

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Republic )  
Wind, LLC for a Certificate of Environmental )  
Compatibility and Public Need for a Wind- ) Case No. 17-2295-EL-BGN  
Powered Electric Generating Facility in )  
Seneca and Sandusky Counties, Ohio. )

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**REPUBLIC WIND, LLC’S REPLY IN SUPPORT OF ITS  
MOTION FOR PROCEDURAL SCHEDULE**

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**I. INTRODUCTION**

The Staff of the Ohio Power Siting Board’s (“Board” and “Staff”) memorandum contra to Republic Wind, LLC’s (“Republic”) motion for procedural schedule improperly states that Republic’s application for amendment should be subject to a 60-day completeness review under OAC 4906-3-06(A). Staff’s position is contrary to the plain language of OAC 4906-3-11(A). Staff’s position is also inconsistent with the Board’s recent application of this rule. Finally, Staff conflates the need for a completeness review with a perceived need for additional time to conduct its investigation. For these reasons, the Board should reject Staff’s request for a completeness review and grant Republic’s motion for procedural schedule.

**II. ARGUMENT**

- A. OAC 4906-3-11(A) sets forth the requirements of the applicable amendment process, which does not require another completeness review.

OAC Rule 4906-3-11 describes two processes for amendments. Paragraph (A) of the rule defines the process for the amendment of a “pending accepted, complete” application. Paragraph (B) of the rule defines the process to amend a certificate already issued by the Board. A “pending accepted, complete” application is one that is determined “complete” under OAC

4906-3-06(A). Under this process, a standard certificate application is examined for compliance with OAC Chapters 4906-1 to 4906-7. Republic's application was determined to be complete by the Chairman on May 23, 2018, but has not received a certificate from the Board. As a result, on December 26, 2018, Republic submitted its application for amendment under OAC 4906-3-11(A).

OAC 4906-3-11(A)(1)-(5) establishes the process for amending an accepted, complete application. The applicant must specifically identify the portion of the pending accepted, complete application which has been amended [OAC 4906-3-11(A)(1)]; serve a copy of the amendment upon local public officials [OAC 4906-3-11(A)(2)]; and serve a copy of the application upon local libraries [OAC 4906-3-11(A)(3)]. As stated in Republic's Motion for a Procedural Schedule, Republic has already complied with these requirements of the rule.

OAC 4906-3-06(A) does not contain any reference to or requirement for a "completeness review". The only "review" by Staff mentioned in the rule contained in OAC 4906-3-11(A)(5), which refers to the post-completeness investigation required under OAC 4906-3-06(C). In turn, OAC 4906-3-11(A)(4) provides Staff sufficient time to its investigation by giving the Board or Administrative Law Judge ("ALJ") the discretion to give a full ninety days before any hearings. In summary, the amendment rule specifically defines the process and requirements for the applicant, Staff, and Board or ALJ. Nothing in the rule suggests that a "completeness review" is required.

- B. Staff's call for a completeness review is inconsistent with the Board's application of the amendment process under 4906-3-11(A) in the Duke Energy Pipeline case, where **no** completeness review was required.

The Board recently applied the amendment process under OAC 4906-3-11(A) and did not require a completeness review in the Duke Energy Ohio, Inc. ("Duke") pipeline extension case.<sup>1</sup> In that case, Duke filed a certificate application to build a natural gas pipeline, which was subsequently deemed complete and a procedural schedule was established. Duke then filed a motion to suspend the procedural schedule in order to address site-specific issues, which the Board granted. Later, Duke filed supplemental information to its application along with a motion seeking to reestablish the procedural schedule (note, it did not classify this supplemental information as an application for amendment). A number of intervenors in opposition to the pipeline filed memoranda in response to Duke's motion, requesting, in part, that the supplemented application be subject to a completeness review pursuant to OAC 4906-3-06.

The ALJ determined that the Duke's supplemental information should be considered an amendment of a pending accepted, complete application.<sup>2</sup> As the ALJ notes, "Ohio Adm. Code 4906-3-11(A)(1)-(5) sets forth the requirements for amendments to a pending accepted, complete application."<sup>3</sup> The ALJ instructed Duke to comply with paragraphs (A)(1)-(4) of the rule. The ALJ also instructed Staff to review the application for amendment and file its report of investigation in accordance with OAC 4906-3-11(A)(5).<sup>4</sup>

More importantly, the ALJ did not order that Duke's application for amendment be subject to a new completeness review. Staff's request that Republic's application for amendment

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<sup>1</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for a Certificate of Environmental Compatibility and Public Need for the C314V Central Corridor Pipeline Extension Project*, Case No. 16-253-GA-BTX.

<sup>2</sup> Duke Pipeline Case, December 18, 2018 Entry at 5.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 5.

be subject to a completeness review is inconsistent with the Board's entry in the Duke pipeline case, which was issued only one month ago.

C. Staff misreads OAC 4906-3-11(A) as requiring another completeness review, which is contrary to the rule and creates contradictory and confusing requirements.

1) *The completeness review is distinct from the Staff's substantive investigation.*

Staff misreads the sentence in OAC 4906-3-11(A) stating that "[t]he applicant shall submit to the board any applications for amendment to a pending accepted, complete application in accordance with rule 4906-3-06 of the Administrative Code." OAC 4906-3-06 provides for a bifurcated review of a "standard certificate application," which includes: 1) the "Chairman's" review to determine whether the application is complete [OAC 4906-3-06(A)]; and 2) "Staff's" substantive investigation and submission of its report and recommendations [OAC 4906-3-06(C)]. These are two distinct steps. Staff reads this sentence in 4906-03-11(A) to mean that a "pending, accepted complete application" must undergo a second completeness review, which under the rule would be completed by the "Chairman." The amendment rule provides for no completeness review by the "Chairman," but only the investigation to be done by "Staff" pursuant to OAC 4906-3-11(A)(5).

2) *The amendment process specifically requires a Staff investigation but makes no specific reference to a completeness review.*

Staff's argument that a 60-day completeness review is required hinges solely upon a general reference to OAC 4906-3-06 in OAC 4906-3-11(A). There is no specific reference to the completeness review process in OAC 4906-3-06(A). There is, however, a specific reference to Staff's obligations in OAC 4906-3-06(C). This provision requires Staff to conduct its post-completeness investigation and issue a report.

The amendment rule's specific reference to OAC 4906-3-06(C) undermines Staff's assertion that a general reference to OAC 4906-3-06 a completeness review under OAC 4906-3-06(A). If the Board intended that applications for amendment be subject to the completeness review, it would have expressly referenced the applicability of OAC 4906-3-06(A), as it did the applicability of OAC 4906-3-06(C). The Staff's obligation to conduct an investigation and issue a report is an expressly defined requirement of the amendment process. There is no such express requirement for a completeness review under OAC 4906-3-06(A).

- 3) *Applying the completeness review requirements of OAC 4906-3-06(A) would contradict and render moot various requirements set forth in OAC 4906-3-11(A).*

Inserting a completeness review process into the amendment process under OAC 4906-3-11(A) would create confusing and conflicting notice requirements. OAC 4906-3-11(A)(2) requires the applicant to "serve a copy of the application for amendment upon all persons previously entitled to receive a copy of the application, and shall supply the board with proof of such service." This includes service to local public officials and libraries within the project area. Republic has already met this requirement.

In contrast, an application subject to completeness review under OAC 4906-3-06(A) is only served *after* the 60-day completeness review, after being deemed complete. *See* OAC 4906-3-07(A)(1)-(2). Staff's interpretation would require that Republic perform the same service twice: once when submitting the application for amendment under OAC 4906-3-11(A)(2) (which has already been completed) and again after Staff's proposed completeness review under OAC 4906-3-06(A)(1). This duplicative service would not only be unnecessary, but also result in confusion for the public.

Nothing in OAC 4906-3-11(A)(2) remotely suggests that the service of an amendment application shall occur after the completeness review as required by OAC 4906-3-06(A). Staff's position would render the service requirement OAC 4906-3-11(A)(2) as superfluous because the completeness review that Staff wants to insert already contains its own service requirement [OAC 4906-3-06(A)(1)]. In fact, if the amendment rule's general reference to OAC 4906-3-06 automatically triggered all of this rule's requirements, then the amendment process of OAC 4906-3-11(A)(1)-(5) would be entirely unnecessary.

D. Staff conflates its perceived need for additional investigation time with the need for a new completeness review.

- 1) *Staff's arguments for a completeness review are really arguments for additional investigation time.*

As discussed above, the purpose of the completeness review is to examine a standard certificate application for compliance with OAC Chapters 4906-1 to 4906-7, after which the "Chairman" makes a finding of completeness. In contrast, the post-completion investigation and report conducted by "Staff" is a distinct requirement under OAC 4906-3-06(C).

In its memorandum contra, Staff conflates the completeness review process with the Staff investigation process. Staff argues that a completeness review process is needed for Staff to perform "additional investigation and analysis" and provide Staff "adequate time to perform its investigation".<sup>5</sup> However, the "Staff" investigation process is separate from a completeness review. While Staff may need time to complete its investigation, the alleged necessity for a completeness review is a separate and unrelated point. Using Staff's logic, a completeness review would be required every time an amendment application is filed. If this were true, there would be no difference between an application for amendment and a brand new certificate application, which would render OAC 4906-3-11(A) meaningless.

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<sup>5</sup> Staff Memorandum Contra at p. 3.

- 2) *Staff provides no reasonable justification that an investigation of Republic's amended application will require more time than already provided by the rule.*

Staff's perceived need for additional time to complete its investigation appears to be based on the changes that Republic's proposed in its application for amendment. Staff cites changes, such as a different turbine model, new turbine locations, and incorrectly states that the "new" project area "is mostly inside the original project area."<sup>6</sup>

To be clear, Republic's amended application reduces the size of the project area, which remains entirely within the original project and involves no new parcels outside of the existing project area. The majority of turbine shifts are minor distances, and the majority remain on the same parcels. The new turbine model will reduce the number of turbine sites to be constructed. Further, the total amount of access roads, metrological towers, and collector lines are all reduced by the amendment.

Staff does not explain why these reductions necessitate additional investigation time beyond what the rule provides. To the contrary, the limited scope of Republic's proposed changes to the project and reductions in impacts should facilitate an efficient investigation by the Staff. Critically, the rule *already* ensures that Staff will have adequate time to complete its investigation by giving the Board or ALJ the discretion to reschedule the hearings up to 90 days after the application is submitted. OAC 4906-3-11(A)(4)(b).

The rule also requires that the application specifically identify the portion of the pending accepted, complete application which has been amended. OAC 4906-3-11(A)(1). Republic submitted a redline of the accepted, complete application to show where information in the

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<sup>6</sup> *Id.*

application was amended.<sup>7</sup> Staff can readily ascertain the changes to the underlying certificate application; neither a brand new completeness review nor an extended investigation time is necessary.

- E. Republic is entitled to hearings scheduled within 90 days after the application for amendment was filed.

Staff accuses Republic as seeking to “rush through the amendment process” and that it is creating an “unfair urgency for Staff to complete its investigation.”<sup>8</sup> This is not at all true. Republic seeks no special treatment, only what the rule affords. Republic’s Motion for Procedural Schedule requests that the hearings be scheduled within ninety days from the date of the filing of the Amended Application. This is consistent with OAC Rule 4906-3-11(A)(4)(b), the “hearings may be postponed on the pending, accepted, complete application and/or application for amendment up to ninety days *after receipt of said application for amendment.*” Emphasis added.

Notably, under OAC 4906-3-11(A)(4)(b), the hearing schedule is to be established after the receipt of the application for amendment, not after a completeness review – yet another reason why Staff’s call for a completeness review is inconsistent with the rules.

Republic does not object to the ALJ rescheduling the hearings the full ninety days after the filing of the amendment application. This will provide Staff with the full amount of time for its investigation as allowed by the rule.

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<sup>7</sup> See, “Amended Application Redline-Redacted,” Case No. 17-2295-EL-BGN (Dec. 26, 2018).

<sup>8</sup> *Id.*



### III. CONCLUSION

Republic respectfully requests that the Board grant Republic's Motion for Procedural Schedule.

Respectfully submitted on behalf of  
Republic Wind, LLC



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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Reply has been served upon the following parties listed below by electronic mail, this 17<sup>th</sup> day of January 2019.



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Summary: Reply of Republic Wind, LLC in Support of Its Motion for Procedural Schedule electronically filed by Teresa Orahod on behalf of Dylan F. Borchers