

**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.)

**APPLICATION FOR REHEARING OF
THE MID-ATLANTIC RENEWABLE ENERGY COALITION
REGARDING OHIO POWER SITING BOARD'S
NOVEMBER 21, 2019 FINDING AND ORDER**

I. INTRODUCTION

Pursuant to Ohio Revised Code ("R.C.") Sections 4906.12 and 4903.10, and Ohio Administrative Code ("O.A.C.") Rule 4906-2-32, the Mid-Atlantic Renewable Energy Coalition ("MAREC") requests rehearing of the November 21, 2019 Finding and Order ("Order") issued by the Ohio Power Siting Board ("Board") in the above-captioned matter in which the Board adopted amendments to O.A.C. Rule 4906-4-09 and new O.A.C. Rule 4906-4-10.

For the reasons detailed below and in the accompanying Memorandum in Support attached hereto and incorporated herein, MAREC respectfully requests rehearing on the following provisions in new O.A.C. Rule 4906-4-10 because such rule, as adopted, is unjust and unreasonable:

- A. O.A.C. Rules 4906-4-10(A)(2) and (A)(2)(c) – The Board erred by including language in the rule that may require wind farm operators to report incidents that do not involve a turbine or turbines.
- B. O.A.C. Rules 4906-4-10(D)(1) and (2) – The Board erred by not requiring a reasonable time frame for investigation and restart of turbine(s).

The facts and arguments that support these grounds for rehearing, and the suggested remedies, are set forth in the attached Memorandum in Support.

Respectfully Submitted,

/s/ Christine M.T. Pirik

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December 23, 2019

**MEMORANDUM IN SUPPORT
OF THE APPLICATION FOR REHEARING OF
THE MID-ATLANTIC RENEWABLE ENERGY COALITION
REGARDING OHIO POWER SITING BOARD’S
NOVEMBER 21, 2019 FINDING AND ORDER**

I. BACKGROUND

On June 20, 2019, the Board issued an entry requesting comments from interested persons on proposed revisions to 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. On July 11 and 26, 2019, MAREC filed comments and reply comments, respectively, in response to the Board’s June 20, 2019 request.

On November 21, 2019, the Board issued its Order amending O.A.C. Rule 4906-4-09 and adopting new O.A.C. Rule 4906-4-10. The Board adopted some of MAREC’s proposals in the comments and reply comments; however, there are a couple issues remaining that MAREC submits the Board erred by not adopting MAREC’s proposed revisions. MAREC incorporates herein its comments and reply comments in this Application for Rehearing.

II. ARGUMENT

A. O.A.C. Rules 4906-4-10(A)(2) and (A)(2)(c) – The Board erred by including language in the rule that may require wind farm operators to report incidents that do not involve a turbine or turbines.

One of the Board’s stated objectives when it initiated this rulemaking proceeding was, “[i]n light of recent weather-related incidents involving *wind turbines*...to investigate whether to adopt a rule requiring *turbine operators* to report incidents to the Board” (emphasis added).¹

¹ June 20, 2019 Entry at ¶ 3.

Moreover, as stated in new O.A.C. Rule 4906-4-10(A)(1), as adopted by the Board on November 21, 2019, the premise of the rule is to require wind farm operators to notify the Board, as well as law enforcement and first responders “*on all incidents involving wind turbines*” (emphasis added).² While MAREC appreciates that the Board revised the rule as in order to clarify what types of incidents are subject to the rule, there are still a couple of revisions that will need to be incorporated to ensure the rule clearly reflects the Board’s intent.

For example, without any explanation, in new O.A.C. Rule 4906-4-10(A)(2)(c), the Board retained the language that requires wind farm operators to report incidents involving “collector or feeder line failure.” However, while collector and feeder lines are facilities that are associated with a wind farm, they are not wind turbines. Thus, such a requirement is contrary to the Board’s stated intention for this rule, which is set forth both in the entry initiating this case and in the introductory clause of this rule. Given that the Board’s expressed concern relates to the wind turbines and not other facilities associated with the wind farm, MAREC submits that it is unreasonable to include the phrase “collector or feeder line failure” in O.A.C. Rule 4906-4-10(A)(2)(c); therefore, it should be deleted. In the alternative, the Board should revise the rule as set forth in Attachment A to make clear that a wind farm operator is only required to report a situation involving a collector or feeder line failure if it results in a turbine incident.

In addition, in light of the potential for a misunderstanding as to the applicability of what is meant by the term “incidents,” O.A.C. Rule 4906-4-10(A)(2) should be revised to emphasize that incidents are events “that involve a turbine or turbines.” This revision will ensure that the Board’s intended purpose for this rule will be carried out.

² Order, Att. A at 13.

Without these minor revisions to new O.A.C. Rules 4906-4-10(A)(2) and (A)(2)(c), the rules engender uncertainty and confusion as to which wind farm facilities are included in the reporting requirements. Moreover, given the ambiguity of the language, it would be unreasonable for the Board to implement the rules as set forth in the Order, because they could result in an inconsistent application of the rules in the future.

B. O.A.C. Rules 4906-4-10(D)(1) and (2) – The Board erred by not requiring reasonable time frames for investigation and restart of turbine(s).

It is unjust and unreasonable for the Board to leave the time frames for the Board's investigation of an incident and the restart date for the turbine(s) open ended, with no guidance or acknowledgement of the importance of timing. As detailed in MAREC's comments and reply comments, it is imperative that judicious time frames for investigation and the restart of the effected turbine(s) are established.

As adopted by the Board, O.A.C. Rule 4906-10(D)(1) prohibits a wind farm operator from disturbing any damaged facilities until the Board's staff has made an initial site visit; however, there is neither a specific timeframe within which staff must make the initial site visit nor an acknowledgement that such visit must not be delayed and should be accomplished directly after the event occurs. Given that shutdown of any part of the wind farm facility could have detrimental effects on all persons and entities involved in any fashion with the wind farm, as well as the surrounding community, it is essential that the technical experts of the wind farm and turbine operator review the incident site as soon as possible in order to ascertain the cause of the incident. Therefore, MAREC strongly recommends the Board reconsider its decision and implement a reasonable period of time for the initial site visit by the Board's staff, be it 72 hours

or two business days (whichever is less) proposed by MAREC in its comments³ or some other reasonable time frame. However, should the Board decline to insert an exact time period, MAREC would propose that the Board clearly indicate in O.A.C. Rule 4906-10(D)(1) that the Board's staff will "promptly" investigate an incident (see Attachment A).

The other timing issue that is problematic is found in O.A.C. Rule 4906-10(D)(2) wherein the Board failed to establish a reasonable time for the restart of the turbines involved in the incident once the investigation is complete. The rule, as adopted, requires approval by the Board's Executive Director prior to the restart of the affected turbines. Given the strict protocol in the emergency plans adhered to by the wind farm operators, must be reviewed and approved by the Board as part of the application process, the experts from the operator and manufacturers are in the best position to evaluate and determine when the involved facilities are prepared to go back online. Therefore, MAREC respectfully asks the Board to acknowledge the expertise of the turbine operators by revising O.A.C. Rule 4906-10(D)(2) to require the operator to notify the Board involved no sooner than three business days before the operator intends to restart the turbine(s) involved in the incident as proposed in MAREC's comments.⁴ Should the Board have any questions with regard to the timing of the restart, such inquiry can be discussed and resolved between the time notification is given and when the facility is scheduled to restart. Every incident should be reviewed and evaluated on a case-by-case basis; thus, this notification process is much more efficient and appropriate. In the alternative, MAREC has proposed language in Attachment A that acknowledges the importance of these actions and requires that the decision by the Executive Director to restart the turbine(s) be done as expeditiously as possible.

³ MAREC Comments at 11.

⁴ MAREC Comments at 12.

III. CONCLUSION

Therefore, MAREC respectfully requests that the Board grant rehearing and reconsider its Order with respect to the above-cited provisions.

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 23rd day of December, 2019.

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ATTACHMENT A

4906-4-10 Notice and reports of incidents involving wind farm facilities.

(A) Telephone notices of incidents.

- (1) Wind farm operators should notify the board's executive director by calling: 1-855-945-3321, as well as local law enforcement and first responders on all incidents involving a wind turbine, within thirty minutes after discovery unless notification within that time is impracticable under the circumstances.
- (2) For purposes of this rule an incidents include-is an events that involve a turbine or turbines where:
 - (a) There is injury to any person.
 - (b) There is damage to property other than the property of the windfarm operator.
 - (c) ~~Where There is an event such as~~ tower collapse, turbine failure, thrown blade or hub, collector or feeder line failure that results in a turbine incident, ice throw, or nacelle fire that, causes damage to the wind farm operator's property that is estimated to exceed fifty thousand dollars, excluding the cost of electricity lost, which is the sum of the estimated cost of material, labor, and equipment to repair and/or replace the operator's damaged property.

(B) Written reports regarding incidents.

- (1) Within thirty days after the incident is discovered, a wind farm operator will submit a written report to the executive director describing the cause of the incident, where ascertainable, and any damage to the wind farm facility or to the neighboring properties or persons, on a form provided by the board.
- (2) Each wind farm operator will also docket, in the wind farm certificate case, a final written report on a form provided by the board within sixty days after discovery of the incident, unless the wind farm operator:
 - (a) For good cause shown, demonstrates more time is needed; and
 - (b) Submits interim reports to the executive director at intervals of not more than sixty days until a final report is docketed.

(C) Each final written report will address:

- (1) Cause of the incident;
- (2) Date and time the incident occurred and date and time it was discovered;

- (3) If the incident involved a turbine, the distance between debris and the wind turbine base;
- (4) If the incident involved a turbine, the distance between debris to habitable structures and property lines, and photographs of the debris field;
- (5) A narrative description of the incident and actions taken by the wind farm operator, including a timeline of events;
- (6) What, if any, damage occurred to the property within the wind farm facility;
- (7) What steps were necessary to repair, rebuild, or replace damage to any property within the wind farm facility;
- (8) What, if any, personal injury was caused by, or related to, the incident;
- (9) What, if any, damage to properties within or adjacent to the wind farm project area was caused by, or related to, the incident;
- (10) What, if any, steps were, or will be, taken to prevent future incidents.

(D) Staff investigation and restart

- (1) Staff will promptly investigate every incident that results in a report being submitted pursuant to this rule. Except as necessary for public safety, a wind farm operator should not disturb any damaged property within the facility or the site of a reportable incident until after staff has made an initial site visit.
- (2) A wind farm operator will not restart any damaged property within a facility involved in a reportable incident until such restart is approved by the board's executive director or the executive director's designee, with the decision to approve any restart to be made as expeditiously as possible given the underlying circumstances and nature of the incident.

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Summary: Application for Rehearing of the Mid-Atlantic Renewable Energy Coalition regarding Ohio Power Siting Board's November 21, 2019 Finding and Order electronically filed by Christine M.T. Pirik on behalf of Mid-Atlantic Renewable Energy Coalition