INCLUDING, BUT NOT LIMITED TO, THEIR LOCATION, ERECTION, CONSTRUCTION, RECONSTRUCTION, CHANGE, ALTERATION, MAINTENANCE, REMOVAL, USE, OR ENLARGEMENT AND INCLUDING EROSION CONTROL,**

¹ In the Matter of the Ohio Power Siting Board's Review of Rule 4906-4-08 of the Ohio Administrative Code, Case No. 16-1109-GE-BRO, Finding and Order (May 4, 2017) (hereinafter referred to as the *May 4 Order*).

AESTHETICS, RECREATIONAL LAND USE, WILDLIFE PROTECTION, INTERCONNECTION WITH POWER LINES AND WITH REGIONAL TRANSMISSION ORGANIZATIONS, INDEPENDENT TRANSMISSION SYSTEM OPERATORS, OR SIMILAR ORGANIZATIONS, ICE THROW, SOUND AND NOISE LEVELS, BLADE SHEAR, SHADOW FLICKER, DECOMMISSIONING, AND NECESSARY COOPERATION FOR SITE VISITS AND ENFORCEMENT INVESTIGATIONS” AS REQUIRED BY R.C. 4906.20(B)(2).

R.C. 4906.20(B) directs the OPSB to adopt two types of rules. R.C. 4906(B)(1) directs the OPSB to adopt rules regarding the application process. In addition, R.C. 4906.20(B)(2) directs the OPSB to adopt rules that:

...prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with power lines and with regional transmission organizations, independent transmission system operators, or similar organizations, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations.

While the *May 4 Order* adopted rules regarding the application process, it failed to promulgate the reasonable regulations required by R.C. 4906.20(B)(2).²

Instead of promulgating the reasonable regulations as directed by statute, the OPSB unlawfully and unreasonably incorporates by reference a number of things that may or may not be reasonable regulations. In Rule 4906-4-09(A)(1), O.A.C., the OPSB adopted a general incorporation by reference provision requiring adherence to applicable state and federal requirements, including all applicable safety, construction, environmental, electrical, communications, and federal aviation administration requirements. The OPSB also incorporated by reference requirements in specific areas

² R.C. 4906.20 states that the OPSB can only issue a certificate pursuant to this section. Thus, the OPSB must satisfy fully the rulemaking requirements in R.C. 4906.20(B) before it can lawfully issue a certificate.

of the rules it adopted in the *May 4 Order*. For example, with respect to blade shear, Rule 4906-4-09(G)(3), O.A.C., requires the design of wind turbines to conform to industry standards.³

The “incorporation by reference” provisions in the rules fail to comply with the requirements of R.C. 106.03, 121.72, 121.74, and 121.75 that the OPSB must follow when incorporating reference.⁴ Generalized incorporation by reference for things such as “industry standards” fails to provide any meaningful guidance to parties that come before the OPSB as to what is required to obtain a certificate to construct and operate an economically significant wind farm.⁵

In other contexts, the OPSB’s rules are just as guideless and unreasonable. For example, the OPSB’s rules do not specify any maximum ice throw distance that would be presumptively unreasonable.⁶ Other provisions in the rules require compliance with the

³ Other instances requiring compliance with unspecified requirements are contained in Rules 4906-4-08(D)(1) and 4906-4-09(C)(5), O.A.C. (identification of landmarks), Rule 4906-4-09(C)(3), O.A.C. (compliance with FAA lighting requirements), and Rule 4906-4-09(D)(1), O.A.C., (minimizing impacts on wildlife through coordination with the United States fish and wildlife service, and the Ohio department of natural resources division of wildlife).

⁴ R.C. 106.03 requires the OPSB to comply with R.C. 121.72, 121.74, 121.75, and 121.76 when it incorporates material by reference into its rules. R.C. 121.72 requires the OPSB’s rules to explain how persons affected by the rule may obtain copies of the incorporated material, requires the OPSB to indicate whether the incorporated material is deposited with libraries or is available on its website, and where the incorporated material is reasonably expected to change to state the date, edition, or version of the material that was incorporated into its rules. When an agency files its rules in final form, R.C. 121.74 further requires the OPSB to deposit a complete and accurate copy of the incorporated material in five libraries designated by the state or maintain a complete and accurate copy of the incorporated material on its website. There has been no indication by the OPSB that it intends to do either. Although R.C. 121.75 exempts the OPSB from the requirements of R.C. 121.71 and R.C. 121.74 upon meeting certain criteria, none of the requirements have been met.

⁵ Ironically, the OPSB rejected changes to its rules proposed by a party to this case because that party had failed to provide the OPSB with the materials that were requested to be incorporated into the OPSB’s rules. *May 4 Order* at 16.

⁶ Rule 4906-4-09(E)(3), O.A.C. Although the OPSB adopted a threshold distance below which ice throw would be deemed presumptively reasonable, the OPSB did not adopt any maximum distance where ice throw would be deemed presumptively unreasonable. The creation of a presumption in this context is also unreasonable and unlawful because there is no necessary relationship between the thing presumed and the thing that triggers the presumption.

“manufacturer’s most current safety manual” (another incorporation by reference defect) but then waives application of the safety manual where the manual conflicts with Rule 4906-4-08(C)(2), O.A.C. which deals with the minimum setback distances.⁷ Thus, it appears that the rules may be read to unreasonably override a minimum setback distance that is specified in a manufacturer’s safety manual when it is greater than the statutory minimum setbacks.

Because the OPSB failed to adopt the reasonable regulations required by R.C. 4906.20(B)(2), the *May 4 Order* and the rules adopted therein are unlawful and unreasonable.

II. THE *MAY 4 ORDER* IS UNLAWFUL AND UNREASONABLE BECAUSE THE OPSB FAILED TO ESTABLISH, BY RULE, THE PROCEDURE BY WHICH A WAIVER OF THE MINIMUM SETBACK MUST BE OBTAINED AS REQUIRED BY R.C. 4906.20(B)(2)(c) AND BY FAILING TO REQUIRE THAT MINIMUM SETBACK WAIVERS BE FILED AS PART OF THE CERTIFICATE APPLICATION PROCESS.

While the *May 4 Order* adopted rule language that identifies the content⁸ of a minimum setback waiver, it failed to identify the procedure⁹ by which a minimum setback waiver must be obtained. The procedure which the OPSB is directed to establish by rule must be sufficient to ensure that any person giving up the right established by the minimum setback has done so voluntarily through a free and deliberate choice rather than as a result of deception, intimidation, or coercion.

⁷ Rule 4906-4-09(A)(2), O.A.C.

⁸ The rule language identifying the content of a waiver confusingly appears in Rule 4906-4-08 O.A.C which identifies information that a certificate applicant must provide. Beyond being merely a waiver content rule, 4906-4-08(C)(3)(b) O.A.C., is unreasonably and unlawfully confined to the construction phase of a wind farm. Since certificates are sought and issued for the construction and operation of a wind farm, any minimum setback waiver must cover the construction and operation phases of the wind farm.

⁹ The word “procedure” means a particular way of accomplishing something or a series of steps followed in a regular definite order. <https://www.merriam-webster.com/dictionary/procedure> (last visited May 29, 2017).

The OPSB can only issue a certificate pursuant to R.C. 4906.20. In the event a certificate applicant proposes a wind farm that violates a minimum setback, the OPSB may not issue a certificate until and unless the applicant demonstrates that minimum setback waivers have been obtained from all owners of property adjacent to the wind farm property pursuant to a procedure the OPSB has established by rule. The *May 4 Order* is unlawful and unreasonable because it does not require all minimum setback waivers to be filed as part of the certificate application process.

III. THE *MAY 4 ORDER* IS UNLAWFUL AND UNREASONABLE BECAUSE THE *MAY 4 ORDER*, RULE 4906-4-08(C)(2)(D), O.A.C., AND RULE 4906-4-08(C)(3), O.A.C., FAIL TO CONFORM TO THE R.C. 4906.20(B)(2)(C) REQUIREMENT THAT MINIMUM SETBACK WAIVERS BE SECURED FROM ALL OWNERS OF PROPERTY ADJACENT TO THE WIND FARM PROPERTY.

Rule 4906-4-08(C)(2), O.A.C., identifies certain maps that a certificate applicant must submit as part of the application process. The Rule language dealing with maps unreasonably and confusingly buries, in Rule 4906-4-08(C)(2)(d), O.A.C., the following sentence: “Minimum setbacks from property lines and residences may be waived pursuant to the procedures set forth in paragraph (C)(3) of this rule.” Then Rule 4906-4-08(C)(3), O.A.C., states: “Setback waivers. The owner(s) of property adjacent to any wind farm property may waive the minimum setback requirements by signing a waiver of their rights.” Otherwise the Rule fails to address the population of adjacent property owners that must waive the minimum setbacks.

R.C. 4906.20(B)(2)(c) states that the minimum setbacks control in all cases “...except those in which all owners of property adjacent to the wind farm property¹⁰ waive

¹⁰ For reasons known only to the OPSB, the *May 4 Order* rejected GNU's recommendation that the Rule define “wind farm property.” It is clear from this statutory language that the “wind farm property” must be identified before the population of adjoining property owners can be identified. And this population of

application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.” The *May 4 Order*, Rule 4906-4-08(C)(2)(d), O.A.C, and Rule 4906-4-08(C)(3), O.A.C., are unreasonable and unlawful because they conflict with the controlling statute. In addition, the *May 4 Order* is unreasonable because it promotes mystery and confusion while the law and the public interest call for transparency and clarity.

IV. THE *MAY 4 ORDER* IS UNLAWFUL AND UNREASONABLE BECAUSE THE ORDER AND RULE 4906-4-09(A)(5)(B), O.A.C., CONFLICTS WITH R.C. 4906.20 AND 4906.201 BY PROVIDING THAT A CERTIFICATE MAY BE AMENDED WITHOUT BEING CONSIDERED AN AMENDED CERTIFICATE THEREBY EVADING THE STATUTORY REQUIREMENTS APPLICABLE TO AMENDED CERTIFICATES.

Rule 4906-4-09(A)(5)(b) provides that applications to modify a certificate will not be considered amendments to a certificate if the “modification(s) would be minimal in nature and would substantially comply with the conditions of a certificate,” unless the OPSB or administrative law judge decides to classify the modification as an amendment. This rule is unreasonable and unlawful because it conflicts with the statutory language governing amendments to certificates.

R.C. 4906.20 and R.C. 4906.201 address, among other things, the statutory minimum setback distances that apply to economically significant wind farms. The statutory minimum setback distances have been increased over time; however, the General Assembly grandfathered certain certificates.¹¹

adjoining property owners must be identified before the minimum setbacks can be evaded by an economically significant wind farm.

¹¹ R.C. 4906.20(B)(2)(b)(i); R.C. 4906.201(B)(1)-(2).

Any amendment to an existing certificate that is proposed after September 15, 2014 triggers application of the current minimum setback requirements as specifically stated in R. C. 4906.201(B)(2). Merriam-Webster defines “amend” as “to alter formally by modification, deletion, or addition,”¹² and an amendment as “the process of altering or amending.”¹³ Because the ordinary meaning of amend includes modification, any “modification” to an existing certificate is an amendment within the meaning and context of R.C. 4906.20 and R.C. 4906.201.

Because the distinction drawn between “modification” and “amendment” in Rule 4906-4-09(A)(5)(b), O.A.C., would produce a result contrary to the statutory requirements, the rule is unlawful and unreasonable.

¹² <https://www.merriam-webster.com/dictionary/amend>

¹³ <https://www.merriam-webster.com/dictionary/amendment>

V. CONCLUSION.

This proceeding concerns the OPSB's adoption of rules required by R. C. 4906.20. These rules were required to be first adopted 120 days after June 24, 2008. Because the OPSB's *May 4 Order* and rules adopted therein are unlawful and unreasonable, GNU urges the OPSB to grant this Application for Rehearing.

Respectfully submitted,

/s/ Samuel C. Randazzo

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MEMORANDUM IN SUPPORT

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In its Initial and Reply Comments in this proceeding, GNU identified legal, procedural and substantive defects in the proposed rules as relevant to applications by economically significant wind farms. In response and on May 4, 2017, the OPSB adopted the defective and deficient rules.¹⁴ The *May 4 Order* is unlawful and unreasonable in the following respects.

I. ARGUMENT

A. THE *MAY 4 ORDER* IS UNLAWFUL AND UNREASONABLE BECAUSE THE OPSB FAILED TO "...PRESCRIBE REASONABLE REGULATIONS REGARDING ANY WIND TURBINES AND ASSOCIATED FACILITIES OF AN

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ECONOMICALLY SIGNIFICANT WIND FARM, INCLUDING, BUT NOT LIMITED TO, THEIR LOCATION, ERECTION, CONSTRUCTION, RECONSTRUCTION, CHANGE, ALTERATION, MAINTENANCE, REMOVAL, USE, OR ENLARGEMENT AND INCLUDING EROSION CONTROL, AESTHETICS, RECREATIONAL LAND USE, WILDLIFE PROTECTION, INTERCONNECTION WITH POWER LINES AND WITH REGIONAL TRANSMISSION ORGANIZATIONS, INDEPENDENT TRANSMISSION SYSTEM OPERATORS, OR SIMILAR ORGANIZATIONS, ICE THROW, SOUND AND NOISE LEVELS, BLADE SHEAR, SHADOW FLICKER, DECOMMISSIONING, AND NECESSARY COOPERATION FOR SITE VISITS AND ENFORCEMENT INVESTIGATIONS” AS REQUIRED BY R.C. 4906.20(B)(2).

R.C. 4906.20(B) directs the OPSB to adopt two types of rules. R.C. 4906(B)(1) directs the OPSB to adopt rules regarding the application process. In addition, R.C. 4906.20(B)(2) directs the OPSB to adopt rules that:

...prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with power lines and with regional transmission organizations, independent transmission system operators, or similar organizations, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations.

While the *May 4 Order* adopted rules regarding the application process, it failed to promulgate the reasonable regulations required by R.C. 4906.20(B)(2).¹⁵

Instead of promulgating the reasonable regulations as directed by statute, the OPSB unlawfully and unreasonably incorporates by reference a number of things that may or may not be reasonable regulations. In Rule 4906-4-09(A)(1), O.A.C., the OPSB adopted a general incorporation by reference provision requiring adherence to applicable state and federal requirements, including all applicable safety, construction,

¹⁵ R.C. 4906.20 states that the OPSB can only issue a certificate pursuant to this section. Thus, the OPSB must satisfy fully the rulemaking requirements in R.C. 4906.20(B) before it can lawfully issue a certificate.

environmental, electrical, communications, and federal aviation administration requirements. The OPSB also incorporated by reference requirements in specific areas of the rules it adopted in the *May 4 Order*. For example, with respect to blade shear, Rule 4906-4-09(G)(3), O.A.C., requires the design of wind turbines to conform to industry standards.¹⁶

The “incorporation by reference” provisions in the rules fail to comply with the requirements of R.C. 106.03, 121.72, 121.74, and 121.75 that the OPSB must follow when incorporating by reference.¹⁷ Generalized incorporation by reference for things such as “industry standards” fails to provide any meaningful guidance to parties that come before the OPSB as to what is required to obtain a certificate to construct and operate an economically significant wind farm.¹⁸

In other contexts, the OPSB’s rules are just as guideless and unreasonable. For example, the OPSB’s rules do not specify any maximum ice throw distance that would be

¹⁶ Other instances requiring compliance with unspecified requirements are contained in Rules 4906-4-08(D)(1) and 4906-4-09(C)(5), O.A.C. (identification of landmarks), Rule 4906-4-09(C)(3), O.A.C. (compliance with FAA lighting requirements), and Rule 4906-4-09(D)(1), O.A.C., (minimizing impacts on wildlife through coordination with the United States fish and wildlife service, and the Ohio department of natural resources division of wildlife).

¹⁷ R.C. 106.03 requires the OPSB to comply with R.C. 121.72, 121.74, 121.75, and 121.76 when it incorporates material by reference into its rules. R.C. 121.72 requires the OPSB’s rules to explain how persons affected by the rule may obtain copies of the incorporated material, requires the OPSB to indicate whether the incorporated material is deposited with libraries or is available on its website, and where the incorporated material is reasonably expected to change to state the date, edition, or version of the material that was incorporated into its rules. When an agency files its rules in final form, R.C. 121.74 further requires the OPSB to deposit a complete and accurate copy of the incorporated material in five libraries designated by the state or maintain a complete and accurate copy of the incorporated material on its website. There has been no indication by the OPSB that it intends to do either. Although R.C. 121.75 exempts the OPSB from the requirements of R.C. 121.71 and R.C. 121.74 upon meeting certain criteria, none of the requirements have been met.

¹⁸ Ironically, the OPSB rejected changes to its rules proposed by a party to this case because that party had failed to provide the OPSB with the materials that were requested to be incorporated into the OPSB’s rules. *May 4 Order* at 16.

presumptively unreasonable.¹⁹ Other provisions in the rules require compliance with the “manufacturer’s most current safety manual” (another incorporation by reference defect) but then waives application of the safety manual where the manual conflicts with Rule 4906-4-08(C)(2), O.A.C. which deals with the minimum setback distances.²⁰ Thus, it appears that the rules may be read to unreasonably override a minimum setback distance that is specified in a manufacturer’s safety manual when it is greater than the statutory minimum setbacks.

Because the OPSB failed to adopt the reasonable regulations required by R.C. 4906.20(B)(2), the *May 4 Order* and the rules adopted therein are unlawful and unreasonable.

B. THE *MAY 4 ORDER* IS UNLAWFUL AND UNREASONABLE BECAUSE THE OPSB FAILED TO ESTABLISH, BY RULE, THE PROCEDURE BY WHICH A WAIVER OF THE MINIMUM SETBACK MUST BE OBTAINED AS REQUIRED BY R.C. 4906.20(B)(2)(c) AND BY FAILING TO REQUIRE THAT MINIMUM SETBACK WAIVERS BE FILED AS PART OF THE CERTIFICATE APPLICATION PROCESS.

While the *May 4 Order* adopted rule language that identifies the content²¹ of a minimum setback waiver, it failed to identify the procedure²² by which a minimum setback

¹⁹ Rule 4906-4-09(E)(3), O.A.C. Although the OPSB adopted a threshold distance below which ice throw would be deemed presumptively reasonable, the OPSB did not adopt any maximum distance where ice throw would be deemed presumptively unreasonable. The creation of a presumption in this context is also unreasonable and unlawful because there is no necessary relationship between the thing presumed and the thing that triggers the presumption.

²⁰ Rule 4906-4-09(A)(2), O.A.C.

²¹ The rule language identifying the content of a waiver confusingly appears in Rule 4906-4-08 O.A.C which identifies information that a certificate applicant must provide. Beyond being merely a waiver content rule, 4906-4-08(C)(3)(b) O.A.C., is unreasonably and unlawfully confined to the construction phase of a wind farm. Since certificates are sought and issued for the construction and operation of a wind farm, any minimum setback waiver must cover the construction and operation phases of the wind farm.

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The OPSB can only issue a certificate pursuant to R.C. 4906.20. In the event a certificate applicant proposes a wind farm that violates a minimum setback, the OPSB may not issue a certificate until and unless the applicant demonstrates that minimum setback waivers have been obtained from all owners of property adjacent to the wind farm property pursuant to a procedure the OPSB has established by rule. The *May 4 Order* is unlawful and unreasonable because it does not require all minimum setback waivers to be filed as part of the certificate application process.

C. THE *MAY 4 ORDER* IS UNLAWFUL AND UNREASONABLE BECAUSE THE *MAY 4 ORDER*, RULE 4906-4-08(C)(2)(D), O.A.C., AND RULE 4906-4-08(C)(3), O.A.C., FAIL TO CONFORM TO THE R.C. 4906.20(B)(2)(c) REQUIREMENT THAT MINIMUM SETBACK WAIVERS BE SECURED FROM ALL OWNERS OF PROPERTY ADJACENT TO THE WIND FARM PROPERTY.

Rule 4906-4-08(C)(2), O.A.C., identifies certain maps that a certificate applicant must submit as part of the application process. The Rule language dealing with maps unreasonably and confusingly buries, in Rule 4906-4-08(C)(2)(d), O.A.C., the following sentence: "Minimum setbacks from property lines and residences may be waived pursuant to the procedures set forth in paragraph (C)(3) of this rule." Then Rule 4906-4-08(C)(3), O.A.C., states: "Setback waivers. The owner(s) of property adjacent to any wind farm property may waive the minimum setback requirements by signing a waiver of their rights." Otherwise the Rule fails to address the population of adjacent property owners that must waive the minimum setbacks.

R.C. 4906.20(B)(2)(c) states that the minimum setbacks control in all cases “...except those in which all owners of property adjacent to the wind farm property²³ waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.” The *May 4 Order*, Rule 4906-4-08(C)(2)(d), O.A.C, and Rule 4906-4-08(C)(3), O.A.C., are unreasonable and unlawful because they conflict with the controlling statute. In addition, the *May 4 Order* is unreasonable because it promotes mystery and confusion while the law and the public interest call for transparency and clarity.

D. THE *MAY 4 ORDER* IS UNLAWFUL AND UNREASONABLE BECAUSE THE ORDER AND RULE 4906-4-09(A)(5)(B), O.A.C., CONFLICTS WITH R.C. 4906.20 AND 4906.201 BY PROVIDING THAT A CERTIFICATE MAY BE AMENDED WITHOUT BEING CONSIDERED AN AMENDED CERTIFICATE THEREBY EVADING THE STATUTORY REQUIREMENTS APPLICABLE TO AMENDED CERTIFICATES.

Rule 4906-4-09(A)(5)(b) provides that applications to modify a certificate will not be considered amendments to a certificate if the “modification(s) would be minimal in nature and would substantially comply with the conditions of a certificate,” unless the OPSB or administrative law judge decides to classify the modification as an amendment. This rule is unreasonable and unlawful because it conflicts with the statutory language governing amendments to certificates.

R.C. 4906.20 and R.C. 4906.201 address, among other things, the statutory minimum setback distances that apply to economically significant wind farms. The

²³ For reasons known only to the OPSB, the *May 4 Order* rejected GNU’s recommendation that the Rule define “wind farm property.” It is clear from this statutory language that the “wind farm property” must be identified before the population of adjoining property owners can be identified. And this population of adjoining property owners must be identified before the minimum setbacks can be evaded by an economically significant wind farm.

statutory minimum setback distances have been increased over time; however, the General Assembly grandfathered certain certificates.²⁴ Any amendment to an existing certificate that is proposed after September 15, 2014 triggers application of the current minimum setback requirements as specifically stated in R. C. 4906.201(B)(2). Merriam-Webster defines “amend” as “to alter formally by modification, deletion, or addition,”²⁵ and an amendment as “the process of altering or amending.”²⁶ Because the ordinary meaning of amend includes modification, any “modification” to an existing certificate is an amendment within the meaning and context of R.C. 4906.20 and R.C. 4906.201.

Because the distinction drawn between “modification” and “amendment” in Rule 4906-4-09(A)(5)(b), O.A.C., would produce a result contrary to the statutory requirements, the rule is unlawful and unreasonable.

II. CONCLUSION

This proceeding concerns the OPSB’s adoption of rules required by R. C. 4906.20. These rules were required to be first adopted 120 days after June 24, 2008. Because the OPSB’s *May 4 Order* and rules adopted therein are unlawful and unreasonable, GNU urges the OPSB to grant this Application for Rehearing.

Respectfully submitted,

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²⁴ R.C. 4906.20(B)(2)(b)(i); R.C. 4906.201(B)(1)-(2).

²⁵ <https://www.merriam-webster.com/dictionary/amend>

²⁶ <https://www.merriam-webster.com/dictionary/amendment>

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Application for Rehearing of Greenwich Neighbors United* was sent by, or on behalf of, the undersigned counsel for Greenwich Neighbors United, to the following parties of record this 5th day of June 2017, *via* electronic transmission.

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Summary: App for Rehearing Greenwich Neighbors United Application for Rehearing and Memorandum in Support electronically filed by Ms. Vicki L. Leach-Payne on behalf of Randazzo, Samuel C. Mr.