

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Ohio Power Siting)
Board's Consideration of Ohio Administrative) Case No. 19-778-GE-BRO
Code Chapter 4906-4)

**COMMENTS OF
AVANGRID RENEWABLES, LLC**

I. INTRODUCTION & BACKGROUND

On June 20, 2019, the Ohio Power Siting Board (“OPSB” or “Board”) issued an entry seeking comments on new proposed Rule 4906-4-10, which would adopt notice and reporting requirements when an incident causes a shutdown of a wind turbine, and revisions to Rule 4906-4-09 to ensure that construction and operation of non-generating plant wind farm facilities are consistent with local building codes.

As further detailed below, Avangrid Renewables, LLC (“AR”) makes the following comments and recommendations to the proposed rules, including in part:

- The definition of “incidents” is overly broad and open-ended, resulting in unnecessary deployment of emergency resources, unhelpful reporting, and significant economic consequences. The definition should be refined to clarify that events that do not pose a hazard to property or safety external to the project are not “incidents.”
- The ongoing facility shut-down requirement until the executive director or designee approves restart effectively modifies the operating conditions for projects that have already received their certificates from the Board, and AR recommends that the ongoing shutdown requirement should be removed from the rule.
- The Board should clarify the intent of the revision requiring structures “not involved in generation or transmission of electricity” to be subject to the state building code. AR further notes that the revision may create regulatory confusion with the current Ohio Building Code (“O.B.C.”) and

recommends limited application of the building code be addressed in certificate conditions.

- The Business Impact Analysis included with the proposed rules does not adequately reflect the adverse financial impacts of ongoing facility shut-down as result of this rule.

AR has more than \$10 billion of operating assets, totaling more than 6,000 MW of owned and controlled wind and solar generation in the U.S., and is part of a family of companies with more than 14,000 MW of renewable energy spread across a dozen countries. In Ohio, AR operates the 304 MW Blue Creek Wind Farm, located in Paulding and Van Wert Counties.

II. COMMENTS

A. O.A.C. 4906-4-09(A)(1) – Compliance with state building code

The Board proposes a revision to its rules “to make explicit that economically significant wind farms and major utility facilities consisting of wind-powered generation adhere to local building codes for non-generating plant facilities.” Entry (June 20, 2019) at 1.

1. *The Board should clarify the intent of the revision.*

AR does not oppose the concept that some structures within a wind farm may be suitable for review under the state building code. In fact, many projects already adhere to building codes when applicable, and in some cases, project insurance providers require building code compliance. At the Blue Creek Wind Farm, for example, the maintenance building meets the applicable building code standards.

However, the single sentence revision of the rule lacks sufficient detail to understand the scope and detail of the requirement. The revision states that only structures “not involved in generation or transmission of electricity” will be subject to state building code regulations. AR’s view is that all of its wind project facilities are involved in the generation of electricity. AR asks

that the Board provide more clarity of the types of structures it considers to “not be involved in generation or transmission of electricity.”

2. *The proposed revision may create regulatory confusion because the Ohio Building Code exempts major utility facilities from enforcement.*

In part, the proposed rule revision states that an applicant “shall comply with state building code regulations” The O.B.C. is codified in Ohio Administrative Code (“O.A.C.”) Chapters 4101:1-1 to 4101:1-35. Within the O.B.C. is a list of exceptions from O.B.C. jurisdiction, including “major utility facilities” regulated by the Board:

Structures on the premises of and directly related to the operation of a generating plant defined as a **major utility facility** regulated by the power siting board, **including the structures associated with generation**, transmission, and distribution. As a condition of the power siting board’s approval, the building department may be requested to review and inspect these structures for compliance with the rules of the board of building standards. However, the building department has no enforcement authority.

Emphasis added.

The statutory definition of “major utility facility” includes the “electric generating plant” and “associated facilities.” R.C. 4906.01(B)(1)(a). Under the Board’s current rules, “associated facilities” means “rights-of-way, land, permanent access roads, *structures*, tanks, distribution lines and substations necessary to interconnect the facility to the electric grid, water lines, pollution control equipment, and other equipment used for the generation of electricity.” O.A.C. 4906-1-01(F)(3). Emphasis added. “Structures” are part and parcel to a “major utility” facility approved by the Board, but the O.B.C. exempts these structures from regulation. A regulatory requirement from the OPSB that certain “structures” meet the state building code when the O.B.C. may exempt such structures creates an environment for regulatory confusion.

3. ***Limited application of state building code regulations is better suited as a condition on a project-by-project basis.***

Even if the Board clarifies on the types of structures to be subject to the building code and even if the O.B.C. could be clearly interpreted to apply to certain structures under the Board's jurisdiction, the building department has no enforcement authority. Instead, the O.B.C indicates that, "[a]s a condition of the power siting board's approval, the building department may be requested to review and inspect these structures for compliance with the rules of the board of building standards." AR believes that this is a sound framework for coordination between the two agencies and recommends that the applicability of building code standards be addressed in the certificate conditions.¹ This will remove potential confusion over enforcement authority and enable the specific structures "not involved in generation, transmission, or distribution" subject to the building code to be identified on a project-by-project basis.

B. O.A.C 4906-4-10 - Notice of incidents involving wind farm facilities

AR believes that notice of major events may be appropriate, however the current draft contains unnecessary and repetitive notice requirements. AR emphasizes the success and efficacy of using its adopted safety plan in conjunction with direct communication with OPSB Staff, and seeks clarity and simplification of formal notification requirements.

1. *Section 4906-4-10(A) – Initial notice and definition of “incidents”*

a) *Subsection 4906-4-10(A)(1)*

AR recognizes that certain wind turbine failure events may warrant the need for prompt communication with the Board and local emergency personnel. However, the proposed rule is problematic for a variety of reasons. From a practical standpoint, the rule does not specify how to

¹ Indeed, the Board Staff has already started doing this, recommending in the recently released Seneca Wind OPSB Staff Report of Investigation, a condition requiring coordination with building code officials: "The Applicant shall coordinate with local building code officials with regard to the construction of any structures not directly related to the operation of the generation facility." Condition 8, Case No. 18-0488-EL-BGN.

contact the executive director or designee. To compare, the Gas Pipeline Safety rules administered by the Public Utilities Commission of Ohio (“PUCO” or “Commission”) also requires incidents to be reported within thirty minutes but expressly includes a specific number for the pipeline operator to call. O.A.C 4901:1-16-05(A)(1).

More importantly, AR observes that the requirement to call both local law enforcement *and* first responders for “*all* incidents involving a wind turbine” has the potential to create an enormous burden on these local resources. The definition of “incidents” as proposed is very broad; a critical issue is discussed in more detail below. As a result, local law enforcement resources and first responders will be called to “incidents” where there is no hazard to human life or property and no potential need for these resources.

The Board’s rules already require a fire protection, safety, and medical emergency plan to be used during construction and operation of a wind farm. O.A.C. 4906-4-08(A)(1)(e). These plans must be developed “in consultation with local emergency responders,” and are subject to review by the OPSB Staff. *Id.* In addition, AR has established a company-wide emergency action plan for every project site to follow when determining the level of response required for a multitude of circumstances or possible situations.

AR recommends that the criteria to require contact of law local enforcement and first responders in the event of a turbine incident be addressed in these plans as opposed to a blanket rule. In the alternative, AR encourages the Board provide additional clarity to the term “incident,” discussed below, in order to ensure that local law enforcement and first responders are not needlessly deployed for incidents that do not require their involvement.

b) Subsection 4906-4-10(A)(2)

AR encourages the Board to refine the definition of “incidents.” Clarity from the Board on what events are considered “incidents” is critical because the multiple requirements within this rule

all flow from the occurrence of an incident. Under the proposed rule, the occurrence of any “incident” triggers emergency notifications, ongoing reporting requirements, investigations, and the shut-down of generation facilities. A lack of clarity may result in unnecessary deployment of emergency resources, unhelpful reports for the sake of reports, and significant economic consequences.

The current definition of “incidents” is too broad. AR agrees that some of the categories in the proposed definition are appropriate, particularly where significant (and very rare) failures such as tower collapse, blade or turbine separation, and nacelle fires are involved and pose a potential hazard to human life or property. However, other categories in the proposed definition are vague and should not constitute an “incident” for the purposes of this rule.

Not every “turbine failure” should constitute an “incident.” For example, turbine failure may be caused by a minor mechanical issue in the turbine gear box, creating no safety concern or external impact. Similarly, collector line failure should not automatically be treated as an “incident” under this rule. In most instances, collector or feeder line failure is insignificant with no harmful effect other than a temporary shut-down of the facilities while repairs are completed. If such failures do not pose a hazard to safety, then they should not be treated as “incidents” under the rule. In addition, events such as ice fall that damages only the tower base or minor workplace injuries should not constitute an “incident” under the rule.² Such occurrences create no property damage or safety risks external to the project.

The rule is also worryingly open-ended. The events listed in the definition constituting “incidents” are a non-exhaustive list because the rule indicates that incidents “include, but are not limited to” these expressly listed events. The rule offers no parameters or criteria as to what other

² To compare, under Occupational Safety and Health Administration (“OSHA”) standards, the reporting requirement is that an employer must notify OSHA when an employee is killed on the job or suffers a work-related hospitalization, amputation, or loss of an eye. See, <https://www.osha.gov/report.html>.

events may be deemed “incidents.” This creates a situation for projects to guess whether a certain event is an “incident,” potentially leading to unnecessary shut-down and deployment of emergency resources or risk violating the rule.

In contrast, the Gas Pipeline Safety Rules’ definition of “incident” is much more specific, with clear parameters and limitations as to what types of events constitute an “incident.” Under the Gas Pipeline Safety Rules an incident must include a release of gas *and* one of the following: 1) a death; 2) personal injury requiring inpatient hospitalization; 3) unintentional estimated gas loss of three million cubic feet or more; or 4) estimate property damage of \$50,000 or more. O.A.C. 4901:1-16-01(K). The proposed wind rule lacks this specificity as to what constitutes an incident, which provide clear guidelines for determining reportable incidents. While there are differences between intrastate pipeline operations and wind farm operations, AR believes that the Gas Pipeline Safety rule provides an example of the degree of specificity needed for the definition of incident.

The consequences of an event being classified as an “incident” are considerable, including the ongoing shut-down of turbines that pose no safety issue whatsoever. As discussed in more detail in below, unnecessary shut-downs may cause significant economic harm. An overly broad or nonspecific definition of “incident” may also lead to the needless deployment of local law enforcement and first responder resources. For these reasons, AR respectfully requests that the Board further refine the definition of “incidents” to provide more specificity and parameters around the type and impact of events to fall under this definition.

2. Section 4906-4-10(B) – Written reports of incidents

AR reiterates its agreement that certain incidents, especially incidents with a potential hazard to human safety or property, should trigger a reporting requirement. However, while well-intentioned, the breadth of reports and timeframes established in this section may not be practical for the project or the Board, especially in the event of a major failure of equipment. In this context,

extensive work with equipment manufacturers and casualty insurers is required before the information can be processed as set out by the proposed rules.

Further, some technical failures of turbine—and, as discussed above, any “turbine failure” is currently treated as an incident, even if the failure creates no external impacts—require initial and ongoing investigations, study, data analysis, manufacturer consultations, potentially competing conclusions, and even litigation. This can delay definitive conclusion of the cause of an incident. Under the proposed rule, there would potentially be many reports, every 60 days, to the Board that would not contain the information sought because the reports would remain inconclusive. For this reason, AR recommends that the rule be revised to require only initial and final reports, with ongoing communication between the project and OPSB Staff as deemed necessary by the OPSB Staff.

3. *Section 4906-4-10(D) – Staff investigations and turbine restarts*

The requirement of the proposed Section 4906-4-10(D) that turbine operators refrain from restarting turbines without OPSB approval, and the potential need to await a site visit before restarting its facilities causes significant concern. All wind turbines require twenty-four hour a day monitoring and are managed both by on-site personnel, as well as remote operation from AR’s national control center. This is necessary in order to effectively operate the plants, to provide reliable power and ancillary services to the grid, and to supply electricity to customers regardless of whether an OPSB executive is available to report to a distant site immediately, at night, or on weekends. Unnecessary shutdowns could cause breach of power supply contracts and significant economic harm. AR opposes this requirement, particularly because it could be interpreted to apply inappropriately to a broad set of incidents.

Even if the definition of “incidents” is appropriately refined, there are still significant concerns about the shut-down requirement. The rule requires Staff “to investigate every incident”

and that turbines may not be restarted “until such restart is approved by the board’s executive director or the executive director’s designee.” However, the rule provides for no timeline for Staff to conduct its initial visit or the purpose of the investigation, for example, whether Staff will provide a report, and if so, the timeline for that report. Each minute a project is shutdown results in significant economic detriment.

AR is also concerned that site visits are likely to be inadequate for establishing whether or not equipment may or may not be operated. For example, most wind farm collector lines are buried and a site inspection will not be a helpful diagnostic tool. Based on AR’s experience, it is unlikely that someone without training in multi-disciplinary specialties on a wide variety of manufacturer-specific equipment and technical references could reasonably make such judgments about a project’s operation. Some turbine incidents require specially trained staff with maintenance experience and intimate knowledge of the infrastructure specific to that site.

Also unclear are details concerning the approval of the executive director or designee to restart the turbines. The rule provides no timeline or basis upon which a decision to approve or disapprove the restart turbines will be made. For example, the rule does not define whether the decision will be made after the Staff’s initial visit, a Staff investigation report, the operator’s initial report, or the operator’s final report—each of which has different associated timelines—or whether a preliminary approval to restart may be made without any of these things.

Delays in the ability to restart turbines can have significant economic impacts. Many thousands of dollars in revenue is lost for each hour that a project is not operating. Additionally, the employees poised to conduct the needed maintenance will be idled.

Delays to restarting facilities will also have indirect impacts on Ohio. During a shutdown, Blue Creek Wind Farm would not be able to provide emission-free energy to its two Ohio

customers. Alternate sources of energy may be more expensive and may come from fossil-fuel sources, with their associated environmental externalities and pollution.

AR is concerned that the continued shut-down requirement effectively modifies the operating conditions for projects that have already received their certificates from the Board. If the Board grants a certificate, the project must be constructed, operated, and maintained in conformance with the certificate and any terms, conditions, and modifications it contains. R.C. 4906.20(A). The operational conditions to the certificate can be extensive, from detailing ice throw notice requirements to curtailment parameters. Companies finance, construct, and operate projects in reliance of the operational parameters established by the certificate. The proposed rule, which ostensibly requires continued turbine shut-down for an undefined period beyond which the turbine poses any risk to safety or property, profoundly disturbs the operational criteria established in the certificate.

AR recommends that the ongoing shutdown requirement should be removed from the rule. Operators will shut down operation of a project or portion of a project whenever appropriate, and provide notice to and coordinate with the OPSB when required by clear parameters set out in the forthcoming rules.

C. The Board’s Business Impact Analysis does not adequately identify adverse impacts.

In accordance with R.C. 121.82, the Board must develop a Business Impact Analysis (“B.I.A.”) regarding the proposed rules. As part of this analysis, the Board must evaluate the adverse impact to business from compliance with the rules. The analysis must include a description of the nature of the impacts and a quantification of the expected adverse impact from the new regulation.

The B.I.A. provided by the Board as part of this rulemaking fails to adequately identify and quantify the adverse impact of the proposed rules. The only impact identified by the Board is “the

time and expense of notifying the OPSB of a reportable incident and reporting the results of the companies' investigation of an incident to the OPSB in the form of a written report." B.I.A., Par.

14. In response to the requirement to quantify these impacts, the Board states:

Any adverse impact in terms of dollars and hours to comply should, in most instances, be minimal. Whenever an incident as defined by the rule occurs, a responsible wind farm operator will conduct an investigation to determine the cause and extent of the damage to its facilities to ensure that the facility returns to full generating capacity as soon as possible. Adoption of this rule just standardizes this investigation process and requires that the results of the investigation be shared with the OPSB.

Id.

First, this description fails to meet the requirement that the impact "be quantified, hours to comply, or other factors" and to "include the source for [the] estimated impact." Second, and critically, this description is not an accurate description of the rule and its impacts. Nowhere does the proposed rule state the purpose of ensuring "that the facility returns to full generating capacity as soon as possible." Nor does the rule "just" standardize the investigation and reporting process. Instead, the rule establishes a mandatory continued shut-down of turbines for an indeterminate period of time, until the Board's executive director or designee approves the restart of the facilities. The rule provides no basis for approval, no timeline for a decision, and no indication of whether the decision is subject to an undefined staff investigation process. The rule creates the potential for significant delays to returning to full generating capacity.

The cost of such delay is significant: up to many thousands of dollars an hour if the facility is unable to operate. The rule as drafted creates a costly and uncertain business environment. We urge reconsideration of the rule and refinement to provide clear and appropriate conditions for notice of only major incidents. AR asks that the shut-down requirement be eliminated, and commit to both formal and informal communication with the OPSB whenever appropriate.

III. CONCLUSION

AR respectfully requests that the Board revise the proposed rules consistent with the comments above.

Respectfully submitted on behalf of
Avangrid Renewables, LLC



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Summary: Comments of Avangrid Renewables, LLC electronically filed by Teresa Orahod on behalf of Dylan F. Borchers