

**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)	
)	

REPLY COMMENTS OF THE OHIO ENVIRONMENTAL COUNCIL

On March 29, 2019, the Ohio Power Siting Board (“OPSB” or “Board”) initiated Case No. 19-778-GE-BRO to consider whether to adopt a rule requiring turbine operators to report incidents to the Board. It also sought comment on a proposed revision to its rules to make explicit that economically significant wind farms and major utility facilities consisting of wind-powered generation must adhere to local building codes. On June 20, 2019, an entry was filed inviting interested parties to submit comments on the proposed modified rules. On July 11, the Ohio Environmental Council (“OEC”) submitted initial comments (“July 11 Comments”), arguing for additional clarity within the proposed rules. The OEC, on behalf of its over 100 member organizations and thousands of individual members across Ohio, submits these reply comments regarding the Board’s review of Rule 4906-4-09 and newly proposed Rule 4906-4-10, related to wind farm facilities in Ohio. The OEC’s reply comments focus on addressing the comments of the Local Resident Intervenors. In addition, we note the untimely filing of Julia F. Johnson’s initial comments (filed July 19, 2019, eight days after the deadline of July 11), and ask the Board to disregard those comments.

I. Introduction

The OEC submitted its July 11 Comments to underline the clean energy needs of Ohioans to ensure they have access to a cleaner, sustainable future. A dramatic shift to carbon-free

energy sources, like wind energy, is necessary for that sustainable future.¹ Ohio has the opportunity to reduce its reliance on fossil fuels by increasing the percentage of wind-generated electricity in the state—that future is only possible with clear guidelines and rules that ensure the siting process and regulation of wind farms is transparent and cooperative, while guaranteeing the safety of the communities in which wind farms are located.

The Local Resident Intervenors submitted initial comments on July 11, 2019 and additional reply comments on July 24, 2019. Their comments argue in favor of overly restrictive and vague regulations that do not bring certainty to Ohio’s wind industry, which would restrict Ohio’s clean energy future. Their comments overstate the risk of adverse public health and safety impacts; more importantly, they propose an overly burdensome public notice process. In their reply comments, the Local Resident Intervenors downplay the ambiguity of Proposed Rule 4906-4-09(A)(1), double-down on overly burdensome reporting requirements, and support unnecessarily restrictive investigation and suspension procedures.

Contrary to the assertions of the Local Resident Intervenors, OPSB rules should ensure all affected parties have a clear understanding of the responsibilities and requirements imposed by those rules, and should not impose unnecessary requirements upon regulated parties. OEC recommends that the amendments to Rule 4906-4-09 and newly proposed Rule 4906-4-10 be revised to ensure clarity of the responsibilities of wind developers, the public, and OPSB staff implementing the rules. In addition, the rules should guarantee an *efficient* process for investigation of incidents and reporting procedures.

¹ The IPCC Report calls for human-caused emissions of carbon dioxide to be reduced by about 45 percent from 2010 levels by 2030, reaching net zero by 2050 in order to prevent the most damaging aspects of climate change from materializing. *IPCC, 2018: Summary for Policymakers*, Global warming of 1.5°C, available at https://www.ipcc.ch/site/assets/uploads/sites/2/2018/07/SR15_SPM_High_Res.pdf.

II. Discussion

A. Contrary to the argument of the Local Resident Intervenors, the currently Proposed Rules do not provide regulatory certainty or adequately protect public health and safety.

In their July 11th Comments, the Local Resident Intervenors reference purported incidents of wind turbine failure, saying “significant debris from these failures were thrown as far as 1500 feet from the tower base in certain instances.” Initial Comments Submitted By Local Resident Intervenors, July 11, 2019, *internal citations omitted*. The OPSB should provide rules to mitigate risk, but the rules should be rooted in data and research on known risks, rather than a single isolated example.² Using isolated examples to overregulate and burden an industry is not sound energy or public policy.

The Proposed Rule 4906-4-10(A)(2) defines reportable incidents as including “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.” The Local Resident Intervenors insist every instance could put the public at risk and ignore the ambiguity of the phrase “all incidents” included within Proposed Rule 4906-4-10(A)(1). A clear and specific definition will ensure both the regulated wind farm reports all incidents implicating public safety while only informing emergency responders, local law enforcement, and the Power Siting Board when major incidents occur. If wind farms over-report on incidents that do not have public health and safety ramifications, it could negatively impact public safety by taking up the very valuable time of emergency responders and law enforcement.

² When the Timber Road II Wind Farm had a turbine fail in 2012, which it distributed debris up to ~230 meters (~754 feet) from the turbine. However, no individuals were harmed and the distance debris was discovered from the turbine (230 meters) was well within the applicable minimum setback requirements applicable when that farm was constructed. *Submitting Correspondence from EDP Renewables North America LLC electronically filed by Mr. Michael J. Settineri on behalf of EDP Renewables North America LLC.*, PUCO, 10-0369-EL-BGN, (June 1, 2012), <http://dis.puc.state.oh.us/TiffToPdf/A1001001A12F01B45052J17771.pdf>.

The Power Siting Board could consider the following alternative definition:

For purposes of this rule incidents include circumstances reasonably calculated to pose a risk to the public, 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.

Eliminating the language “includes, but is not limited to,” and replacing it with “circumstances reasonably calculated to pose a risk to the public,” will provide clarity to the regulated industry while ensuring emergency personnel are responding to events in which their skills are needed. The Ohio Power Siting Board should not use isolated failures of wind turbines, as proposed by the Local Resident Intervenors, to impose overly burdensome regulation that isn’t related to ensuring the safety of the public.

B. The Local Resident Intervenors disregard the ambiguity in Proposed Rule 4906-4-09.

The Local Resident Intervenors argue 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 Local Resident Intervenors fail to account for all components included in a “major utility facility” or “economically significant wind farm.” Buildings and structures not involved, yet *associated*, in generation or transmission of electricity are still considered part of the regulated facility. The OEC’s original comments noted the potential conflict that could arise—the revision directly conflicts with O.A.C. 4901:1-1-01 of the building code rules. That section specifically exempts major utility facilities regulated by the Power Siting Board and vests the Board with authority to impose conditions related to code compliance in the certificates. That language includes the structures *associated* (though not necessarily involved) with generation, transmission, and distribution. The OPSB’s thorough review process already permits OPSB to require review and inspection of all structures

associated with generation, transmission and distribution for compliance with the building code. The proposed revision could complicate the OPSB process by failing to clearly identify who has the ability to regulate these facilities, and the rules should be revised to clarify that the authority is vested in the OPSB.

C. The Local Resident Intervenors support overly restrictive investigation and suspension procedures.

The use of “facilities” should be revised to ensure public safety is protected while not unnecessarily restricting clean energy generation. The Local Resident Intervenors argue: “the independent Staff investigation and re-start conditions are of paramount importance and should not be eliminated or unduly restricted.” The OEC agrees that if a significant incident occurs that affects public safety, it deserves investigation and possibly suspension of a portion of a facility, and the operator of the wind farm must act cautiously to protect the public.

However, the Local Resident Intervenors do not address the OEC’s primary concern regarding the use of the term “facilities” in Proposed Rule 4906-4-10(A)(1) referenced in our July 11th Comments: The OPSB should rewrite the proposed rule to ensure wind farm operators need only suspend the appropriate portion of the wind farm, rather than requiring the entire facility be shut down. The definition of a facility under OAC 4906-1-01(W) is a “major utility facility and all associated facilities,” and “associated facilities” for wind farms are defined as “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). If there is

an “incident” with one turbine, there may be no need or justification for shutting down the entire wind farm facility, and the language should be revised to reflect that reality.³

The OEC also has concerns about the Local Resident Intervenors’ additional recommendations regarding public hearings following every incident at a wind farm. Requiring a public hearing for a minor incident at a wind turbine that has no public safety impact is a recipe for administrative disaster and unnecessary. A far more limited form of such requirements might be acceptable, e.g. requiring notice to local residents if an injury occurs due to an incident at a wind farm is reasonable. However, requiring overly burdensome reporting and notice requirements upon wind farm operators will unnecessarily restrict the wind industry—an industry necessary to ensure Ohio has a sustainable clean energy future and can mitigate the greenhouse gas emissions causing climate change.

III. Conclusion

The OEC appreciates the opportunity to participate in public comment regarding the Proposed Rules and offers these reply comments in addition to its initial comments. The OPSB rules related to wind farms should be written clearly to ensure public safety as a priority, encourage Ohio’s transition away from dirty energy sources, and create a welcoming environment for clean energy innovation, bringing private investment, jobs, and economic benefits to Ohioans. The additional restrictions envisioned in the currently Proposed Rules are unnecessary, as are the additional rules proposed by the Local Resident Intervenors.

Renewable energy development, including wind, is critical for Ohio in order to reduce carbon emissions and harmful air pollution from the power sector. Adding unclear rules applicable to wind facilities will only further complicate and hinder the opportunity for clean

³ Please see the OEC’s Initial Comments from July 11th for a complete analysis of the ambiguity of the term “facilities” as used in the Proposed Rules.

energy to thrive in Ohio. OEC recommends clarification of the rules, as recommended above and in our July 11 Comments, to ensure public safety and continued clean energy development in the state.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served via the Public Utility Commission of Ohio's e-filing system on all parties referenced in the service list of the docket.

/s/ Chris Tavenor
Chris Tavenor

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Summary: Reply Comments electronically filed by Chris Tavenor on behalf of The Ohio Environmental Council