

**BEFORE
THE OHIO POWER SITING BOARD**

IN THE MATTER OF THE OHIO POWER)	
SITING BOARD'S CONSIDERATION OF)	CASE NO. 19-778-GE-BRO
OHIO ADMINISTRATIVE CODE)	
CHAPTER 4906-4)	

**REPLY COMMENTS SUBMITTED
BY LOCAL RESIDENT INTERVENORS**

I. INTRODUCTION

By Entry filed June 20, 2019 in this docket, the Ohio Power Siting Board (the "Board") invited public comments by all interested persons in response to the Board's consideration of: (1) proposed rule revisions 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 and (2) proposed rule revisions requiring wind turbine operators to timely report defined "incidents" to the Board and to suspend facility operations pending Staff investigation. Initial Comments were due by July 11, 2019 with Reply Comments due by July 26, 2019.

On July 11, 2019, the "Local Resident Intervenors" submitted their Initial Comments strongly supporting the Board's proposed rule revisions. Initial Comments were also filed by Avangrid Renewables, LLC ("AR"), the operator of the Blue Creek Wind Farm in Paulding and VanWert Counties, the Mid-Atlantic Renewable Energy Coalition ("MAREC") whose members include developers / owners of wind projects in Ohio, the Ohio Environmental Council and the Ohio Farm Bureau Federation.

Significantly, all Commenters acknowledge that this Board has the authority to promulgate the proposed rule revisions. The Board has jurisdiction to issue siting certifications for "major utility facilities" as defined in R.C. 4906.01(B)(1) and for "economically significant

wind farms" as defined in R.C. 4906.20. The Board has plenary authority to adopt rules establishing the criteria for evaluation of certificate applications. R.C. 4906.03(C). The Board has authority to establish terms and conditions for the construction, operation and maintenance of major utility facilities as the Board deems appropriate. R.C. 4906.10(A). No person shall construct, operate or maintain a major utility facility or economically significant wind farm other than in compliance with the certificate obtained. R.C. 4906.98(B).

All Commenters also generally acknowledge that the proposed rule revisions, at least in part, are appropriate, in the public interest and should be adopted by the Board. However, the industry stakeholders, principally AR and MAREC, suggest that the proposed rule revisions be modified and substantially limited in scope. In summary, these Commenters, along with the Ohio Farm Bureau and the Ohio Environmental Council, urge the following revisions:

1. Further clarification should be addressed to insure that the state building codes only apply to structures "not involved in the generation or transmission of electricity";
2. Notice of "incidents" and reporting of "incidents" should be limited to more narrowly defined "incidents" causing death or significant personal injury or significant, off-site property damage;
3. The proposed rule revisions applicable to Staff investigation and mandatory shut down of facilities should be significantly limited, if not eliminated, and time restrictions for the Board's final action should be imposed;
4. Finally, the Commenters generally assert that the Board's Business Impact Analysis does not adequately identify adverse impacts of the proposed rule revisions.

The Local Resident Intervenors strongly support the rule revisions as proposed. The Board is justified in its concern with recent wind-farm incidents in Ohio and nationally and the potential adverse impact on public health and safety. The proposed rule revisions are a sound first step in reporting and documenting wind-farm incidents and in requiring Staff investigation and remediation before continued operation of facilities. The modifications and limitations

proposed by the other Commenters are unnecessary, unjustifiably dilute the provisions of the proposed rules and are not in the public interest.

II. THE PROPOSED RULE REVISIONS ARE IN THE PUBLIC INTEREST AND SHOULD BE ADOPTED BY THE BOARD.

A. Adherence to Local Building Codes

The proposed revisions to OAC 4906-4-09(A)(1) simply make it explicit that an applicant for a siting certificate for a proposed wind farm shall comply with state building code regulations for structures not involved in the generation or transmission of electricity. These structures would not be "major utility facilities" otherwise subject to the Board's jurisdiction and would be subject to applicable state building code regulations.

Proposed Rule 4906-4-09(A)(1) provides:

- (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. Subject to section 4906.13 of the Revised Code, an applicant shall comply with state building code regulations for structures not involved in generation or transmission of electricity.

AR does not oppose the concept that certain structures within a wind farm may be suitable for review under the state building code. In fact, many project facilities adhere to state building codes where applicable. (AR Comments, p. 2). MAREC contends that the State Building Code is itself ambiguous and any reference in the proposed rule revisions should be eliminated. (MAREC Comments, pp. 6-7).

R.C. 4906.13(B) makes it clear that no public agency or political subdivision of the state may condition construction or initial operation of a major utility facility or economically

significant wind farm authorized by a certificate issued pursuant to Chapter 4906 of the Revised Code. By the same token, state or local regulations applicable to facilities that are not subject to the Board's jurisdiction continue in effect. R.C. 4906.01(B)(1) defines a "major utility facility" subject to the Board's jurisdiction and R.C. 4906.13(A) defines an "economically significant wind farm" subject to the Board's jurisdiction.

Proposed Rule 4906-4-09(A)(1) merely makes it explicit that physical structures not involved in generation or transmission of electricity are subject to applicable state building code regulations. The proposed rule revision simply makes clear the obvious - major utility facilities are subject to the Board's exclusive jurisdiction while non-generating or non-transmission facilities remain subject to state building code regulations. Whether or not state building code regulations apply to non-generating or non-transmission facilities is subject to other state and local regulatory authorities.

The proposed rule revision merely states the obvious in conformity with R.C. 4906.13(B). If, as MAREC contends, the state building codes are ambiguous, that is an issue for the state or local authority.

B. Notice And Reports Of Incidents Involving Wind Farm Facilities

Proposed Rule 4906-4-10 is a new rule requiring notice and reports of incidents involving wind farm facilities. Wind farm "incidents" properly include, but are not limited to, events such as tower collapse, turbine failure, thrown blade or hub, collector or feeder line failure, damaging ice throw, nacelle fire or injury to any person. OAC 4906-4-10(A)(2). Pursuant to the proposed rule, wind farm operators must initially notify the Board and local law enforcement and first responders of any wind farm incident thirty (30) minutes after discovery or as soon as practicable. OAC 4906-4-10(A). Written reports must be filed within sixty (60) days. OAC

4906-4-10(B). The written reports properly require detail including cause of the incident, date and time, debris distances, a narrative description of the incident, extent of damage, remediation steps, extent of property damage or personal injury and description of steps taken to prevent future incidents. OAC 4906-4-10(C).

These proposed rules for the first time require timely and adequate notice and reporting of wind farm incidents. Further, the rules establish uniform reporting standards and an investigation process. The Local Resident Intervenors support these requirements.

AR believes the notice and report of "major events" may be appropriate but asserts the definition of reportable "incidents" is overly broad. AR would limit reportable incidents to those implicating a hazard to human life or property. AR also maintains that emergency plans required by OAC Rule 4906-4-08(A)(1)(e) already require contact with local law enforcement. (AR Comments, pp. 4-6). MAREC similarly contends the definition of reportable "incidents" is overly broad and unnecessary and the time response is impractical. Reportable incidents should be limited to those involving personal injury or property damage off-site. MAREC also asserts that the Board has continuing jurisdiction over operating conditions in the certificate and this should be sufficient. (MAREC Comments, pp. 7-11).

As discussed, Proposed Rule 4906-4-10(A)(2) explicitly defines a reportable incident to include significant events including tower collapse, turbine failure, thrown blade or hub, collector or feeder line failure, damaging ice throw, nacelle fire or injury to any person. Each of these defined "incidents" are significant incidents impacting health and safety. Each of these defined "incidents" can threaten or impact personal safety or property damage beyond the footprint of the physical facility itself. Each of these defined "incidents" can involve high voltage electrical equipment and significant safety risk. Fires can occur in the nacelle due to

weather, lightning strike, short circuit or mechanical failure / malfunction. Turbine failures can result from excessive wind speed, excessive blade vibration, control equipment failure or malfunction.

There is no justifiable reason to limit a reportable "incident" to an incident causing death, personal injury or significant, off-site property damage. The scope of the proposed rule should include turbine failures or other incidents that involve equipment malfunction or failure whether or not resulting in death, personal injury or significant off-site property damage. Facility failures that can be mitigated or avoided before actual personal injury or property damage should be reportable incidents and subject to mitigation or remediation to protect health and safety.

Further, while operators may submit emergency plans under OAC Rule 4906-4-08(A)(1)(e), these emergency plan simply identify internal emergency response protocol and local enforcement contact for events such as weather events, accidents and fires. These emergency plans address response protocol but do not address the notice and reporting requirements embedded in the proposed rule revisions. The proposed rule revisions do not supplant emergency response plans and are not inconsistent with the plans. The emergency plans do not provide for Staff investigation or required shut down or re-start conditions.

Finally, the thirty (30) minute notice provision is thirty (30) minutes after discovery of the incident and may be expanded if that time is impracticable under the circumstances. A full written report of the incident is due within thirty (30) days, documenting the cause, date and time, narrative description of the incident, damage and personal injury and remediation steps as required by Proposed Rules 4906-4-10(B) and (C). The report requirements are appropriate, not unduly burdensome and are necessary to determine the root cause of the incident.

In short, the proposed rule revisions as drafted are appropriate and in the public interest. Timely notice to local authorities and the Board is not inconsistent with sound safety protocol. Timely reporting and detailed Staff investigation is not burdensome and promotes the public interest to ascertain, investigate and remediate wind farm incidents that can directly impact human health and safety and property interests.

C. Staff Investigation, Facility Operation Suspension And Remediation

Beyond notice and reporting, Proposed Rule 4906-4-10(D) requires a full Staff investigation of every incident that results in a written report. Critically, a wind farm operator shall not re-start facilities involved in a reportable incident until the re-start is approved by the Board. OAC 4906-4-10(D)(2).

AR contends that "unnecessary" shut downs can impact operations, implicating supply obligations and subjecting operations to delay. AR raises concerns that the proposed rule revisions are inconsistent with operating conditions in the certificate. AR recommends that ongoing shut down requirements be eliminated entirely or modified. (AR Comments, pp. 8-10). MAREC similarly contends the proposed rules duplicate safety and operational conditions in the certificate and may have a chilling effect on financing. (MAREC Comments, pp. 3-6, 11-13).

None of these contentions have any real merit.

Both AR and MAREC claim to understand the importance of reporting major operation failures for purposes of public safety but claim the reporting and Staff investigation duplicates the emergency plan protocols required by OAC Rule 4906-4-08(A)(1)(e) and operational conditions in the certificate. However, the emergency plan protocols do not address the notice and reporting requirements in the proposed rules and do not require independent and timely Staff investigation of the cause of the incident, extent of harm and, most importantly, remediation

measures. The primary importance of the proposed rule revisions is to require timely and uniform reporting of significant incidents that jeopardize health and safety, complete and independent Staff investigation and plans for remediation and mitigation of future incidents.

Further, the proposed rule revisions do not infringe on operating conditions in any certificate. Operating conditions generally require ongoing compliance with regulatory standards and permit conditions and possibly adherence to industry standards and good operational practice. These proposed rule revisions address significant wind farm incidents which are defined and are outside the scope of normal operation. Any required, temporary shut down is not "unnecessary" but in fact is absolutely necessary to investigate the cause of the incident and fully address any mitigation and remediation.

The Board may consider imposing reasonable time restrictions for the Staff investigation and the re-start order. However, the time restrictions should not impede a full Staff investigation and reasoned agency action.

Regarding any claimed "chilling effect" on supply obligations and financing, prudence would dictate in the event of occurrence of a significant incident as defined in the rules that the cause of the incident be fully investigated, mitigated and remediated. Liability concerns are paramount and no rational entity can legitimately assert that the cause of any reportable incident should not be fully investigated and addressed before re-start of the facility. This is particularly true where the cause of the incident may be attributed to a mechanical or design failure, potentially common to more than one structure.

The Local Resident Intervenors assert that the independent Staff investigation and re-start conditions are of paramount importance and should not be eliminated or unduly restricted.

D. The Business Impact Analysis Is Complete

The Board's Business Impact Analysis required by Executive Order 2011-01 K addresses the pertinent considerations and is complete. Many of the objections of the Commenters described above are purely speculative, overstated and outside the scope of the proposed rule analysis.

E. Additional Recommendations For Consideration

As discussed in the Local Resident Intervenors' Initial Comments, the Board may also wish to consider these further clarifications and recommendations:

1. The written reports required by OAC Rule 4906-4-10(B) should be a matter of public record, filed with the Board and filed with local enforcement and government officials.
2. Notice of the filing of the written report should be published in a newspaper of general circulation in the area with a description of the process to obtain a copy.
3. The written report should be served on all residents within a reasonably defined distance from the incident event.
4. The written report should be documented in a common data base so all incidents occurring at all wind farms in Ohio are available in a single format and at a single location.
5. The Staff investigation report required by OAC 4906-4-10(D) should also be filed with the Board and a matter of public record. There should be opportunity for a public hearing and impact from the affected residents. Again, effective notice of the filing of the Staff report should be published in a newspaper of general circulation.
6. All the requirements of OAC 4906-4-10 should be addressed in certification proceedings and compliance should be a condition of any certificate granted.

III. CONCLUSION

The proposed rule revisions are in the public interest and should be adopted by the Board. The Local Resident Intervenors commend the Board's interest and affirmative action in this

important matter of public interest, health and safety. The Local Resident's Intervenors support the Board's action and respectfully urge consideration of the additional measures recommended.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Reply Comments* was electronically filed in this docket this 24th day of July, 2019.

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Summary: Reply Reply Comments Submitted by Local Resident Intervenors electronically filed by John F Stock on behalf of Local Residents