

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE OHIO POWER
SITING BOARD'S CONSIDERATION OF
OHIO ADM.CODE CHAPTER 4906-4.

CASE NO. 19-778-GE-BRO

ENTRY

Entered in the Journal on August 17, 2020

I. SUMMARY

{¶ 1} The Ohio Power Siting Board invites all interested persons to file initial and reply comments regarding the proposed revision of proposed Ohio Adm.Code 4906-4-10(D) by August 24, 2020, and August 31, 2020, respectively.

II. DISCUSSION

{¶ 2} The Ohio Power Siting Board (Board) has jurisdiction to issue certificates for construction of major utility facilities or economically significant wind farms, and to ensure that such facilities are constructed, operated, and maintained in compliance with the certificate obtained. R.C. 4906.04, 4906.20(A), 4906.98(A)-(B). Ultimately, the Board sets forth certificated conditions directed at, among other things, ensuring the safe operation of major utility facilities.

{¶ 3} In light of certain weather-related incidents involving wind turbines and wind farm facilities, the Board initiated this rulemaking proceeding in order to address the manner of reporting and responding to incidents that impact major utility facilities. Additionally, the Board sought comment on a proposed revision to its rules to make explicit that certain wind farm facilities adhere to local building codes.

{¶ 4} Following an initial workshop, and the opportunity to file initial and reply comments in this case, the Board adopted amended rules by Finding and Order and Entry on Rehearing issued on November 21, 2019 and February 20, 2020, respectively.

{¶ 5} On August 7, 2020, the administrative law judge (ALJ) scheduled this matter for a second workshop on August 14, 2020.

{¶ 6} A workshop was held as scheduled on August 14, 2020, to afford interested persons an opportunity to provide the Board with informal comments solely in regard to revisions (as depicted in the underlined language) to proposed Ohio Adm.Code 4906-4-10(D). In response to the comments received at the workshop, additional changes were recommended to the proposed rule prescribing the time for a post-incident Board Staff site visit, and the time for restarting operations after an operator files an investigation report detailing the cause of the incident and that a return to safe operations can occur.

{¶ 7} R.C. 107.53 sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Board must review any proposed rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and, amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, needlessly burdensome, have had negative unintended consequences, or unnecessarily impede business growth

{¶ 8} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Board must conduct a business impact analysis regarding the rules. If there will be an adverse impact on business, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Board is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the business impact analysis (BIA) instrument

{¶ 9} Attached to this Entry is a proposed revision of proposed Ohio Adm.Code 4906-4-10 (proposed changes to Section (D) are underlined), which more fully: (1) addresses the manner in which Staff must respond to incidents; and, (2) describes the criteria for restarting operations following an incident. The proposed rule changes are included in Attachment A and the BIA is included as Attachment B to this Entry which is also posted on the Public Utilities Commission of Ohio's Docketing Information System website at <http://dis.puc.state.oh.us>.

{¶ 10} The Board, acting through its ALJ, now requests comments from interested persons to assist with review of the proposed rule amendments. Comments should be filed, via electronic filing or hard copy, by August 24, 2020. Reply comments should be filed by August 31, 2020.

III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That all interested parties or entities wishing to file comments or reply comments with the Board regarding the proposed modifications to proposed Ohio Adm.Code 4906-4-10(D) do so no later than August 24, 2020, and August 31, 2020, respectively. It is, further,

{¶ 13} ORDERED, That notice of this Entry be served upon all parties of record in this matter.

THE OHIO POWER SITING BOARD

/s/Michael L. Williams

By: Michael L. Williams
Administrative Law Judge

JRJ/hac

*****DRAFT - NOT FOR FILING*****

NEW

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

(A) Telephone notice of incidents.

- (1) Wind farm operators should notify the board's executive director by calling: 1-844-OHCALL1 (1-844-642-2551), 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 incidents include, events where:
 - (a) There is injury to any person.
 - (b) There is damage to property other than the property of the wind farm operator.
 - (c) Where an event such as tower collapse, turbine failure, thrown blade or hub, collector or feeder line failure, ice throw, or nacelle fire, 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 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;

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- (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 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. Staff will make its initial visit to review any damaged property within three business days of the notice provided for in paragraph (A)(1) unless otherwise prohibited from accessing the area of the damaged property by public safety officials.
 - (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 pursuant to the following process:-
 - (3)(a) Such approval is premised upon the filing of a complete and final written report fully addressing the factors set forth in paragraph (C), as well as a notarized statement from either a licensed professional engineer or a qualified representative from the manufacturer of the damaged equipment that it is safe to restart the damaged property.
 - (4)(b) Unless otherwise suspended for good cause shown by the board, executive director, or an administrative law judge, a wind farm operator may restart damaged property five business days after docketing the final written report and notarized statement required in this section.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Power Siting Board (OPSB)

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Ohio Adm.Code Chapter 4906-4 Certificate Applications for Electric Generation Facilities

Rule Number(s): 4906-4-09; 4906-4-10

Date of Submission for CSI Review: Originally filed 6/2/19 – Re-filed 8/20/20 (changes in bold, italicized and underlined)

Public Comment Period End Date: August 31, 2020

Rule Type/Number of Rules:

☒ **New/1 rules**

☒ **Amended/1 rules (FYR? No)**

☐ **No Change/____ rules (FYR? ____)**

☐ **Rescinded/____ rules (FYR? ____)**

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- ☐ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance. The revisions to proposed Rule 4906-4-10(D) clarify the criteria for restarting operations of damaged wind farm equipment, including requiring an operator's investigation and restart report.
- ☒ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies. The revisions are unlikely to further impact business revenues and expenses, as they merely describe time periods for compliance and clarify the content of the report required ahead of restarting the operation of damaged equipment.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

4906-4-09 - Generally, this rule sets forth regulations applicable to economically significant wind farms and major utility facilities consisting of wind-powered electric generating units. The purpose for the amendment to this rule is to clarify that for non-generation facilities, a wind farm applicant must comply with the Ohio Building Code for structures not involved in the generation or transmission of electricity.

4906-4-10 - This is a new rule which would require notice and written reports to the OPSB when wind farm facilities experience an incident such as a tower collapse, turbine failure, thrown blade or hub, collector or feeder line failure, damaging ice throw, nacelle fire, or injury to any person. **The proposed rule has been modified solely in section (D) to define specific procedures for post-incident site inspections and restarting operations.**

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Rule	Statutory Authority- Ohio Revised Code
4906-4-09	4906.20, 4906.03
4906-4-10	4906.20, 4906.03

4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not Applicable.

6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

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CSIPublicComments@governor.ohio.gov

The public purpose for the additional language added to Ohio Adm.Code 4906-4-09 is to clarify the circumstances when the Ohio Building Code would apply to non-generating utility plant.

The public purpose for new rule Ohio Adm.Code 4906-4-10 is to standardize and make transparent to the public a reporting obligation when an incident impacts a wind farm facility. **Further, the rule now specifies that an OPSB site inspection must occur within 3 business days of an incident, and authorizes restarting operations within 5 days of an operator's filing of a post-incident investigation report.**

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The OPSB will measure the success of the amended regulation and the new rule based upon comments from wind farm operators and from property owners located in the proximity of the wind farm projects.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On April 4, 2019, in Case No. 19-778-GE-ORD, the OPSB issued an entry by U.S. mail and email indicating that a workshop would be conducted on April 30, 2019, so that interested persons could offer comments on the proposed amended rule and the new rule. The entry was served upon a wide range of persons interested in wind farm applications before the OPSB including parties of record from pending wind farm applications, Ohio Environmental Council and Ohio Environmental Defense Fund, Seneca County Park District, persons filing comments in the last rule review proceeding (Case No. 16-1109-GE-BRO), the county commissioners where wind farm certification proceedings are pending (i.e., Champaign, Crawford, Cuyahoga, Erie, Hardin, Huron, Logan, Paulding, Richland, Seneca, and Van Wert counties), Greenwich Neighbors United, and wind farm

owners/operators with applications pending before the OPSB. The workshop was held as scheduled.

Further, a second workshop was held on August 14, 2020, in order to add specificity to the rule regarding OPSB site visits and the procedure for restarting operations.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Attendees at the workshop included landowners, representatives from the Ohio Environmental Council and Environmental Law & Policy Center, and several law firms with wind farm applicant clients.

The comments offered at the workshop were generally supportive of the concept of a reporting requirement covering incidents at wind farm facilities.

The comments at the supplemental workshop on August 14, 2020 were also generally supportive of the new proposed language, as adding details regarding the timing of post-incident site visits and requirements for restarting operations were improvements to the proposed rule.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

No scientific data was used to develop the draft rules.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Since the purpose of the draft regulations is transparency and consistent reporting of wind farm incidents, no regulatory alternative would suffice.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

As noted in response to question 10 above, since the purpose of the draft regulation is to ensure transparency and consistent reporting obligations of wind farm incidents, performance-based regulations would not achieve the necessary compliance.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The OPSB has widely publicized notice of the consideration of these rules to the wind farm industry, as well as other organizations and interest groups. The OPSB has sole jurisdiction over wind farm facilities and has found no duplicate, nor has a duplicate regulation been identified by any stakeholder.

15. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The OPSB will take steps to ensure that the wind farm industry and interested stakeholders are fully aware of these regulations. The opportunity for continued feedback and input from interested stakeholders always exists through interaction with OPSB staff and better ensures that implementation of these rules occurs consistently and predictably.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

The impacted business community will be the wind farm operators who will comply with these rules.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

The rules were drafted in an effort to minimize any adverse impact on businesses. Any adverse impact results from 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.

The OPSB offers the proposed changes in Rule 4906-4-10(D) in furtherance of the interest of wind farm operators in investigating incidents and restarting operations within a safe, expedient time period.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

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

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soon as possible. Adoption of this rule just standardizes the investigation process and requires that the results of the investigation be shared with the OPSB.

The proposed changes in section (D) required that operators be allowed to restart operations within 5 days of the filing of an investigation report unless the OPSB acts to suspend restarting for “good cause shown.”

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Transparency and standardized reporting of wind farm incidents justify the minimal impact on the regulated business community of adopting these rules.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Small businesses do not develop wind farm projects. However, there is a rule applicable to this chapter which affords an impacted entity with the opportunity to seek a waiver of these rules.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The amended and new rules do not impose specific fines or penalties for failure to comply. Fines or penalties for violation of these rules may only be ordered by the OPSB after notice and hearing. The OPSB will fully comply with R.C. 119.14 and it is not the OPSB's intent to seek and recover administrative fines or civil penalties on any small business for a first-time paperwork violation.

20. What resources are available to assist small businesses with compliance of the regulation?

OPSB staff works with affected entities, including small businesses if applicable, to assist such companies with compliance.

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in

Case No(s). 19-0778-GE-BRO

Summary: Administrative Law Judge Entry ordering that all interested parties or entities wishing to file comments or reply comments with the Board regarding the proposed modifications to proposed Ohio Adm.Code 4906-4-10(D) do so no later than August 24, 2020, and August 31, 2020, respectively electronically filed by Heather A Chilcote on behalf of Michael L. Williams, Administrative Law Judge, Ohio Power Siting Board