

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

SECOND ENTRY ON REHEARING

Entered in the Journal on August 17, 2017

I. SUMMARY

{¶ 1} The Ohio Power Siting Board finds that the application for rehearing filed by Mid-Atlantic Renewable Coalition and Greenwich Neighbors United should be granted, in part, and denied in part.

II. PROCEDURAL HISTORY

{¶ 2} The Ohio Power Siting Board (Board) initiated the above-captioned rulemaking docket to formally consider Staff's proposed revisions to Ohio Adm.Code 4906-4-08 resulting from an informal stakeholder workshop held for a previous rulemaking proceeding. *In re the Board's Review of Ohio Adm.Code Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, 4906-15, and 4906-17, Case No. 12-1981-GE-BRO, Second Finding and Order (Nov. 12, 2015) at 5-12.*

{¶ 3} By Entry issued May 18, 2016, the administrative law judge (ALJ) scheduled a formal workshop for June 9, 2016, in the above-captioned case, for Staff to receive feedback from interested stakeholders. The formal workshop was held as scheduled on June 9, 2016. At the workshop, eight stakeholders offered comments.

{¶ 4} Staff evaluated the rules contained in Ohio Adm.Code 4906-4-08, as well as the comments received at the June 9, 2016 workshop, and recommended certain amendments to Ohio Adm.Code 4906-4-08, as well as a newly proposed rule, Ohio Adm.Code 4906-4-09.

{¶ 5} On September 22, 2016, the Board issued Staff's recommendations for amending Ohio Adm.Code 4906-4-08 and the proposed new rule under Ohio Adm.Code

4906-4-09, and requested comments to assist in the review. Comments were filed by Mid-Atlantic Renewable Coalition (MAREC), Icebreaker Windpower, Inc. (Icebreaker), Greenwich Windpark, LLC (Greenwich), Union Neighbors United, Julia F. Johnson, and Robert and Diane McConnell (collectively, UNU), the Ohio Environmental Council (OEC), the Black Swamp Bird Observatory and the American Bird Conservancy (collectively, BSBO/ABC), Greenwich Neighbors United (GNU), Senator Michael J. Skindell, the Ohio Farm Bureau Federation (Farm Bureau), Ms. Alicia Rodrian, and Ms. Katie M. Elsasser on October 24, 2016. The Ohio State Historic Preservation Office and Ohio History Connection (collectively, SHPO) filed its initial comments on October 28, 2016. Reply comments were filed by Icebreaker, MAREC, Farm Bureau, UNU, OEC, Greenwich, GNU, Mr. Gary J. Biglin, and Ms. Elsasser on November 8, 2016. Senator William J. Seitz filed two letters in response to initial comments submitted in this proceeding, the first letter being filed on November 1, 2016, and a second letter being filed on November 4, 2016.

{¶ 6} In considering the comments and reply comments filed in response to the September 22, 2016 Entry, the Board issued its Finding and Order on May 4, 2017, finding that Ohio Adm.Code 4906-4-08 should be amended and the newly proposed Ohio Adm.Code 4906-4-09 should be adopted, as set forth in the Finding and Order (Order).

{¶ 7} R.C. 4906.12 provides, in pertinent part, that R.C. 4903.10 shall apply to any proceeding or order of the Board in the same manner as if the Board were the Public Utilities Commission of Ohio (Commission).

{¶ 8} R.C. 4903.10 permits any party who has entered an appearance in a Commission proceeding to apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission. Further, Ohio Adm.Code 4906-2-32 states that any party or any affected person, firm, or corporation may file an application for rehearing, within 30 days after

the issuance of a Board order, in the manner and form and circumstances set forth in R.C. 4903.10.

{¶ 9} On June 5, 2017, MAREC and GNU filed timely applications for rehearing of the Board's Order.

{¶ 10} On June 15, 2017, MAREC filed a memorandum contra GNU's application for rehearing.

{¶ 11} Ohio Adm.Code 4906-2-32(E) provides that an ALJ 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.

{¶ 12} On June 19, 2017, the ALJ issued an Entry granting MAREC and GNU's applications for rehearing for the purpose of affording the Board more time to consider the issues raised in the applications for rehearing.

III. DISCUSSION

A. *General Assignment of Error*

{¶ 13} As its first assignment of error, GNU argues that the Order is unlawful and unreasonable because the Board failed to "prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm," as required by R.C. 4906.20(B)(2). Specifically, GNU asserts that, instead of promulgating reasonable regulations, the Board unlawfully and unreasonably incorporates by reference many standards that may not be considered reasonable. For instance, in Ohio Adm.Code 4906-4-09(A)(1), GNU notes that the Board adopted a general provision requiring adherence to applicable state and federal requirements, including all applicable safety, construction, environmental, electrical, communications, and federal aviation administration requirements. GNU raises the same argument against Ohio Adm.Code

4906-4-09(G)(3), where the Board requires the design of wind turbines to conform to industry standards, as well as other rules amended or adopted by the Board in its Order.¹

{¶ 14} GNU argues that these provisions fail to comply with the requirements of R.C. 106.03, 121.72, 121.71, and 121.75, noting that general provisions incorporating such things as “industry standards” fail to provide any meaningful guidance to applicants or other parties coming before the Board as to what is required to obtain a certificate to construct and operate an economically significant wind farm. Finally, GNU asserts that other rules adopted by the Board are also unreasonable. For instance, GNU contends that the Board did not specify any maximum ice throw distance which would be presumptively unreasonable. As another example, GNU cites to the Board’s adoption of rules requiring compliance with the “manufacturer’s most current safety manual,” but then waives application of the safety manual where the manual conflicts with Ohio Adm.Code 4906-4-08(C)(2), which deals with the minimum setback distances. GNU contends such a provision is unreasonable as it may allow the minimum setback distance specified in the manufacturer’s safety manual to be overridden when it is greater than the statutory minimum setbacks found in R.C. 4906.20.

{¶ 15} In response, MAREC asserts that the Board’s Order strikes an important balance in order to promote technological innovations that benefit the industry and the state of Ohio, as a whole. Moreover, MAREC notes that the references to industry standards are similar to other references to industry standards in the Ohio Administrative Code, specifically citing to several rules adopted by the Commission. As such, MAREC requests that GNU’s application for rehearing as to this issue be denied.

{¶ 16} The Board believes the Order prescribes reasonable regulations regarding wind turbines and associated facilities of an economically significant wind farm, as required by R.C. 4906.20(B)(2), and complies with the statutory minimum setback

¹ See GNU App. for Rehearing at 3 (citing to Ohio Adm.Code 4906-4-08(D)(1), 4906-4-09(C)(3), 4906-4-09(C)(5), 4906-4-09(D)(1)).

requirements. We do not find GNU's general objections to the adopted rules to be a sufficient reason to warrant our reconsideration, especially given the fact that GNU and other interested stakeholders have had ample opportunity to raise such general objections throughout this proceeding. Additionally, the Board notes that it is fully aware of the statutory requirements regarding incorporation by reference in administrative rules, as the Order specifically references such requirements (Order at 2). Moreover, the only reference to such industry standards was made in the newly adopted rule Ohio Adm.Code 4906-4-09(G)(3). In that rule, the Board requires applicants to provide plans to minimize potential impacts from blade shear, including a minimum requirement that the design of the wind turbine generators conform to industry standards, including those of the American National Standards Institute (ANSI), the International Electrotechnical Commission (IEC), or an equivalent industry standard. R.C. 121.75 provides, in pertinent part, that:

Sections 121.71 to 121.74 of the Revised Code do not apply with regard to the incorporation by reference into a rule of any of the following so long as the incorporation by reference consists of a citation that will be intelligible to the persons who reasonably can be expected to be affected by the rule and that, if the incorporated text or other material was, is, or reasonably can be expected to be subject to change, identifies, and specifies the date of, the particular edition or other version that is incorporated: * * * A text or other material, including, without limitation, generally accepted industry standards, that is generally available to persons who reasonably can be expected to be affected by the rule.

{¶ 17} In this case, R.C. 121.72 and 121.74, cited to by GNU, do not apply to the incorporation of the industry standards by reference in the Commission's rules. First, the Commission notes that the ANSI and IEC standards are highly technical engineering standards for wind turbine generators. While surrounding property owners may be

interested in these standards, they will necessarily have to look to the engineering expertise of the wind developers and manufacturers of wind turbine generators for insuring that the design and operation of the wind turbine generators conform to these standards. Thus, the incorporation of the ANSI, IEC, or equivalent standards into the Commission's rules by citation is intelligible to the persons who reasonably can be expected to be affected by the rules. Moreover, these standards are generally known and available to wind developers, as well as the manufacturers of the associated equipment. Landowners or other interested stakeholders who are interested in reviewing these standards can contact the manufacturer of such equipment or purchase a copy of the standards from the publishers. Thus, we find that GNU's application for rehearing should be denied as to these issues.

{¶ 18} However, we do find that rehearing should be granted for the limited purpose of amending the rule to clarify the effective date of such industry standards. As this rule pertains to the applicant's commitments in an application regarding the construction and operation of the wind turbine generators, the Board finds it appropriate to amend the rule to clearly state that the applicable versions of industry standards referenced in the rule should be those effective at the time the applicant submits its application, consistent with R.C. 121.75 and the rules as adopted in the Order. We also note that this rule will require, "[a]t a minimum," the design of the wind turbine generators to conform to industry standards effective at the time of the application; however, Staff may require additional information to ensure the applicant has taken appropriate measures to minimize the potential impacts from blade shear, if Staff determines such additional information is necessary. Therefore, to the extent it requested clarification as to the effective date of the industry standards to be used for design compliance purposes, we find that GNU's application for rehearing should be granted and Ohio Adm.Code 4906-4-09(G)(3) should be amended to state the following: "* * * wind turbine generators shall conform to industry standards, as effective at the time the applicant submits its application, including those of the American National Standards Institute, * * *."

B. *Ohio Adm.Code 4906-4-08(C)(2)(b)*

{¶ 19} As its first assignment of error, MAREC contends that the Board erred by requiring that turbines be setback at least 1,125 feet from a state or federal highway, instead suggesting that the appropriate setback should be 1.1 times the total height of the turbine structure as measured from the tower's base to the tip of a blade at its highest point, as required in Ohio Adm.Code 4906-4-08(C)(2)(c). MAREC argues that the Board's reasoning for its adoption of the 1,125 foot setback is unsubstantiated by the record in this case and that the current setback of 1.1 times the total height of the turbine structure as measured from the tower's base to the tip of the blade is a more appropriate balance of the safety concerns noted by the Board in its Order. Thus, MAREC suggests that the Board grant rehearing on this issue and exclude state and federal highways from Ohio Adm.Code 4906-4-08(C)(2)(b).

{¶ 20} The Board finds that MAREC's assignment of error should be denied. We fully addressed the identical comments of Greenwich in our Order by finding that potential injury to the traveling public and damage to highways due to ice throw and blade shear may be significant concerns, and, thus, warrants an additional level of protection over other types of public roads. Additionally, we found the 1,125 foot setback to be reasonable when accounting for the increased amount of traffic and increased cost of infrastructure related to state and federal highways. (Order at 22-23.) As MAREC has not identified any new issue to warrant further consideration by the Board, we find that this assignment of error should be denied.

C. *Ohio Adm.Code 4906-4-08(C)(2)(d)*

{¶ 21} In its next assignment of error, GNU once again contends that Ohio Adm.Code 4906-4-08(C)(2)(d) and (C)(3) are unreasonable and unlawful because they conflict with the controlling statute and fail to address the population of adjacent property owners that must waive the minimum setbacks. R.C. 4906.20. GNU also contends that such rules promote confusion and run against the public interest of promoting transparency and clarity in the rulemaking process.

{¶ 22} MAREC contends that GNU's recommendation goes beyond the statutory requirements and the Board appropriately denied GNU's arguments in the Order, emphasizing that all waivers will be required to be publicly available in the respective county recorder's office. As MAREC contends GNU has raised no new issue on rehearing that would warrant reconsideration, MAREC requests that GNU's application for rehearing on this issue be denied, as well.

{¶ 23} The Board agrees with MAREC in that GNU has simply reiterated its earlier comments and raises nothing new for the Board to consider. Additionally, the Board thoroughly addressed this issue, as well as several other waiver-related concerns of interested stakeholders, in its Order (Order at 23-24). Thus, we find this assignment of error should also be denied.

D. *Ohio Adm.Code 4906-4-08(C)(3)(b)*

{¶ 24} In its next assignment of error, GNU asserts that the Board's Order is unlawful and unreasonable because it fails to establish 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. In support of its assignment of error, GNU argues that while the Order further identifies the content of the required waiver, the Board failed to prescribe a procedure by which a minimum setback waiver must be obtained, thus ensuring that landowners waive their rights by means of a free and deliberate choice. GNU further claims that all minimum setback waivers from all owners of property adjacent to the wind farm should be filed as part of the certificate application process, as the Board is restricted from issuing a certificate pursuant to R.C. 4906.20 if an applicant proposes a wind farm that violates a minimum setback.

{¶ 25} MAREC initially notes that it argued that the statutory language regarding setback waivers is ambiguous and urged the Board to revise the initial paragraph in Ohio Adm.Code 4906-4-08(C)(3) to more closely resemble the language utilized in the statute.

Based on GNU's continued assertion that the rule language runs afoul of the statutory language, MAREC contends that the wording utilized in the rule will only promote additional confusion and debate among stakeholders as to the proper interpretation of the rule and statutory language and, thus, continues to recommend that the rule language be revised in order to more closely align with the statutory language to avoid such conflict. However, MAREC requests that the Board deny GNU's specific request for rehearing on this issue.

{¶ 26} The Board initially notes that R.C. 4906.20(B)(2)(c) states that the "[s]etback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the [B]oard shall establish by rule * * *." We disagree with GNU's assertion that we have not established such a procedure. GNU seems to be requesting that the Board insert itself in the private contractual matters between wind developers and landowners by adopting rules to govern that process. As the Board has already indicated, we do not wish to interfere with the involved parties' right to contract, especially since the consideration of each landowner signing a waiver will certainly vary. Instead, we adopted rules in our Order that will ensure all landowners from whom waivers are required are provided with adequate information to make an informed decision about their property rights and fully understands what is being waived. To act beyond establishing the procedure set forth in our rules would only add a layer of governmental oversight to what has historically been, and what should continue to be, a private contractual matter. The Board would also again like to emphasize that these landowners have the ability to obtain the assistance of counsel during negotiations with a wind developer, if they believe doing so would be in their best interest. We also note that our proceedings are open to the general public and landowners have the ability to fully participate in the Board's process, with or without the assistance of counsel. (Order at 24-34.) Therefore, GNU's request for rehearing as to this issue should be denied.

{¶ 27} As to GNU's contention that the waivers should be filed with the application, we find GNU's request to be impractical as it is common for these types of projects to evolve over several years, which may consequently necessitate changes in the number of required waivers needed to proceed with the construction of the project. Additionally, consistent with our initial response to such a request, we find this proposed rule revision to also be unnecessary due to the fact that all waivers will be filed in the county recorder's office where the subject property is located and the Board has the authority to require applicants to obtain any statutorily-required waivers prior to commencing construction of the facility as a condition to a certificate, if we find such a condition is necessary (Order at 27-28). Again, we do not believe the rule language should be revised to "more closely align" with the statutory language, as the statutory language is unambiguous and will stand for itself. The Board may address any other potential, albeit unnecessary, interpretive conflicts in future proceedings. Thus, we find that waivers should continue to be obtained prior to construction, rather than submitted as part of the application, and GNU's request for rehearing as to this issue should also be denied.

E. Ohio Adm.Code 4906-4-09(A)(5)(b)

{¶ 28} As its final assignment of error, GNU asserts that the Order is unreasonable and unlawful because Ohio Adm.Code 4906-4-09(A)(5)(b) 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. GNU notes that any amendment to an existing certificate for an economically significant wind farm proposed after September 15, 2014, triggers the application of the current minimum setback requirements set forth in R.C. 4906.201(B)(2). As the plain meaning of "amend" also includes "modification," GNU argues that any "modification" to an existing certificate should be treated as an amendment for purposes of R.C. 4906.20 and 4906.201. As any other result would run contrary to the statutory requirements, GNU contends this rule is unlawful and unreasonable.

{¶ 29} MAREC argues that GNU is incorrect in its interpretation and notes that the Board correctly acknowledges that modifications to certificates that are minimal in nature and compliant with the conditions of the certificate do not equate to an amendment as set forth in the statute. While MAREC may not agree that the process set forth in the rules for modifications should be adopted at this time, MAREC is supportive of the Board's acknowledgement that applicants may make unsubstantial modifications in compliance with the conditions approved in the certificates, without filing applications for amendments. Therefore, MAREC also requests that the Board deny GNU's request for rehearing on this issue.

{¶ 30} GNU's final assignment of error is denied. R.C. 4906.20 directs the Board 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, * * *." Consistent with our Order, we believe that, through this language, the General Assembly authorized this Board to utilize its expertise and prescribe rules governing minimal changes that do not rise to the level of an amendment of a certificate for purposes of that statute. Provided such authority, the Board proposed and adopted the modification process as a means to effectively and efficiently address these changes while affording adequate due process to other interested stakeholders, which is directly aligned with the objectives of the Common Sense Initiative. (Order at 47-52.) Accordingly, GNU's request for rehearing as to this issue is denied. However, the Board will amend the language of the rule to state that modifications will not be considered amendments if such modifications would be minimal in nature and would be adequately addressed by, rather than substantially comply with, the conditions of a certificate. Additionally, we find the phrase "to the certificate" to be unnecessary. These revisions will more accurately reflect the Board's intent and provide additional clarity as to the designation of modifications, as well as remain consistent with Board practice and precedent.

F. Ohio Adm.Code 4906-4-09(A)(5)(c)

{¶ 31} As its second assignment of error, MAREC argues that the Board erred by requiring that insignificant modifications to a certificate approved by the Board be filed in the docket and subject to an additional review process and procedure, which it also notes is lengthy, uncertain, and undefined. MAREC reiterates its comments initially submitted in response to the proposed modification process, noting that it is neither required by the statute nor compliant with the Common Sense Initiative and will create an additional unnecessary burden and expense on wind developers in Ohio and act as a disincentive to integrating new technologies. MAREC also claims that Ohio Adm.Code 4906-4-09(A)(5)(c) is not a reasonable regulation and is, in fact, unjust and discriminatory toward wind developers. Specifically, MAREC takes issue with the fact that the Board does not currently require any other major utility facility to file such “modifications” with the Board to become subject to the possible 90-day suspension process, despite the fact these other types of facilities face the same types of de minimis modifications the Board points to in its justification for adopting the rule. While the Board indicates that it intends to adopt a similar process for other major utility facilities in a future rulemaking proceeding, MAREC believes it would be more reasonable to wait until the next five-year review of the rules to unveil this new process for all such facilities, also noting that the additional time could be used by the Board to potentially identify what types of changes would constitute “modifications” in future cases. Finally, MAREC asserts that if the Board plans to implement the rules as provided in the Order, the BIA should be revised to reflect the increased economic burden imposed on wind developers as a result of the modification process. Thus, MAREC requests that the Board grant rehearing as to this issue and reject Ohio Adm.Code 4906-4-09(A)(5)(c), pending further review and consideration.

{¶ 32} As discussed above, our Order thoroughly addressed these arguments (Order at 47-54). Further, the Board stresses that our objective is to maintain due process for all parties when evaluating modifications, consistent with the level of transparency

historically provided in proceedings governing such changes, and allow affected property owners to be aware of, and submit objections to, any proposed modifications. Additionally, we believe it would be more appropriate to address MAREC's remaining concerns regarding the qualification of proposed changes as either modifications or amendments in future Board proceedings. Thus, we find that MAREC's assignment of error should be denied.

G. Ohio Adm. Code 4906-4-09(D)(8)

{¶ 33} MAREC argues in its third assignment of error that the Board erred by requiring the curtailment of wind turbine blades for birds when curtailment is only applicable and effective for bats according to applicable scientific studies. Moreover, MAREC notes that this rule unreasonably requires curtailment year round rather than limiting it to bat migratory periods. Therefore, MAREC requests that the Board grant rehearing as to this issue and revise the new rule to state " * * *the applicant shall describe its curtailment strategy for bat migration~~plans for maintaining turbine blades in a stationary or nearly stationary stance during low wind speed conditions at night during bird and bat migratory seasons.~~" MAREC adds that this proposed revision is consistent with the Board's precedent regarding curtailment protocol. *In re 6011 Greenwich Windpark, LLC*, Case No. 13-990-EL-BGN, Opinion, Order, and Certificate (Aug. 25, 2014) at 31.

{¶ 34} The Board notes that we thoroughly addressed MAREC's recommendation in our Order (Order at 73-74). Moreover, the Board is not persuaded by the one instance in which we conditioned the issuance of a certificate by requiring curtailment in order to minimize bat strikes at operating turbines. The Board would prefer to encourage preservation efforts for both birds and bats during their respective migratory periods, as demonstrated in our Order. Nonetheless, even if the Board was persuaded by the cited case, the particular condition referenced by MAREC does not limit the curtailment requirements to the bat migratory season; rather, the condition applies to all operating turbines "at least until the manufacturer-set cut-in speed is reached," and could,

therefore, potentially apply year-round. If an applicant believes that a curtailment strategy is only pertinent to the fall bat migration for a particular project, the applicant is certainly able to request a waiver of this requirement as it pertains to birds, pursuant to Ohio Adm.Code 4906-4-01; however, we would note that the applicant would still be subject to any applicable rules and regulations of other state and federal agencies, such as the Ohio Department of Natural Resources and United States Fish and Wildlife Service, aimed to protect various bird species during their migratory seasons. Thus, we find that MAREC's assignment of error should be denied.

H. Ohio Adm.Code 4906-4-09(E)(3)

{¶ 35} MAREC argues in its final assignment of error that the Board erred by requiring the measurement of one kilogram of ice or less per year per turbine beyond the property line setback because the required measurement is arbitrary, cost prohibitive, and contrary to the Board's stated intent in the Order. Reiterating much of its initial comments regarding the one kilogram of ice presumptive threshold, MAREC states that the Board's response in the Order creates more uncertainty as to the application of the new rule, since the rule utilizes the phrase "for each turbine location." Additionally, MAREC notes that the one kilogram measurement is an arbitrary selection and may not align with manufacturer's guidelines or industry standards, further contesting that ice detectors on the turbines would alleviate any public safety concerns. Therefore, MAREC requests that the Board grant rehearing and revise the rule language to be compliant with the expected measurements according to the manufacturer's guidelines and industry standards.

{¶ 36} The Board will grant rehearing as to MAREC's assignment of error for the limited purpose of clarifying the justification of the one kilogram measurement designated in our Order. The Board notes that the one kilogram measurement is not an arbitrary one and, in fact, the Board has previously relied on evidence from ice throw risk assessments containing this very measurement to establish adequate certificate conditions regarding the risk of ice throw. *In re Application of Black Fork Wind Energy, LLC*,

for a Certificate to Site a Wind-Powered Elec. Generation Facility in Crawford and Richland Counties, Ohio, Case No. 10-2865-EL-BGN, Opinion, Order, and Certificate (Jan. 23, 2012) at 57-58. The Board also emphasizes that neither MAREC nor any other interested stakeholder in this proceeding recommended an alternative presumptive measurement to be used in their initial or reply comments. Further, as we noted in the Order, we do not expect MAREC or other wind developers to track this information on a turbine-by-turbine basis; rather, we will require this information to be presented pursuant to the expected measurements set forth in the manufacturer's guidelines and applicable industry standards. Moreover, we reiterate that this is simply a presumptive threshold and, in the event it cannot be shown or met, the applicant will have additional means of establishing that all safety considerations regarding ice throw have been satisfied, in accordance with Ohio Adm.Code 4906-4-09(E). (Order at 77-78.) Additionally, while installing ice detection software may alleviate a significant portion of the risk attributed to ice throw, such action may not be sufficient by itself and the Board finds it reasonable to establish additional safety measures to ensure the risk of ice throw is adequately addressed. Thus, the remaining issues set forth in MAREC's request for rehearing should be denied.

{¶ 37} As a final matter the Board notes that, to the extent not specifically addressed herein, all other arguments raised in the applications for rehearing are denied.

IV. ORDER

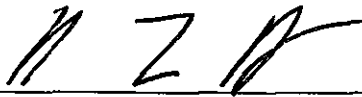
{¶ 38} It is, therefore,

{¶ 39} ORDERED, That the applications for rehearing filed by MAREC and GNU be denied, in part, and granted, in part. It is, further,


{¶ 40} ORDERED, That, to the extent not specifically addressed herein, all other arguments raised in the applications for rehearing are denied. It is, further,

{¶ 41} ORDERED, That a copy of this Second Entry on Rehearing be served upon all commenters and all interested persons of record in this matter.

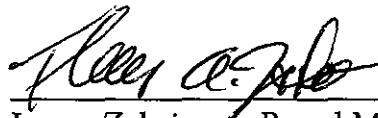
THE OHIO POWER SITING BOARD



Asim Z. Haque, 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



Lance Himes, Board Member
and Director of the Ohio
Department of Health



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



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

Jeffrey J. Lechak, Board Member
and Public Member

MJA/sc

Entered in the Journal **AUG 17 2017**



Barcy F. McNeal
Secretary

*****DRAFT - NOT FOR FILING*****

AMENDED

4906-4-08 Health and safety, land use, and ecological information.

- (A) The applicant shall provide information on health and safety.
- (1) Equipment safety. The applicant shall provide information on the safety and reliability of all equipment.
 - (a) Describe all proposed major public safety equipment.
 - (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~~ the 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) Air pollution control. 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) Noise. 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.

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- (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~~farm, 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. ~~Non-participating property, for the purpose of this rule, refers to properties not under lease or agreement with the applicant regarding any components of the facility or project.~~ 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.
 - (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. Sensitive receptor, for the purposes of this rule, refers to any occupied building.
 - (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) Water impacts. 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.

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- (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) Geological features. 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.
 - (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) Per_cent recovery.
 - (v) Depth and description of bedrock contact.
- (6) High-wWinds Velocity. The applicant shall provide an analysis of the ~~prospects of high wind~~ velocities for the area, including the probability of occurrences and likely consequences of various wind velocities, and describe plans to mitigate any likely adverse consequences.

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- (7) Blade shear. For a wind farm, ~~t~~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) Ice throw. For a wind farm, ~~t~~The applicant shall evaluate and describe, by providing a site-specific ice throw risk analysis and assessment study, 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) Shadow flicker. For a wind farm, ~~t~~The applicant shall evaluate and describe the potential cumulative impact from shadow flicker at the property boundary and habitable residenceessensitive receptors within a distance of ten rotor diameters or at least one-half mile, whichever is greater, of a turbine, including its plans to minimize potential impacts.
 - (10) Radio and TV reception. 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) Radar interference. 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) Navigable airspace interference. The applicant shall evaluate and describe the potential for the facility to interfere with navigable airspace and describe measures that will be taken to minimize interference. The applicant shall coordinate such efforts with appropriate state and federal agencies. microwave communication paths and systems and describe measures that will be taken to minimize interference. Include all licensed systems and those used by electric service providers and emergency personnel that operate in the project area.
 - (132) Communication interference. 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 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) Ecological information. The applicant shall provide information regarding ecological resources in the project area.

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- (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 fieldstracts of land subject to past or present surface mining activities, not used as a registered game preserve or in agricultural production.
 - (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) Conduct and pProvide 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) Ecological impacts. The applicant shall provide information regarding potential impacts to ecological resources during construction.
- (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.

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- (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 state or federally listed and protected species and their habitat, in accordance with paragraph (D) of rule 4906-4-09 of the Administrative Code.
- (3) Operational ecological impacts. 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.

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- (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) Existing land use. The applicant shall provide information regarding land use in the region and potential impacts of the facility through the following maps and related information.
 - (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 and property lines within one thousand five hundred feet of the generation equipment or wind turbine, the distance between both the structure or property line and the equipment or nearest wind turbine.
 - (ii) For all structures and property lines within two hundred fifty feet of a collection line, access road, or other associated facility, the distance between both the structure or property line and the associated facility.

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- (iii) For each structure and property 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) Wind farm maps. 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, the parcel number and whether the parcel is being leased by the applicant for the proposed facility, as of no more than thirty 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, gas distribution lines, hazardous liquid(s) 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 one thousand, one hundred, twenty-five feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the property line of the nearest adjacent property, including a state or federal highway, at the time of the certification application.
 - (c) The distance from a wind turbine base to any electric transmission line, gas pipeline, gas distribution line, hazardous liquid(s) pipeline, or state or federal highway public road 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 pursuant to the procedures set forth in paragraph (C)(3) of this rule.~~
- (3) 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. The waiver(s) must meet the following requirements:~~The applicant shall provide information regarding land use plans.~~
- (a) Content of Waiver. The waiver shall: ~~Describe formally adopted plans for future use of the project area and surrounding lands for anything other than the proposed facility.~~
- (i) Be in writing;
- ~~(i)(ii)~~ Provide a brief description of the facility;
- ~~(ii)(iii)~~ Notify the applicable property owner(s) of the statutory minimum setback requirements;
- ~~(iii)(iv)~~ Describe the adjacent property subject to the waiver through a legal description;
- ~~(iv)(v)~~ Describe how the adjacent property is subject to the statutory minimum setback requirements; and
- ~~(v)(vi)~~ Advise all subsequent purchasers of the adjacent property subject to the waiver that the waiver of the minimum setback requirements shall run with the land.
- (b) Required Signature. The waiver shall be signed by the applicant and the applicable property owner(s), indicating consent to construction activities without compliance with the minimum setback requirements. Describe the applicant's plans for concurrent or secondary uses of the site.
- (c) Recordation of Waiver. The waiver shall be recorded in the recorder of deeds office for the county recorder's office where the adjacent property that is the subject of the waiver is located. 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.

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- ~~(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.~~
- (34) Land use plans. 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, current population density, 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) Landmark mapping. 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-ten~~ 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 state historical society~~ preservation office, or the Ohio department of natural resources.
 - (2) Impacts on landmarks. 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) Recreation and scenic areas. The applicant shall describe the identified recreation and scenic areas within ~~five-ten~~ miles of the project area in terms of their proximity

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to population centers, uniqueness, topography, vegetation, hydrology, and wildlife. Provide an evaluation of the impact of the proposed facility on identified recreational and scenic areas within ~~five~~ ten miles of the project area and describe plans to mitigate any adverse impact.

- (4) Visual impact of facility. The applicant shall evaluate the visual impact of the proposed facility within at least a ten ~~five~~-mile radius from the project area. The evaluation shall be conducted or reviewed by a licensed landscape architect or other professional with experience in developing a visual impact assessment. The applicant shall:
- (a) Describe the visibility of the project, including a viewshed analysis and area of visual effect, shown on a corresponding map of the study area. The viewshed analysis shall not incorporate deciduous vegetation, agricultural crops, or other seasonal land cover as viewing obstacles. If the viewshed analysis includes atmospheric conditions, it shall incorporate the atmospheric conditions under which the facility would be most visible.
 - (b) Describe the existing landscape and evaluate its scenic quality. This description shall include documentation of a review of existing plans, policies, and regulations of the communities within the study area, and list all references to identified visual resources or other indications of the visual preferences of the community.
 - (c) Describe the alterations to the landscape caused by the facility, including a description and illustration of the scale, form, and materials of all facility structures, 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)(4) 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 residents, public officials, and historic preservation groups in selecting these vantage points.

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- (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) Mapping of agricultural land. 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) Agricultural information. 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.
 - (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, aerial applications, and 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:

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- (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.

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NEW

4906-4-09 Regulations associated with wind farms.

For both an economically significant wind farm and a major utility facility consisting of wind-powered electric generating units, the application shall state the applicant's commitment to comply with the following regulations and the board shall require that each of the following requirements be satisfied.

(A) Construction, location, use, maintenance, and change.

(1) Adherence to other regulations. Construction and operation of all proposed wind farms shall be consistent with all applicable state and federal requirements, including all applicable safety, construction, environmental, electrical, communications, and federal aviation administration requirements.

(2) Construction, operations, and maintenance safety.

(a) Equipment safety

(i) The applicant shall comply with the manufacturer's most current safety manual, unless such safety manual conflicts with paragraph (C)(2) of rule 4906-4-08 of the Administrative Code.

(ii) The applicant shall maintain a copy of this safety manual in the operations and management building of the facility.

(b) Geological features

(i) Sixty days prior to the preconstruction conference, the applicant shall provide a fully detailed geotechnical exploration and evaluation to confirm that there are no issues to preclude development of the facility.

(ii) The geotechnical exploration and evaluation shall include borings at each turbine location to provide subsurface soil properties, static water level, rock quality description, per cent recovery, and depth and description of the bedrock contact and recommendations needed for the final design and construction of each wind turbine foundation, as

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- well as the final location of the transformer substation and interconnection substation.
- (iii) The applicant must fill all boreholes, and borehole abandonment must comply with state and local regulations.
 - (iv) The applicant shall provide copies of all geotechnical boring logs to board staff and to the Ohio department of natural resources division of geological survey prior to construction.
- (c) Blasting. Should site-specific conditions warrant blasting, the applicant shall submit a blasting plan to the board, at least thirtysixty days prior to blasting.
- (i) The applicant shall submit the following information as part of its blasting plan:

 - (a) The name, address, and telephone number of the drilling and blasting company.
 - (b) A detailed blasting plan for dry and/or wet holes for a typical shot. The blasting plan shall address blasting times, blasting signs, warnings, access control, control of adverse effects, and blast records.
 - (c) A plan for liability protection and complaint resolution.
 - (ii) Prior to the use of explosives, the applicant or explosive contractor shall obtain all required licenses and permits. The applicant shall submit a copy of the license or permit to the board within seven days of obtaining it from the local authority.
 - (iii) The blasting contractor shall utilize two blasting seismographs that measure ground vibration and air blast for each blast. One seismograph shall be placed at beside the nearest dwelling, or at least at the nearest accessible property line to the dwelling, and the other placed at the discretion of the blasting contractor.
 - (iv) At least thirty days prior to the initiation of blasting operations, the applicant must notify, in writing, all residents or owners of dwellings or other structures within one thousand feet of the blasting site. The applicant or explosive contractor shall offer and conduct a pre-blast survey of each dwelling or structure within one thousand feet of each

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blasting site, unless waived by the resident or property owner. The survey must be completed and submitted to the board at least ten days before blasting begins.

- (3) Location. Wind farms shall be sited in locations that comply with paragraph (C)(2) of rule 4906-4-08 of the Administrative Code and applicable provisions of this rule.
- (4) Maintenance and use.
 - (a) The applicant shall maintain the wind farm equipment in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures.
 - (b) The applicant shall have a construction and maintenance access plan based on final plans for the facility, access roads, and types of equipment to be used. The plan shall consider the location of sensitive resources, as identified by the Ohio department of natural resources, and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan shall include locations of erosion control measures. The plan shall provide specific details on all wetlands, streams, and/or ditches to be impacted by the facility, including those where construction or maintenance vehicles and/or facility components such as access roads cannot avoid crossing the waterbody. In such cases, specific discussion of the proposed crossing methodology for each wetland and stream crossing, and post-construction site restoration, must be included. The plan shall include the measures to be used for restoring the area around all temporary access points, and a description of any long-term stabilization required along permanent access routes.
 - (c) The applicant shall have a vegetation management plan. The plan must identify all areas of proposed vegetation clearing for the project, specifying the extent of the clearing, and describing how such clearing work will be done so as to minimize removal of woody vegetation. The plan must also describe how trees and shrubs around structures, along access routes, at construction staging areas, during maintenance operations, and in proximity to any other project facilities will be protected from damage. Priority should be given to protecting mature trees throughout the project area, and all woody vegetation in wetlands and riparian areas, both during construction and during subsequent operation and maintenance of all facilities; low-growing trees and shrubs in particular should be protected wherever possible within the proposed right-of-way. The vegetation management plan should also

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explore various options for disposing of downed trees, brush, and other vegetation during initial clearing for the project, and recommend methods that minimize the movement of heavy equipment and other vehicles within the right-of-way that would otherwise be required for removing all trees and other woody debris off site.

- (d) For both construction and future right-of-way maintenance, the applicant shall limit, to the greatest extent possible, the use of herbicides in proximity to surface waters, including wetlands along the right-of-way. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides during initial clearing or future right-of-way maintenance should only be used where no other options exist, and with prior approval from the Ohio environmental protection agency. Prior to commencement of construction, the applicant shall describe the planned herbicide use for all areas in or near any surface waters during initial project construction and/or future right-of-way maintenance.
- (e) Within its plans for post-construction site restoration and stabilization of disturbed soils, such restoration plans shall include:
 - (i) The applicant shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner.
 - (ii) The applicant shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. All construction debris and all contaminated soil shall be promptly removed and properly disposed of in accordance with Ohio environmental protection agency regulations.
- (5) Change, reconstruction, alteration, or enlargement.
 - (a) Any amendment to a wind farm certificate shall be proposed by the applicant to the board as an amendment application, as provided in rule 4906-3-11 of the Administrative Code.
 - (b) Unless otherwise ordered by the board or administrative law judge, modification(s) to the certificate shall not be considered amendments under this rule if such modification(s) would be minimal in nature, would pose no

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significant additional adverse environmental impacts, and would substantially
comply with be adequately addressed by the conditions of a certificate, and
would not create additional adverse impacts for any property owner.

- (c) An applicant may seek review of a proposed modification(s) sought under paragraph (A)(5)(b) of this rule by filing the proposed modification(s) in the public docket of the certificate case and shall provide written notification of such filing to staff and all landowners immediately adjacent to the site of the proposed modification(s). The notification shall reference, and include a copy of, paragraph (A)(5) of this rule. In the filing submitted in the public docket, the applicant shall present its rationale as to why the applicant is seeking the proposed modification(s) is necessary and must demonstrate that the proposed modification(s) satisfies paragraph (A)(5)(b) of this rule. Staff or any interested person may file objections to the applicant's proposal within twenty-one days. If no objections are filed within the twenty-one day period, the applicant may proceed with the proposed modification(s). If objections are filed within the twenty-one day period, board staff may subsequently docket its recommendation on the matter. The board will process proposed modification(s) under the suspension process set forth for accelerated applications as outlined in rule 4906-6-09 of the Administrative Code.

- (B) Erosion control. Within its procedures for inspection and repair of erosion control measures, the applicant shall employ the following erosion and sedimentation control measures, construction methods, and best management practices when working near environmentally-sensitive areas or when in close proximity to any watercourses:

- (1) During construction of the facility, seed all disturbed soil, except within actively cultivated agricultural fields, within seven days of final grading. Denuded areas, including spoils piles, shall be seeded and stabilized in accordance with the applicant's approved stormwater pollution prevention plan within seven days, if they will be undisturbed for more than twenty-one days. Re-seeding shall be done within seven days conducted in accordance with the applicant's approved stormwater pollution prevention plan as necessary until sufficient vegetation in all areas has been established.
- (2) Inspect and repair all erosion control measures after each rainfall event of one-half of an inch or greater over a twenty-four-hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.
- (3) Delineate all watercourses, including wetlands, by fencing, flagging, or other prominent means.

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- (4) Avoid entry of construction equipment into watercourses, including wetlands, except at specific locations where construction has been approved.
 - (5) Prohibit storage, stockpiling, and/or disposal of equipment and materials in these sensitive areas.
 - (6) Locate structures outside of identified watercourses, including wetlands, except at specific locations where construction has been approved.
 - (7) Divert all storm water runoff away from fill slopes and other exposed surfaces to the greatest extent possible, and direct instead to appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.
- (C) Aesthetics and recreational land use.
- (1) In the event of vandalism on any generating facility, the applicant shall immediately remove or abate the damage to preserve the aesthetics of the project to pre-vandalism condition.
 - (2) No commercial signage or advertisements may be displayed on any turbine, tower, or related infrastructure, except for reasonable identification of the manufacturer or operator of the wind farm.
 - (3) All structures that require lighting by the federal aviation administration, including construction equipment, shall be lit with the minimum lighting required by the federal aviation administration. Lighting of other parts of the wind farm, such as associated structures and access roads, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from adjacent properties.
 - (4) The visible surfaces of wind farm structures shall be a non-reflective, matte finished, non-obtrusive, and neutral color such as white, off-white, gray, or beige.
 - (5) The applicant shall provide a plan to avoid adverse impacts of the proposed facility on landmarks in the surrounding area. Landmarks, for the purpose of this rule, refer to 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 state historic preservation office, or the Ohio department of natural resources. If avoidance measures are not feasible, the applicant shall describe why impacts cannot be avoided and shall provide an evaluation of the impact of the proposed facility on the preservation and continued meaningfulness of registered or potentially eligible landmarks of historic, religious, archaeological, scenic, natural,

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or other cultural significance and describe plans to mitigate any adverse impact. The mitigation plan shall contain measures to be taken should previously-unidentified archaeological deposits or artifacts be discovered during construction of a project.

(6) The applicant shall provide photographic simulations or artist's pictorial sketches of the proposed facility from at least one vantage point in each area of three square miles within the project area, showing views to the north, south, east, and west. The photographic simulations or artist's pictorial sketches shall incorporate the environmental and atmospheric conditions under which the facility would be most visible.

(D) Wildlife protection. The applicant shall satisfy the following requirements to avoid or mitigate impacts to federal or state listed and protected species.

(1) The applicant shall coordinate with the United States fish and wildlife service, the Ohio department of natural resources division of wildlife, and board staff to determine if any actions are necessary to avoid impacts to federal or state listed and protected species or other species which may be impacted. The applicant shall provide coordination letters received from the United States fish and wildlife service and the Ohio department of natural resources division of wildlife. If the United States fish and wildlife service, the Ohio department of natural resources division of wildlife, or board staff identify any recommendations for the avoidance of impacts to specific species, the applicant shall describe how it shall address all recommendations in a manner satisfactory to the applicable wildlife management agency.

(2) The applicant shall contact board staff within twenty-four hours if federal or state listed and protected species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the applicant, board staff, and other applicable administrative agencies. Nothing in this condition shall preclude agencies having jurisdiction over the facility with respect to wildlife from exercising their legal authority over the facility consistent with law.

(3) The applicant shall comply with the Ohio department of natural resources' requirements for conducting work in stream or water bodies during fish spawning restricted periods.

(4) Prior to construction within streams in the project area, the applicant shall consult with the Ohio department of natural resources division of wildlife to determine which streams could provide a suitable habitat for mussels. Construction activities in

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such streams shall comply with Ohio department of natural resources' Ohio mussel survey protocols. Where there is the potential for federally protected mussels to occur within the project area, the applicant shall contact the United States fish and wildlife service for consultation.

- (3) The applicant shall avoid construction in federal or state listed and protected species' habitats during seasonally restricted dates, including the species' nesting period or at restricted habitat types, as provided by the Ohio department of natural resources and the United States fish and wildlife service, unless coordination efforts with the Ohio department of natural resources and the United States fish and wildlife service allows a different course of action.
- (5) The applicant shall adhere to seasonal cutting dates specified by the Ohio department of natural resources to avoid clearing of habitat when breeding birds specified by the Ohio department of natural resources would be present and during bat roosting and maternity season. If any federal or state listed species of bird or bat habitat trees are found that cannot be avoided outside the seasonal cutting dates specified by the Ohio department of natural resources, the applicant shall conduct a mist netting survey prior to such cutting.
- (6)(4) At least sixty days prior to the first turbine becoming operational, the applicant shall submit a post-construction avian and bat monitoring plan to the board. During operation of the facility, if significant mortality occurs to birds or bats, the applicant will develop a mitigation plan.
- (7)(5) At least sixty days prior to the first turbine becoming operational, the applicant shall describe plans for maintaining turbine blades in a stationary or nearly stationary stance during low wind speed conditions at night during bird and bat migratory seasons.
- (8)(6) If construction activities result in significant adverse impact to wildlife federal or state listed and protected species, then mitigation measures may be prescribed to the applicant—the applicant will develop a mitigation plan or adaptive management strategy.

(E) Ice throw.

- (1) The ice throw analysis shall, at a minimum, include the probability of ice throw impacts at the nearest property boundary and public road.
- (2) The applicant's plans to minimize potential impacts shall include:

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- (a) Restricting public access to the facility with appropriately placed warning signs or other necessary measures.
 - (b) Instructing workers on the potential hazards of ice conditions on wind turbines, and
 - (c) Installing and utilizing an ice warning system to include an ice detector installed on the roof of the nacelle, ice detection software, warranted by the manufacturer to detect ice, for the wind turbine controller, or an ice sensor alarm that triggers an automatic shutdown.
- (3) In addition to the use of the safety measures enumerated in paragraph (E)(2) of this rule, the potential impact from ice throw shall be presumptively deemed to satisfy safety considerations if the probability of one kilogram of ice landing beyond the statutory property line setback for each turbine location is less than one per cent per year.
- (F) Noise.
- (1) General construction activities shall be limited to the hours of seven a.m. to seven p.m., or until dusk when sunset occurs after seven p.m. Impact pile driving, hoe ram, and blasting operations, if required, shall be limited to the hours between ten a.m. to five p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at adjacent property boundariesensitive receptors are permitted outside of daylight hours when necessary. Sensitive receptor, for purposes of this rule, refers to any occupied building. The applicant shall notify property owners or affected tenants within the meaning of paragraph (B)(2) of rule 4906-3-03 of the Administrative Code of upcoming construction activities including potential for nighttime construction activities.
 - (2) The facility shall be operated so that the facility noise contribution does not result in noise levels at any the adjacent non-participating property sensitive receptor within one mile of the project boundary that exceed the project area ambient nighttime average sound level (L_{eq}) by five A-weighted decibels (dBA). Non-participating property, for the purpose of this rule, refers to properties not under lease or agreement with the applicant regarding any components of the facility or project. During daytime operation only (seven a.m. to ten p.m.), the facility may operate at the greater of: the project area ambient nighttime L_{eq} plus five dBA; or the validly measured ambient L_{eq} plus five dBA at the location of the sensitive receptor. After commencement of commercial operation, the applicant shall conduct further review of the impact and possible mitigation of all project-related noise complaints through

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its complaint resolution process. Non-participating, as used in this context, refers to a property for which the owner has not signed a waiver or otherwise agreed to be subject to a higher noise level.

(G) Blade shear. The applicant shall provide its plans to minimize potential impacts from blade shear. These plans shall include restricting public access to the facility with appropriately placed warning signs or other necessary measures, and instructing workers on the potential hazards.

(1) To minimize the possibility of blade shear, all wind turbine generators must be equipped with:

(a) Two independent braking systems, which may include aerodynamic overspeed controls and mechanical brakes operated in a fail-safe mode, but shall not include stall regulation;

(b) A pitch control system;

(c) A lightning protection system; and

(d) Turbine shutoffs in the event of excessive wind speeds, uncontrolled rotation, excessive blade vibration, stress, or pressure on the tower structure, rotor blades, and turbine components.

(2) Bypass or override of wind turbine safety features or equipment is prohibited.

(3) At a minimum, the design of the wind turbine generators shall conform to industry standards, as effective at the time the applicant submits its application, including those of the American National Standards Institute, the International Electrotechnical Commission, or an equivalent industry standard. The applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.

(H) Shadow flicker.

(1) The facility shall be designed to avoid unreasonable adverse shadow flicker effect at any adjacent non-participating property boundary-sensitive receptor within 1,000 meters of any turbine. At a minimum, the facility shall be operated so that shadow flicker levels do not exceed thirty hours per year at any non-participating property boundary-such receptorsuch receptor. Non-participating, as used in this context,

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refers to a property for which the owner has not signed a waiver or otherwise agreed to be subject to a higher shadow flicker level.

- (2) After commencement of commercial operation, the applicant shall conduct further review of the impact and possible mitigation of all project-related shadow flicker complaints through its complaint resolution process.
- (I) Decommissioning and removal.
 - (1) The applicant shall provide the final decommissioning plan to the board and the applicable county engineer(s) at least thirty days prior to the preconstruction conference. The plan shall:
 - (a) Indicate the intended future use of the land following reclamation.
 - (b) Describe the engineering techniques and major equipment to be used in decommissioning and reclamation; a surface water drainage plan and any proposed impacts that would occur to surface and ground water resources and wetlands; and a plan for backfilling, soil stabilization, compacting, and grading.
 - (c) Provide a detailed timetable for the accomplishment of each major step in the decommissioning plan, including the steps to be taken to comply with applicable air, water, and solid waste laws and regulations and any applicable health and safety standards in effect as of the date of submittal.
 - (2) The applicant shall file a revised decommissioning plan to the board and the applicable county engineer(s) every five years from the commencement of construction. The revised plan shall include advancements in engineering techniques and reclamation equipment and standards. The revised plan shall be applied to each five-year decommissioning cost estimate.
 - (3) The applicant shall, at its expense, complete decommissioning of the facility, or individual wind turbines, within twelve months after the end of the useful life of the facility or individual wind turbines. If no electricity is generated for a continuous period of twelve months, or if the board deems the facility or turbine to be in a state of disrepair warranting decommissioning, the wind farm or individual wind turbines will be presumed to have reached the end of its useful life. The board may extend the useful life period for the wind farm or individual turbines for good cause as shown by the applicant. The board may also require decommissioning of individual wind turbines due to health, safety, wildlife impact, or other concerns that prevent the turbine from operating within the terms of the certificate.

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- (4) Decommissioning shall include the removal and transportation of the wind turbines and towers off site. Decommissioning shall also include the removal of buildings, cabling, electrical components, access roads, and any other associated facilities, unless otherwise mutually agreed upon by the facility owner and/or facility operator and the landowner. All physical material pertaining to the facility and associated equipment shall be removed to a depth of at least thirty-six inches beneath the soil surface and transported off site. The disturbed area shall be restored to the same physical condition that existed before construction of the facility. Damaged field tile systems shall be repaired to the satisfaction of the property owner.
- (5) During decommissioning, all recyclable materials, salvaged and non-salvaged, shall be recycled to the furthest extent practicable. All other non-recyclable waste materials shall be disposed of in accordance with state and federal law.
- (6) The facility owner and/or facility operator shall not remove any improvements made to the electrical infrastructure if doing so would disrupt the electric grid, unless otherwise approved by the applicable regional transmission organization and interconnection utility.
- (7) At least seven days prior to the preconstruction conference, the applicant shall retain an independent, registered professional engineer, licensed to practice engineering in the state of Ohio to estimate the total cost of decommissioning in current dollars, without regard to salvage value of the equipment. Said estimate will be converted to a per-turbine basis calculated as the total cost of decommissioning of all facilities divided by the number of turbines in the most recent facility engineering drawings. This estimate shall be conducted every five years. Said estimate shall include:
 - (a) An identification and analysis of the activities necessary to implement the most recent approved decommissioning plan including, but not limited to, physical construction and demolition costs assuming good industry practice and based on publication or guidelines approved by staff;
 - (b) The cost to perform each of the activities; and
 - (c) An amount to cover contingency costs, not to exceed ten per cent of the above calculated reclamation cost.
- (8) The applicant, facility owner, and/or facility operator shall post and maintain for decommissioning a performance bond in an amount equal to the per-turbine decommissioning costs multiplied by the sum of the number of turbines constructed and under construction. For purposes of this condition, a turbine is considered to be under construction at the commencement of excavation for the turbine foundation.

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The form of the performance bond shall be mutually agreed upon by the board and the applicant, the facility owner, and/or the facility operator. The performance bond shall ensure the faithful performance of all requirements and reclamation conditions of the most recently filed and approved decommissioning and reclamation plan. At least thirty days prior to the preconstruction conference, the applicant, the facility owner, and/or the facility operator shall provide an estimated timeline for the posting of decommissioning funds based on the construction schedule for each turbine. Prior to commencement of construction, the applicant, the facility owner, and/or the facility operator shall provide a statement from the holder of the performance bond demonstrating that adequate funds have been posted for the scheduled construction. Once the performance bond is provided, the applicant, facility owner and/or facility operator shall maintain such funds or assurance throughout the remainder of the applicable term. The applicant, facility owner, and/or facility operator shall obtain a new performance bond every five years with an updated decommissioning cost estimate from its engineer and revised decommissioning plan.

- (9) The facility owner and/or facility operator shall repair damage to government-maintained (public) roads and bridges caused by decommissioning activity. Any damaged public roads and bridges shall be repaired promptly to their pre-decommissioning state by the facility owner and/or facility operator under the guidance of the appropriate regulatory agency. The applicant shall provide financial assurance to the counties that it will restore the public roads and bridges it uses to their pre-decommissioning condition. These terms shall be defined in a road use agreement between the applicant and the county engineer(s) prior to construction. The road use agreement shall contain provisions for the following:
- (a) A pre-decommissioning survey of the condition of public roads and bridges conducted within a reasonable time prior to decommissioning activities.
 - (b) A post-decommissioning survey of the condition of public roads and bridges conducted within a reasonable time after decommissioning activities.
 - (c) An objective standard of repair that obligates the facility owner and/or facility operator to restore the public roads and bridges to the same or better condition as they were prior to decommissioning.
 - (d) A timetable for posting of the decommissioning road and bridge bond prior to the use or transport of heavy equipment on public roads or bridges.
- (10) The decommissioning funds, performance bond, or financial assurance shall be released by the holder of the funds, bond, or financial assurance when the facility owner and/or facility operator has demonstrated, and the board concurs, that

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decommissioning has been satisfactorily completed, or upon written approval of the board, in order to implement the decommissioning plan.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	<u>Ohio Power Siting Board (OPSB)</u>
	<u>Attn: Angela M. Hawkins, Legal Director</u>
	<u>Phone: 614-466-0122 Fax: 614-728-8373</u>
	<u>Angela.Hawkins@puco.ohio.gov</u>
Regulation/Package Title:	<u>Health and Safety, Land Use and Ecological Information;</u> <u>Regulations Associated with Wind Farms</u>
Rule Number(s):	<u>4906-4-08 and 4906-4-09</u>
Date:	<u>August 17, 2017</u>
Rule Type:	
<input checked="" type="checkbox"/> New	<input type="checkbox"/> 5-Year Review
<input checked="" type="checkbox"/> Amended	<input type="checkbox"/> Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Proposed amended Ohio Adm.Code 4906-4-08 requires health, safety, land use, and ecological information to be contained in the application for any entity choosing to apply to construct an electric generation facility. Proposed new Ohio Adm.Code 4906-4-09 contains requirements specifically associated with wind farms as discussed in R.C. 4906.20.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 4906.20, 4906.03

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The public purpose of the rules is to govern standard certificate applications for electric generation facilities.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The rules in this package contain general provisions and procedural matters which will not have measureable outputs or outcomes.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

The Board conducted a workshop on June 9, 2016, at the offices of the Public Utilities Commission to receive feedback from interested stakeholders and the general public in Case No. 16-1109-GE-BRO. The Entry providing notice of the workshop was served upon the Board's electric-energy and gas-pipeline industry service lists. The Board enjoyed significant

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stakeholder participation at the workshop. Additionally, the Board issued an Entry on September 22, 2016, setting deadlines for interested stakeholders to file written comments regarding Staff's recommendations for the rules after considering the feedback from the June 9, 2016 workshop. The Board received comments from residential property owners, wind developers, and environmental and historical preservation groups, among other interested stakeholders.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Recommendations were provided by stakeholders at the workshop in Case No. 16-1109-GE-BRO. Additionally, interested stakeholders had the opportunity to file initial and reply comments containing additional recommendations following the issuance of the Board's September 22, 2016 Entry. Some of the recommendations were as follows: More specific, defined standards in regards to impact of wind farms including shadow flicker, blade shear/blade throw, and noise; a clearer, more defined process for the waiver of setback requirements; and implementation of a greater minimum setback requirement. The Board's Staff endeavored to include more specific, defined standards in the areas of shadow flicker, blade shear/blade throw, noise, and the setback waiver process in proposed amended Ohio Adm.Code 4906-4-08 and proposed new Ohio Adm.Code 4906-5-09.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

In proposing amendments to Ohio Adm.Code 4906-4-08, and developing proposed new Ohio Adm.Code 4906-4-09, the Board took into account feedback from stakeholders and the general public to the rule prior to the proposed changes. Stakeholder and public feedback can be made directly to the Board by filing comments from such entities as electric distribution utilities, gas and natural gas local distribution companies, applicants who have filed cases before the Board, and members of the general public. No specific scientific data was cited in the development of these rules.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The operation of the Board is specifically provided for in R.C. Chapter 4906, and the promulgation of rules governing the siting process is specifically provided for in R.C. 4906.03 and 4906.20; thus, regulatory alternatives were not available.

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11. Did the Agency specifically consider a performance-based regulation? Please explain.

The rules in this package dictate the content and substance of standard certificate applications and a large number do not define the required outcome. Moreover, the rules are specifically mandated by R.C. 4906.03 and 4906.20; and thus, performance-based regulations are not appropriate for many of the contents required in applications. However, several of the regulations proposed require demonstration of desired, measurable outcomes.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Board has reviewed other Ohio regulations and found no duplication; however, as the Board consists of multiple state agencies working together, some of the regulations cite the authority of other agencies. Furthermore, the rules have been adopted pursuant to R.C. Chapter 4906.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Proposed amended Ohio Adm.Code 4906-4-08 and proposed new Ohio Adm.Code 4906-4-09 set forth the rules governing the health and safety, land use, and ecological information required to be contained in standard certificate applications for electric generating facilities, and, specifically, wind farms. The Board has presented Ohio Adm.Code 4906-4-08 and 4906-4-09 for comment from stakeholders to ensure that this package will be applied consistently and predictably for the regulated community. Additionally, the revisions to the rules should provide greater predictability and clarity in the application of the rules.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Proposed amended Ohio Adm.Code 4906-4-08 and proposed new Ohio Adm.Code 4906-4-09 provide guidance to entities seeking to site facilities within the state of Ohio. Therefore, for purposes of identifying the impacted business community, the only businesses impacted by the rules would be entities seeking to build electric generation facilities and wind farms.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Costs of compliance with proposed amended Ohio Adm.Code 4906-4-08 and proposed new Ohio Adm.Code 4906-4-09 are not expected to vary from the costs of complying with current Ohio Adm.Code 4906-4-08. Costs vary greatly depending on the nature of the facility that is seeking certification, but costs include environmental studies, preparation of the application, and the Board's costs for reviewing the application, which are billed to the applicant on an hourly basis for actual time spent on the case. All upfront application fees are applied to the billed hours of work on the case, and any surplus is refunded to the applicant.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

There is no representative business for purpose of quantifying any adverse impact from the regulations. It is nearly impossible to estimate costs to the regulated population or a representative business. Costs are billed on a case-by-case basis and depend greatly on the nature of the facility and particular issues of the case. Costs tend to be lower for facilities that have less environmental impact or occupy a smaller area of land. Furthermore, cases with less opposition will have fewer costs by avoiding the need for further hearings and appeals.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Proposed amended Ohio Adm.Code 4906-4-08 and proposed new Ohio Adm.Code 4906-4-09 are required by R.C. 4906.03 and 4906.20. Therefore, the rules are required by law, but were drafted to minimize adverse impacts on businesses.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Ohio Adm.Code Chapter 4906-4 reflects the legislative intent of R.C. 4906.03 and 4906.20 and provides for the certificating of new facilities in Ohio. The certificating of an electric generation facility or wind farm in Ohio are not activities typically undertaken by an entity that would be defined as a small business.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The Board only assesses penalties for violations of certificates, which occur after an applicant has begun construction of a facility.

18. What resources are available to assist small businesses with compliance of the regulation?

The Board actively works with applicants and parties who have been granted certificates to ensure compliance with the Board's rules and the terms and conditions of their certificates. However, construction of a certificated facility is not an activity typically undertaken by a small business.