

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

FINDING AND ORDER

Entered in the Journal on September 17, 2020

I. SUMMARY

{¶ 1} The Ohio Power Siting Board finds that proposed Ohio Adm.Code 4906-4-10(D) should be amended in order to improve the incident management of wind farms.

II. DISCUSSION

A. *Procedural History*

{¶ 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 response to weather-related incidents that impacted the safe operation of wind turbines, the Board initiated this rulemaking proceeding to investigate whether additional or modified rules were necessary as to the construction and incident management of wind farm operations.

{¶ 4} On April 30, 2019, the Board held an informal stakeholder workshop to discuss the propriety of rule changes relating to the construction and incident management of wind farms.

{¶ 5} On June 20, 2019, the Board published an Entry seeking public comment as to: (1) proposed rule (Ohio Adm.Code 4906-4-10) (Incident Reporting Rule), which would adopt notice and reporting requirements when an incident causes a shutdown of a wind

turbine; and, (2) proposed edits to Ohio Adm.Code 4906-4-09 (Building Code Rule), which would ensure that the construction and operation of non-generating plant wind farm facilities are consistent with local building codes. In addition to the proposed rule changes, the Board also published the business impact analysis (BIA) instrument setting forth the anticipated adverse impact to businesses that would result from the rule modifications, as required by R.C. 121.82. The Board also sought formal comments as to the rule proposals.

{¶ 6} Following the review of comments and reply comments, the Board adopted: (1) amendments to proposed Ohio Adm.Code 4906-4-09; and, (2) new Ohio Adm.Code 4906-4-10, by Finding and Order and Entry on Rehearing issued on November 21, 2019 and February 20, 2020, respectively.

{¶ 7} On August 7, 2020, the Board proposed modifications to Ohio Adm.Code 4906-4-10(D), and scheduled another informal stakeholder workshop on August 14, 2020. The proposed modifications addressed the time allotted for a post-incident Staff site visit, and the time and manner 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.

{¶ 8} The workshop was held as scheduled on August 14, 2020. On August 17, 2020, in response to comments received at the workshop, the administrative law judge (ALJ) published an Entry proposing further modifications to proposed Ohio Adm.Code 4906-4-10(D), and opened the case for formal comments. In addition to the proposed rule changes, the Board also published an updated business impact analysis (BIA) instrument setting forth the anticipated adverse impact to businesses that would result from the rule modifications, as required by R.C. 121.82.

{¶ 9} Comments were filed by (1) Mid-Atlantic Renewable Energy Coalition (MAREC)¹, and (2) jointly by Hardin Wind LLC and RWE Renewables Americas, LLC (Hardin Wind). No reply comments were filed in the case.

B. Summary of the Comments

{¶ 10} MAREC's comments addressed the plan for communication between an operator and Staff in connection with restarting operations including: (1) the nature of the representation to Staff that is required prior to restarting operations; and, (2) who should be responsible for providing the representation. MAREC proposes that the restarting representation more reasonably focuses on a determination that a satisfactory repair or replacement of damaged property has been completed, rather than a declaration that it is safe to restart the damaged property. Further, MAREC proposes expanding the list of persons qualified to make the restart declaration to also include "another person that Board Staff determines has appropriate qualifications to provide the required statement under the circumstances." MAREC maintains that the flexibility achieved by its proposal maintains regulatory controls over certified operators, and also balances reasonable repair expectations with Staff's need for timely, reliable evidence that damaged property has been repaired to the point where it is again safe to operate.

{¶ 11} Hardin Wind's comments align with MAREC's in regard to the need to empower operators to provide statements that repairs have been completed such that the equipment is ready to restart. Hardin Wind argues against requiring restarting statements from either professional engineers or original equipment manufacturers, asserting that these options are inconsistent with the professional limitations upon engineers, and the ongoing operational business expectations of equipment manufacturers. The proposal expands the persons qualified to make the restart declaration and clarifies that the statement is aimed at the quality of the repairs, which aligns the operator's expertise and Staff's continuing

¹ The Board grants MAREC's motion for leave to file comments out of time, as the deadline was not statutory and there is no prejudice to the parties or the Board.

regulatory jurisdiction. Hardin Wind further advocates for a presumption of restarting authority within three, rather than five, business days of Staff's receipt of the repair statement provided in the rule. Hardin Wind maintains that Staff's review can reasonably occur in the reduced time period, and that the lost revenue associated with the delayed restart of a facility could be significant. Beyond these proposals, Hardin Wind offers additional comments that are outside the realm of the Board's current rule consideration, including: (1) the Board lacks authority to apply the proposed rule against existing operators; and, (2) the definition of a wind farm "incident" is both unclear and overly broad to the extent that it also includes non-turbine events.

C. Board Conclusion

{¶ 12} Upon review of the comments, the Board finds that Ohio Adm.Code 4906-4-10(D) should be further amended. Subject to the amendments outlined herein, the Board finds that the rule proposal should be adopted.

{¶ 13} 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.

{¶ 14} 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 BIA.

{¶ 15} The Board finds that actions taken in further consideration of the Incident Reporting Rule are compliant with the legal mandates applicable to rule implementation. As amended herein, the proposed rule balances regulatory objectives, such as the safety of the public, and compliance costs of adhering to the rules.

{¶ 16} The proposed Incident Reporting Rule is further amended as attached to clarify: (1) the nature of the representation required to restart damaged equipment; and, (2) the qualifications of the entity responsible for providing the restart representation. The Board finds it reasonable to expand the rule to allow for the presumption of restarting operations upon filing a statement as to the quality of the repair to damaged equipment, and to expand the list of persons qualified to provide that assurance. The Board finds that these additional changes to the proposed rule continue to preserve the primary function of protecting public safety while also acknowledging the needs of operators to obtain timely Staff review and consideration of relevant information from operators that are the subject of incident reviews.

{¶ 17} The Board considered and rejects additional public comment suggestions as filed by Hardin Wind. Initially, the Board declines to reduce the time for restarting operations from five to three days after the filing of the required operator statements, finding that: (1) the additional review time provided to the Board is reasonable; and, (2) the financial impact to operators that Hardin Wind references is overstated, as only damaged property – not entire operations – is subject to suspension during this period of the Board’s safety review. In declining to adopt the remainder of Hardin Wind’s suggestions, the Board notes that it made clear the scope of its limited further consideration of the Incident Reporting Rule when it reopened this case on August 7, 2020. Moreover, the further issues raised by Hardin Wind were previously considered and rejected by the Board by Finding and Order and Entry on Rehearing issued on November 21, 2019 and February 20, 2020, respectively.

{¶ 18} In conclusion, the Board finds that the Incident Reporting Rule should be further amended as outlined herein and adopted. The proposed rule changes enhance the ability of operators to predictably and efficiently restart operations after incidents without sacrificing public safety. By requiring a timely incident response and investigatory cooperation with Staff, the Board is satisfied with the public safety enhancements contained in these rules. We find that Ohio Adm.Code 4906-4-10, as amended, should be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with R.C. 111.15.

III. ORDER

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That newly proposed Ohio Adm.Code 4906-4-10, as amended, be adopted as set forth in Attachment A. It is, further,

{¶ 21} ORDERED, That Ohio Adm.Code 4906-4-09 and 4906-4-10 be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with R.C. 111.15. It is, further,

{¶ 22} ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Board, the five-year rule review date for Ohio Adm.Code 4906-4-09 and 4906-4-10 shall be in compliance with R.C. 119.032. It is, further,

{¶ 23} ORDERED, That a copy of this Finding and Order be served upon all commenters and interested persons of record in this matter

BOARD MEMBERS:

Approving:

Sam Randazzo, Chairman
Public Utilities Commission of Ohio

Rachel Johanson, Designee for Lydia Mihalik, Director
Ohio Development Services Agency

Mary Mertz, Director
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Lance Himes, Interim Director
Ohio Department of Health

Drew Bergman, Designee for Laurie Stevenson, Director
Ohio Environmental Protection Agency

Sarah Huffman, Designee for Dorothy Pelanda, Director
Ohio Department of Agriculture

Greg Murphy, Public Member

MLW/hac

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;
- (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:

(a) Such approval is premised upon the filing of:

(i) a complete and final written report fully addressing the factors set forth in paragraph (C),

(ii) a representation by the wind farm operator that it is ready to restart the damaged property, and,

(iii) as well as a notarized statement that a satisfactory repair or replacement of the damaged property has been completed from:

(1) a licensed professional engineer;-

(2) a qualified representative from the manufacturer of the damaged equipment; or

(3) another person employed by or hired by the operator having ~~having that Staff determines has appropriate qualifications under the circumstances to provide the required statement that it is safe to restart the damaged property.~~

(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 statement information required in this section.

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in

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

Summary: Finding & Order adopting OAC 4906-4-10, as amended, and ordering the rule filing with JCARR. electronically filed by Ms. Mary E Fischer on behalf of Ohio Power Siting Board