

**BEFORE
THE OHIO POWER SITING BOARD**

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

**REPLY COMMENTS OF
THE MID-ATLANTIC RENEWABLE ENERGY COALITION**

I. INTRODUCTION

These reply comments are provided pursuant to the June 20, 2019 entry issued by the Ohio Power Siting Board (“Board”) requesting comments from interested persons on proposed revisions to Ohio Administrative Code (“O.A.C.”) Rule 4906-4-09 and newly proposed O.A.C. Rule 4906-4-10—both of which pertain to the regulation of wind farms (collectively, “Proposed Rules”). The Proposed Rules: require wind farm “structures not involved in generation or transmission of electricity” to comply with state building code¹ regulations;² and create additional reporting obligations for wind farm operators³ (hereinafter “Building Code Rule,” and “Reporting Rules,” respectively).

Stakeholder comments on the Board’s proposed rule changes were due July 11, 2019. The following entities timely filed comments in this proceeding: the Mid-Atlantic Renewable Energy Coalition (“MAREC”); the Ohio Farm Bureau Federation (“OFBF”); residents in Erie, Huron, Seneca, and Sandusky counties (“Residents”); the Ohio Environmental Council (“OEC”);

¹ See O.A.C. Chapter 4901:1 (hereinafter, “Building Code”).

² Proposed O.A.C. Rule 4906-4-09(A)(1).

³ Proposed O.A.C. Rule 4906-4-10.

and Avangrid Renewables, LLC (“Avangrid”).⁴ In accordance with the schedule established by the Board, the deadline for interested parties or entities to file reply comments is July 26, 2019. At this time, MAREC submits the following reply comments. MAREC members participating in these comments include developers/owners of wind projects in Ohio that are operational and projects that have received certificates from the Board but are not yet under construction, as well as projects that are currently under construction. All are very familiar with the state’s regulations associated with wind farm operations and building requirements in Ohio.

II. DISCUSSION

Initially, MAREC notes that the majority of commenters expressed concern with the Board’s Proposed Rules. The views expressed by the majority of commenters include:

- the lack of clarity as to the meaning of the term “facilities” throughout the Proposed Rules could lead to conflicting and unclear interpretations and expectations (OFBF Comments at 3);
- the Building Code Rule is better addressed as a certificate condition on a case-by-case basis – in the least the rule should be clarified to reflect what types of structures are not involved in the generation or transmission of electricity (Avangrid Comments at 3-4).
- the Reporting Rules are overly broad and open-ended, may create regulatory confusion, and could result in significant economic consequences (Avangrid Comments at 6-7);
- the Proposed Rules should be revised to ensure clarity of the responsibilities of wind developers, the public, and the Board’s staff (OEC Comments at 2-3); and
- the Reporting Rules are unclear and could lead to over-reporting or under-reporting, depending on how the language is interpreted, as well as overly burdensome restrictions when incidents occur (OEC Comments at 3-4).

⁴ MAREC notes that Julia F. Johnson filed initial comments on July 19, 2019, which is well after the deadline for the filing of comments established in this docket. Therefore, Ms. Johnson’s comments should be disregarded by the Board in its deliberations of the Proposed Rules. In the event the Board decides to consider her comments, MAREC’s replies to the comments of the Residents, set forth herein, likewise apply to the proposals set forth by Ms. Johnson.

These commenters urged the Board to clarify the regulatory intention, revise unnecessary requirements, and consider economic consequences, among others remarks. MAREC concurs with the concerns raised by these commenters.

The only interested party to offer comments in support of the Board's Proposed Rules, with out regard for the need for clarity, were the Residents. The Residents also recommended the Board consider the following clarifications and procedures:

1. The written reports required by O.A.C. 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 O.A.C. Rule 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 O.A.C. Rule 4906-4-10 should be addressed in certification proceedings and compliance should be a condition of any certificate granted.

(Residents Comments at 4-5).

MAREC has already expressed concerns in its initial comments relating to the Board's Proposed Rules. MAREC explained that the Proposed Rules conflict with existing law, as well as the certificates already issued by the Board, and levy an unreasonable burden on wind farm developers/owners. Here, MAREC reiterates these concerns and expresses further concerns relating to the Residents' proposed clarifications and procedures. The Residents' propositions create further conflict with existing law and impose an even greater unreasonable burden on

wind farm developers/owners. For these reasons, MAREC respectfully requests that the Board not adopt the Residents' recommendations.

A. Reply to the Residents' comments 1-5 relating to additional public disclosure requirements required by Proposed Rule 4906-4-10.

Initially, MAREC notes that, in accordance with the public records law applicable to all state agencies, any document provided to the Board is considered a "public record" and subject to review and public disclosure, absent a finding that the information should be protected. Thus, the Residents' recommendations requiring wind farm operators to disclose written reports of incidents as "a matter of public record" is a moot issue and conflicts with the Board's already existing oversight and investigatory responsibilities.

As previously explained in MAREC's initial comments, Ohio law grants the Board explicit jurisdiction over construction and maintenance of wind farms and, through its certificate conditions, the Board is able to ensure their safe and ongoing operation (MAREC Comments at 6-7). No evidence or facts have been presented that supports a conclusion that the processes set forth in the certificate conditions have failed to work as envisioned by the Board. Moreover, there has not been any showing that there is a need for the Board's Proposed Rules or, even more so, the Residents' overly broad recommendations addressed herein. If codified, the Residents' proposed public disclosure requirements would conflict with existing conditions set out in the Board's statutorily issued certificates, would be contrary to law, and would violate the vested rights of the developers/owners that have already received certificates from the Board.

The Residents' recommendation to incorporate written reports as a matter of public record—filed with local enforcement and government officials—is unclear and overly vague. As explained in MAREC's initial comments, the Board's Proposed Rules fail to sufficiently identify

what constitutes an “incident” that would mandate reporting under their Proposed Rules (MAREC Comments at 9-10). Because the Residents’ recommendations rely on the same direction as the underlying Proposed Rules, they similarly fail to sufficiently identify what constitutes an “incident” that would mandate reporting under their recommendations. As currently drafted, MAREC believes the Proposed Rules and, all the more so, the Residents’ recommendations would grant the Board’s staff unfettered discretion to apply these public disclosure requirements for written reports to any minor turbine-related issue. MAREC assumes the Board’s overarching intent is to enhance notice/reporting obligations with respect to major incidents that cause actual safety concerns for the public or damage to others’ property. Thus, it stands to reason that the Residents’ recommendations to further enhance written reporting requirements for all “incidents” are beyond the Board’s purported scope (and intent).

Specifically, with regard to the Residents’ proposals that notice of the report be published in the newspaper and the report served on all residents within a defined area, MAREC submits that this proposal is unwarranted, overly broad, and burdensome. The developers/owners work closely with and readily communicate with the local emergency responders, officials, and residents in and abutting the project areas. In the event there is an extraordinary incident, appropriate notice will be given to those individuals based on the emergency procedure under the certificate conditions that are reviewed and approved by the Board.

B. Reply to Residents’ comment 5 recommending that there be an opportunity for public hearings in Proposed Rule 4906-4-10.

The Residents’ suggestion that there should be an opportunity for public hearing conflicts with the Board’s existing oversight and investigatory responsibilities and is also unclear and

overly vague for the same reasons as set forth above in response to Residents' recommendations in comments 1-4. Specifically, as proposed, the Residents' recommendations for public hearing would conflict with existing conditions set out in the Board's statutorily issued certificates. The Board is a creature of statute and the statute clearly sets forth the circumstances under which the Board can set a time for public hearing regarding a certificate issued to a developer/owner. Ohio Revised Code ("R.C.") Section 4906.97 provides that, if the Board finds that the developer/owner has constructed a facility with first obtaining a certificate, failed to construct or operate the facility pursuant to a certificate issued by the Board, or failed to comply with an order or suspension issued by the Board (R.C. Section 4906.98), the Board shall fix a time for hearing. The statute does not give the Board authority to schedule a public hearing absent a finding of noncompliance with R.C. Section 4906.98.

III. CONCLUSION

MAREC respectfully urges the Board to not adopt the Residents' recommendations. As currently drafted, the Proposed Rules and, all the more so, the Residents' recommendations conflict with existing law and levy an unreasonable burden on wind farm developers/owners. If implemented, these rules would introduce significant uncertainty in the marketplace, causing a chilling effect on investments and the development of wind energy. Proposing unnecessary and duplicative rules on top of the existing certificate approval process, and in addition to ongoing

condition compliance obligations is unreasonable, unnecessary, and unlawful. Therefore, MAREC respectfully requests that the Board revise the rules to incorporate the recommendations set forth by MAREC herein and in MAREC's initial comments.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 26th day of July, 2019.

/s/ Christine M.T. Pirik

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Summary: Reply Comments of The Mid-Atlantic Renewable Energy Coalition electronically filed by Christine M.T. Pirik on behalf of Mid-Atlantic Renewable Energy Coalition