

# THE OHIO POWER SITING BOARD

IN THE MATTER OF THE OHIO POWER  
SITING BOARD'S REVIEW OF OHIO  
ADM.CODE CHAPTERS 4906-1, 4906-2,  
4906-3, 4906-4, 4906-5, 4906-6, AND  
4906-7.

CASE NO. 21-902-GE-BRO

## ENTRY

Entered in the Journal on June 16, 2022

### I. SUMMARY

{¶ 1} The Ohio Power Siting Board invites all interested persons to file initial and reply comments regarding the proposed revision of Ohio Adm. Code Chapters 4906 by July 22, and August 12, 2022, respectively.

### II. DISCUSSION

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The Ohio Power Siting Board (Board) opened this docket in order to review the rules in Ohio Adm.Code Chapters 4906-1 through 4906-7.

{¶ 3} R.C. 106.03(A) requires that the Board determine whether the rules:

- Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
- Need amendment or rescission to give more flexibility at the local level;
- Need amendment or rescission to eliminate unnecessary paperwork;

- Incorporate a text or other material by reference and, if so, whether the citation accompanying the incorporation by reference would reasonably enable the Joint Committee on Agency Rule Review or a reasonable person to whom the rules apply to find and inspect the incorporated text or material readily and without charge and, if the rule has been exempted in whole or in part from R.C. 121.71 to 121.74 because the incorporated text or material has one or more characteristics described in R.C. 121.75(B), whether the incorporated text or material actually has any of those characteristics;
- Duplicate, overlap with, or conflict with other rules;
- Have an adverse impact on businesses, as determined under R.C. 107.52;
- Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Board must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, 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 BIAs.

{¶ 5} On October 4 and October 8, 2021, the Board held three workshops in this proceeding to enable interested stakeholders to propose revisions to Ohio Adm.Code Chapters 4906-01 through 4906-7.

{¶ 6} The Board and Staff evaluated the rules contained in Ohio Adm.Code Chapters 4906-01 through 4906-7. As a result of that review, Staff recommends changes as follows:

- Ohio Adm. Code 4906-4 (Certificate Applications for Electric Generation Facilities) should be combined with Ohio Adm. Code 4906-5 (Certificate Applications for Electric Transmission Facilities and Gas Pipelines);
- Additional project description and schedule information should be included in proposed project applications;
- Applicants should provide additional information as to the public interest, convenience, and necessity of a proposed electric transmission line or gas pipeline;
- In regard to project siting, applicants should file information to support its consideration of public involvement as to the site/route selection process;
- Additional information should be filed in the public docket in regard to public interaction and complaint resolution surrounding significant preconstruction and pre-operation project developments;
- Consistent with R.C. 4906.221 to 4906.222, additional project information should be filed regarding a wind or solar facility's decommissioning plans;
- Applicants should provide additional information regarding the planned management of noxious weeds,

irrigation system mitigation, field drainage system mitigation, and storm water runoff management;

- Solar facility applicants should file information confirming compliance with the Board's recommendations as to high wind velocity, setbacks, and perimeter fencing requirements; and,
- Fee procedures and rate caps should be modified in consideration of equating Staff's costs of review and compliance monitoring.

{¶ 7} Attached to this Entry are the proposed changes to Ohio Adm.Code Chapters 4906-01 through 4906-7 (Attachment A) and the BIAs (Attachment B), which are also posted on the Public Utilities Commission of Ohio's Docketing Information System website at <http://dis.puc.state.oh.us/>. To minimize the expense of this proceeding, the Board will serve only a paper copy of this Entry. All interested persons are directed to input case number 21-902-GE-BRO into the Case Lookup box to view this Entry, as well as the proposed changes, or to contact the Commission's Docketing Division to request a paper copy.

{¶ 8} The Board requests comments on the proposed modifications from interested persons to assist in the review as required by R.C. 111.15 and 106.03. Comments should be filed, via electronic filing or in hard copy by July 22, 2022. Reply comments should be filed by August 12, 2022.

### III. ORDER

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That, all interested persons or entities wishing to file comments or reply comments with the Board do so no later than July 22, 2022, and August 12, 2022, respectively, as described in Paragraph 8. It is, further,

{¶ 11} ORDERED, That a copy of this Entry, with the rules and the BIAs, be submitted to CSI, in accordance with R.C. 121.82. It is, further,

{¶ 12} ORDERED, That a copy of this Entry be sent to the parties of record in this case, as well as those in Case Nos. 16-1109-GE-BRO and 19-778-GE-BRO.

BOARD MEMBERS:

*Approving:*

Jenifer French, Chair  
Public Utilities Commission of Ohio

Jack Christopher, Designee for Lydia Mihalik, Director  
Ohio Department of Development

Brittney Colvin, Designee for Mary Mertz, Director  
Ohio Department of Natural Resources

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

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

Gregory Slone  
Public Member

MLW/hac

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**AMENDED**

**4906-1-01 Definitions.**

As used in Chapters 4906-1 to 4906-7 of the Administrative Code:

- (A) "Accelerated certificate application" means a letter of notification or construction notice filed with the board under the requirements of Chapter 4906-6 of the Administrative Code.
- (B) "Accepted, complete application" means a standard certificate application which the ~~chairman~~  
chairperson or individual designated by the ~~chairman~~  
chairperson declares in writing to be accepted and in compliance with the content requirements of section 4906.06 of the Revised Code, pursuant to section 4906.07 of the Revised Code and rule 4906-3-06 of the Administrative Code.
- (C) "Administrative law judge" means an attorney examiner of the public utilities commission.
- (D) "Agricultural district" means any agricultural district established pursuant to Chapter 929. of the Revised Code.
- (E) "Applicant" means any person filing an accelerated or standard application under Chapter 4906. of the Revised Code.
- (F) "Associated facility" or "associated facilities" is defined as follows:
  - (1) For a gas pipeline: rights-of way, land, structures, mains, valves, meters, compressors, regulators, tanks, overpressure protection equipment, and other transportation items and equipment used for the transportation of gas from ~~and or~~ to a gas pipeline.
  - (2) For an electric power transmission line:
    - (a) Where poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys and rights-of-way ~~shall be classified~~are considered as associated facilities of the transmission line, while the conductors, crossarms, braces, grounds, tiewires, insulators, etc., ~~shall be classified~~are considered as associated facilities of transmission lines or distribution lines according to the purposes for which they are used.
    - (b) ~~Transmission voltage switching substations and~~Both substations that change ~~electricity-~~  
line voltage from one transmission voltage to another transmission voltage and

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substations that change line voltage between transmission voltage and distribution voltage shall be classified as transmission substations and are considered associated facilities of transmission lines. Pole-mounted transmission switching substations are excluded. Those stations that change electricity from transmission voltage to distribution voltage shall be classified as distribution substations, and are not considered associated facilities of transmission lines.

(c) Rights-of-way, land, permanent access roads, structures, breakers, switches, transformers, and other transmission items and equipment used for the transmission of electricity at voltages of one hundred ~~and twenty-five~~ kilovolts or greater ~~shall be classified as~~ are considered as associated facilities of transmission lines.

(3) For an electric power generation plant or wind farm: 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.

(G) "Board" means the Ohio power siting board, as established by division (A) of section 4906.02 of the Revised Code.

(H) "Business day" means any day that is not a Saturday, Sunday, or legal holiday.

(I) "Capacity" means the maximum electric output a generator can produce, and in the case of an electric storage resource store for later output back to the grid, under specific conditions and that is reflected as installed capacity in any system impact study conducted by PJM.

~~(J)~~ "Certificate" means a certificate of environmental compatibility and public need, issued by the board.

~~(JK)~~ "Certificate application" means an application filed with the board under the requirements of Chapters 4906-4 to 4906-6 of the Administrative Code.

~~(KL)~~ "~~Chairman~~Chairperson" means the ~~chairman-chairperson~~ of the board as established by division (A) of section 4906.02 of the Revised Code.

~~(LM)~~ "Commence to construct" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include surveying changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions. This definition does not constitute a restriction on normal maintenance

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activities on any section of the proposed site or route that is located within an existing utility right-of-way.

(~~MN~~) "Commercial operation" means the following:

- (1) For electric generation plants and wind farms, the output of any generation unit is capable of being delivered to the grid.
- (2) For electric transmission lines and associated facilities, the line is interconnected to the grid.
- (3) For gas pipelines, the gas is being transported through the pipeline in an attempt or offer to exchange the gas for money, barter, or anything of value.

(~~NO~~) "Commission" means the public utilities commission of Ohio, as established by division (A) of section 4901.02 of the Revised Code.

(~~OP~~) "Construction notice" means a document filed with the board under the requirements of paragraph (C) of rule 4906-6-03 of the Administrative Code.

(~~PQ~~) "Docketing division" means the commission's division responsible for the filing and maintenance of case documents.

(~~QR~~) "Docketing information system" means the commission's system for electronically storing documents filed in a case, which is maintained by the commission's docketing division. The internet address of the docketing information system is <http://dis.puc.state.oh.us>.

(~~RS~~) "Economically significant wind farm" means a wind-powered electric generation facility, including wind turbines and associated facilities, with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of five megawatts or more but less than fifty megawatts.

(~~ST~~) "Electric distribution line" means an electric power line that has a design ~~capacity value~~ of less than one hundred ~~twenty-five~~ kilovolts.

(~~TU~~) "Electric power transmission line" (transmission line) means an electric power line that has a design ~~capacity value~~ of one hundred ~~twenty-five~~ kilovolts or more.

(~~UV~~) "Electronic filing" (e-filing) means the submission of electronic files to the public utilities commission's docketing information system.

(~~VW~~) "Electronic mail" (email) means the exchange of digital messages across the internet or other



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computer network.

(~~WX~~) "Facility" means the proposed major utility facility and all associated facilities.

(~~XY~~) "Gas" means natural gas, flammable gas, or gas that is toxic or corrosive.

(~~YZ~~) "Gas pipeline" means a pipeline that is greater than five hundred feet in length, is more than nine inches in outside diameter, and is designed for transporting gas at a maximum allowable operating pressure in excess of one hundred twenty-five pounds per square inch and its associated facilities.

(~~AA~~) "Generation" means the process of producing electrical energy by transforming other forms of energy.

(~~BB~~) "Jurisdictional wind or solar facility" has the same meaning as "utility facility" in section 303.57 of the Revised Code.

(~~ZCC~~) "Letter of notification" means a document filed with the board under the requirements of paragraph (B) of rule 4906-6-03 of the Administrative Code.

(~~AADD~~) "Major utility facility" means a facility that meets the definition of major utility facility set forth in section 4906.01 of the Revised Code.

(~~BEE~~) "Manufacturing facility that creates byproducts that may be used in the generation of electricity" means a facility that produces exhaust heat or flue gases from engines or boilers used primarily for manufacturing processes and excludes facilities whose primary purpose is the generation of electricity.

(~~CEFF~~) "Maximum allowable operating pressure" means the maximum pressure at which a pipeline or segment of a pipeline may be operated under 49 C.F.R. ~~192 as was effective on February 18, 2014.~~

(~~DDGG~~) "Person" means an individual, corporation, business trust, association, estate, trust, or partnership, or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity.

(~~EEHH~~) "Potential disturbance area" means the area of land or water that may be cleared, graded, excavated, accessed with heavy equipment, constructed on, or otherwise directly disturbed for construction of the facility.

(~~FFII~~) "Project" means all equipment, land, and activities required for construction, operation, and

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maintenance of the facility and associated facilities.

(~~GGJJ~~) "Project area" means all land ~~within a contiguous geographic boundary~~ that contains components of the facility, as well as any real property for which land rights are necessary to be secured in order to construct and operate associated setbacks, and properties under lease or agreement that contain any components of the facility.

(~~HHKK~~) "Replacement of an existing facility with a like facility" means replacing an existing major utility facility with a major utility facility of equivalent size, rating and operating characteristics, and within the same right-of-way. If the existing facility includes material sizes and specifications that are no longer widely manufactured and available, ~~or no longer used by the applicant,~~ replacement with the nearest equivalent standard industry size and material available that meets the needs of the project is considered a replacement with a like facility.

(~~LL~~) "Resident" is determined by where a person is domiciled, and includes a tenant.

(~~MM~~) "Route" means, in the case of a proposed electric transmission line or gas pipeline, a proposed centerline and a proposed distance from each side of the centerline, with such total distance not to exceed the proposed right-of-way width. Route width may vary along the proposed electric transmission line or gas pipeline, as specified in the application.

(~~HNN~~) "Specific customer or customers" means industrial or commercial end-use customer(s) in Ohio.

(~~HOO~~) "Staff" means the board staff.

(~~KKPP~~) "Standard certificate application" means a document filed with the board under the requirements of Chapter 4906-4 ~~or Chapter 4905-5~~ of the Administrative Code.

(~~LLQQ~~) "Substantial addition," in the case of an electric power transmission line or gas pipeline already in operation, is any addition or modification that meets any of the descriptions listed in the "Application Requirement Matrix" contained in appendix A and appendix B to this rule. Construction necessary to restore service of a transmission line damaged by reason of natural ~~disaster~~ or human-caused disaster or accident does not constitute a substantial addition and therefore does not ~~require~~ necessitate the filing of a certificate application. "Substantial addition," ~~if~~ in the case of an electric power generation plant, ~~it~~ is any modification of an operating generation plant which modification in itself constitutes a major utility facility or economically significant wind farm. Additions under this definition include, but are not limited to:

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- (1) Addition of structures or equipment to an existing electric power generation facility that would result in a capacity increase unit of fifty megawatts or greater ~~to an existing plant~~.
  - (2) Addition of a fifty megawatts or greater electric power generation unit which is designed to operate in conjunction with an existing unit to establish a combined-cycle unit.
  - (3) Addition of an electric power generation unit to an existing plant which is not a major utility facility, or modification of an existing unit, with the result that the combined capacity of the new facility is fifty megawatts or greater.
  - (4) Addition of a wind-powered electric generation turbine to an existing wind farm, with the result that the combined capacity of the new facility is five megawatts or greater.
- (~~MMRR~~) "Wind farm" means a wind-powered electric generation facility, including wind turbines and associated facilities, with a single interconnection to the electrical grid.

**AMENDED**

**4906-1-02 Purpose and scope.**

- (A) The purpose of this chapter is to provide for just, efficient, and inexpensive determination of the issues presented in matters under Chapter 4906. of the Revised Code.
- (B) The board may, upon its own motion, or upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

**AMENDED**

**4906-1-03 Board meetings.**

- (A) All meetings of the board at which official action is taken and deliberation upon official business is conducted shall be open to the public. For the purpose of this rule, the term "meeting" shall mean any prearranged discussion of the public business of the board by a majority of its members. All resolutions, rules, regulations or formal action of any kind shall be adopted in an open meeting of the board.
- (B) The ~~chairman~~ chairperson shall cause to be made and preserve such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the board and for the protection of the legal and financial rights of the state and persons directly affected by the board's activities under Chapter

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4906. of the Revised Code.

- (C) The minutes of a regular or special meeting of the board shall be promptly recorded and such records shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) of section 121.22 of the Revised Code.
- (D) Following a majority vote of its members, the board may hold an executive session only at a regular or special meeting for the sole purpose of the consideration of the matters contained in division (G) of section 121.22 of the Revised Code. Such executive session may be held only at a meeting for which notice has been given in accordance with the requirements of paragraph (E) of this rule.
- (E) Notice of board meetings
  - (1) Any person may ascertain the time and place of each regularly scheduled meeting and the time, place and purpose of each special meeting in the following manner:
    - (a) Writing to the board's principal office.
    - (b) Calling the board between eight a.m. and five-thirty p.m. except on Saturdays, Sundays, or legal holidays.
    - (c) Accessing the board's website at [www.opsb.ohio.gov](http://www.opsb.ohio.gov).
    - (d) Emailing the board at ~~[contact.opsb@puc.state.oh.us](mailto:contact.opsb@puc.state.oh.us)~~ [contact.opsb@puco.ohio.gov](mailto:contact.opsb@puco.ohio.gov).
  - (2) Notice of all meetings of the board shall be given to the following persons:
    - (a) All individuals on the board's electronic notification of meeting distribution list shall be given notice of all regular meetings. This list shall consist of those persons who have requested notice of each board meeting by signing upon the board's website or contacting the board at (866) 270-6772.
    - (b) All news media routinely notified by the board shall be given notice of all regular board meetings. No special meeting of the board shall be held unless the board gives twenty-four hours advance notice to the news media, except in the event of an emergency requiring immediate official action. In the event of an emergency, the board shall immediately notify the news media of the time, place and purpose of the meeting.
  - (3) Notice of all board meetings shall include but not be limited to the following information:

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- (a) Date, time and location of the meeting.
- (b) Agenda for the meeting.
- (c) Name of a person to be contacted for further information.
- (4) When practicable, such notice shall be issued not less than seven days prior to any regular meeting of the board. Such notice shall be issued not less than twenty-four hours prior to a special meeting and immediately before a meeting in the event of an emergency.

**AMENDED**

**4906-1-04 Fees and payments.**

- (A) All duplication fees used to defray the cost of copying documents shall be charged by the board in accordance with applicable provisions of the Revised Code, including section 4903.23 of the Revised Code.
- (B) All application fees shall be determined pursuant to rule 4906-3-12 of the Administrative Code.
- (C) All payments of application fees ~~shall be in~~ may be paid by credit card, debit card, personal check, cashier's check, certified check, money order, wire or electronic funds transfer. Cash payments are not permitted. Payment remittance instructions will be provided on the invoice and shall be due upon receipt of an invoice unless otherwise indicated. Payment will contain the identifying case or invoice number for which payment is tendered. Invoices determined uncollectible will be certified to the Attorney General of Ohio for further collection actions in accordance with Ohio Revised Code section 131.02 the form of a check payable to "Treasurer of the State of Ohio, Ohio Power Siting Board, fund 561," and shall be designated by case number.
- (D) All payments of forfeitures, compromise forfeitures, and other payments made pursuant to stipulation shall be made in accordance with rule 4906-7-03 of the Administrative Code.

**AMENDED**

**4906-1-05 Site visits.**

Persons proposing, owning or operating major utility facilities or economically significant wind farms ~~will allow should make all reasonable efforts to ensure that, upon prior notification,~~ the board, its representatives (including, but not limited to contractors and inspectors), or staff ~~may to~~ make visits to proposed or alternative sites or routes of a major

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utility facility or economically significant wind farm or a substantial addition in order to carry out board responsibilities pursuant to Chapter 4906. of the Revised Code.

## 4906-1-01 APPENDIX A

### APPLICATION REQUIREMENT MATRIX FOR ELECTRIC POWER TRANSMISSION LINES

<b>Description of the Proposed Electric Power Transmission Line and Associated Facilities</b>	<b>Standard Application (BTX or BTA)* Required</b>	<b>Letter of Notification Application (BLN) Required</b>	<b>Construction Notice Application (BNR) Required</b>
	<b>4906-<del>54</del></b>	<b>4906-6-05</b>	<b>4906-6-05</b>
(1) New construction, extension, or relocation of single or multiple circuit electric power transmission line(s), or upgrading existing transmission or distribution line(s) for operation at a higher transmission voltage, as follows:			
(a) Line(s) not greater than 0.2 miles in length.			<b>X</b>
(b) Line(s) greater than 0.2 miles in length but not greater than two miles in length.		<b>X</b>	
(c) Line(s) greater than two miles in length.	<b>X</b>		
(d) Line(s) primarily needed to attract or meet the requirements of a specific customer or customers, as follows:			
(i) The line is completely on property owned by the specific customer or the applicant.			<b>X</b>
(ii) Any portion of the line is on property owned by someone other than the specific customer or applicant.		<b>X</b>	

<b>Description of the Proposed Electric Power Transmission Line and Associated Facilities</b>	<b>Standard Application (BTX or BTA)* Required</b>	<b>Letter of Notification Application (BLN) Required</b>	<b>Construction Notice Application (BNR) Required</b>
	<b>4906-5</b>	<b>4906-6-05</b>	<b>4906-6-05</b>
(e) Line(s) that are necessary to maintain reliable electric service as a result of the retirement or shutdown of an electric generation facility located within Ohio.		<b>X</b>	
(2) Adding new circuits on existing structures designed for multiple circuit use, replacing conductors on existing structures with larger or bundled conductors, adding structures to an existing transmission line, or replacing structures with a different type of structure, for a distance of:			
(a) Two miles or less.			<b>X</b>
(b) More than two miles.		<b>X</b>	
(3) Constructing a new electric power transmission substation.		<b>X</b>	
(4) Constructing additions to existing electric power transmission stations or converting distribution stations to transmission stations where:			
(a) There is a twenty percent or less expansion of the fenced area.			<b>X</b>
(b) There is a greater than twenty percent expansion of the fenced area.		<b>X</b>	
(5) Replacement or relocation of an electric power transmission line and associated facilities where the project is required by publicly funded entities and is located on or adjacent to right-of-way or land owned by the public entity requiring the project.			<b>X</b>



**\* The three-letter acronyms in the column header refer to the three-letter purpose codes that are assigned to these types of applications when filed with and given a case number by the Ohio Power Siting Board.**

## 4906-1-01 APPENDIX B

### APPLICATION REQUIREMENT MATRIX FOR GAS PIPELINES

Description of the Proposed Gas Pipelines or Pipeline Segments and Associated Facilities	Standard Application (BTX or BTA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906- <del>54</del>	4906-6-05	4906-6-05
(1) New construction, extension, relocation, upgrade, or replacement (except with a like facility) of gas pipelines or pipeline segments, as follows:			
(a) Pipelines or pipeline segments not greater than one mile in length.			X
(b) Pipelines or pipeline segments greater than one mile in length but not greater than five miles in length.		X	
(c) Pipelines or pipeline segments greater than five miles in length.	X		
(d) Pipelines or pipeline segments greater than one mile in length and primarily needed to meet the requirements of a specific customer or customers, as follows:			
(i) The pipeline or pipeline segments is completely on property owned by the specific customer or the applicant.			X
(ii) Any portion of the pipeline or pipeline segment is on property owned by someone other than the specific customer or applicant.		X	
(2) Adding a compressor station to an existing gas pipeline or pipeline segment.		X	
(3) Replacement or relocation of gas pipeline facilities where the project is required by publicly funded entities and is located on or adjacent to new right-of-way owned by the public entity requiring the project.			X

- \* The three-letter acronyms in the column header refer to the three-letter purpose codes that are assigned to these types of applications when filed with and given a case number by the Ohio Power Siting Board.**

## 4906-1-01 APPENDIX C

### APPLICATION REQUIREMENT MATRIX FOR ELECTRIC GENERATION FACILITIES

<b>Description of the Proposed Electric Generation Facility</b>	<b>Standard Application (BGN or BGA)* Required</b>	<b>Letter of Notification Application (BLN) Required</b>	<b>Construction Notice Application (BNR) Required</b>
	<b>4906-4</b>	<b>4906-6-05</b>	<b>4906-6-05</b>
(1) An electric generation facility designed for, or capable of, operation at a capacity of fifty megawatts or more that uses waste heat or natural gas and is primarily within the current boundary of an existing industrial or electric generation facility.		<b>X</b>	
(2) A wind-powered electric generation facility designed for, or capable of, operation at a capacity of five megawatts or more.	<b>X</b>		
(3) An electric generation facility designed for, or capable of, operation at a capacity of fifty megawatts or more and not listed in one of the above categories.	<b>X</b>		

\* **The three-letter acronyms in the column header refer to the three-letter purpose codes that are assigned to these types of applications when filed with and given a case number by the Ohio Power Siting Board.**



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

**Agency, Board, or Commission Name:** Public Utilities Commission of Ohio (PUCO)

**Rule Contact Name and Contact Information:**

Angela Hawkins, Legal Director

Phone: 614-466-0122

Email: [Angela.Hawkins@puco.ohio.gov](mailto:Angela.Hawkins@puco.ohio.gov)

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

General Provisions for Filing and Proceedings before the Ohio Power Siting Board (OPSB)

**Rule Number(s):** 4906-1-01 through 4906-1-05

**Date of Submission for CSI Review:** N/A

**Public Comment Period End Date:** August 12, 2022

**Rule Type/Number of Rules:**

☐ New/\_\_\_ rules

☐ No Change/\_\_\_ rules (FYR? \_\_\_)

☒ Amended/ 5 rules (FYR? Y)

☐ 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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

**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 rules for CSI review.**

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

**The rule:**

- ☒ 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.**
- ☒ d. **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

**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.***

The proposed revisions to the rules in Chapter 4906-1, Ohio Adm.Code (OAC), make general revisions to the definitions that govern applications for OPSB certificates.

- 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.**

The amendments to the rules in Chapter 4906-1, OAC, are proposed pursuant to Section 119.032, Revised Code, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend

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their rules, or rescind their rules. The OPSB is authorized to adopt the proposed rules pursuant to Chapter 4906, Revised Code, which governs the rules and regulations promulgated by the OPSB. Further, on July 12, 2021, the governor of the state of Ohio signed into law Am. S.B. 52 (S.B. 52) amending provisions that govern OPSB certificates, including those contained in Chapter 4906, Revised Code. The OPSB intends to combine the review of its rules with its review of possible provisions to the rules resulting from the enactment of S.B. 52.

- 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 rule in this chapter implements any federal requirement of is being adopted or amended to enable Ohio to obtain or maintain approval to enforce a federal requirement.

- 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)?**

Chapter 4906-1, OAC, describes the definitions that the OPSB utilizes when evaluating and enforcing certificate applications.

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

The rules contained in this chapter are general provisions that govern matters before the OPSB pursuant to Chapter 4906 of the Revised Code. As such, there will not be measurable outputs or outcomes as a result of the adoption of Chapter 4906-1, OAC.

- 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.*

The OPSB conducted a three-part workshop on October 4 and October 8, 2021, using virtual hearing technology, to receive feedback from interested stakeholders and the general public in Case No. 21-902-GE-ORD. Additionally, the OPSB conducted three stakeholder engagement meetings on March 11, March 12, and May 12, 2020, to gather stakeholder information as to the rules.

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

The OPSB considered recommendations by stakeholders at the engagement meetings and workshop as follows:

- (1) Additional project information should be included in certificate applications.
- (2) Specific to electric transmission and gas pipeline projects, the types of information that should be required in relation to the public interest, convenience, and necessity of the project.
- (3) In regard to project siting, the types of information that a certificate applicant should submit in consideration of public involvement as to the site/route selections.
- (4) The types of information that should be filed regarding public interaction and any complaint resolution issues concerning significant preconstruction and pre-operation project developments.
- (5) The types of information that a wind or solar facility applicant should file regarding decommissioning plans.
- (6) The types of information that an applicant should file regarding interactions with local governments in a project area.
- (7) The types of information that an applicant should file regarding environmental, aviation, noxious weed management, irrigation and field drainage system mitigation, storm water runoff management, and communication system mitigation.
- (8) Additional considerations the OPSB should utilize as to solar project certifications.

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(9) The types of additional enforcement measures the OPSB should consider, and how they are best funded.

**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 considered. In adopting changes to Chapter 4906-1, OAC, the OPSB takes into account feedback from stakeholders and the general public regarding the rules in effect prior to the proposed changes. Stakeholder and public feedback can be made directly to the OPSB by filing comments from such entities as persons proposing, owning or operating major utility facilities or economically significant wind farms, electric distribution utilities, gas and natural gas local distribution companies, the Ohio Gas Association, the Oil and Gas Association, applicants who have filed cases with the OPSB, members of the general public, or any other entity. The requirements in S.B. 52 were also taken into account.

**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?**

The operation of the OPSB is specifically provided for in Chapter 4906 of the Revised Code, and the promulgation of rules governing the siting process is specifically provided for in Section 4906.03, Revised Code. As a result, regulatory alternatives were not available.

**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.***

No performance-based regulations were considered, as the rules in Chapter 4906-1, OAC, are supported by Chapter 4906, Revised Code, and dictate process and do not define a required outcome. Thus, performance-based regulation is not appropriate.

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

The OPSB has reviewed other state regulations and found no duplication as to the adoption of these rules pursuant to Chapter 4906, Revised Code, and S.B. 52.

**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.**

Chapter 4906-1, OAC, has been in effect without complaints about inconsistent application of the Chapter. The proposed changes that result from the proposed amendments to this chapter will be communicated via distribution of the final rules in Case No. 21-902-GE-BRO, as well as through updates to the OPSB website.

**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**

Chapter 4906-1, OAC, provides guidance to entities seeking to site facilities within the state of Ohio. Only entities seeking certificates to build, own, or operate facilities will be affected by these rules. Effects to business include the continuing application fees and the time it takes for compliance with application and certificate monitoring requirements.

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

As Chapter 4906-1, OAC, merely addresses definitions, there are no expected adverse impacts from the proposed rule.

**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.*

As Chapter 4906-1, OAC, merely addresses definitions, there are no expected adverse impacts from the proposed rule.

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

As described in Chapter 4906, Revised Code, these rules are required by law and were drafted to minimize adverse impacts on business while maintaining a strong focus on the rights and protections afforded the public.

**Regulatory Flexibility**

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

Chapter 4906-1, OAC, is drafted in order to comply with Chapter 4906, Revised Code, which provides for the certification of new facilities in Ohio. This is not an activity typically undertaken by an entity that would be defined as a small business.

**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 OPSB only assesses penalties for violations of certificates, which occur after an applicant has begun construction of an approved facility.

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

The OPSB actively works with applicants, as well as parties who have been granted certificates, to assure compliance with the OPSB's rules and the terms and conditions of their certificates.

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**4906-2-01 Purpose and scope.**

- (A) This chapter sets forth the procedural standards which apply to all persons or entities participating in cases before the board.
- (B) The board may, upon its own motion, or upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

**AMENDED**

**4906-2-02 Filing of pleadings and other documents.**

(A) General provisions

- (1) The principal office of the board is located within the office of the public utilities commission of Ohio. The official address of the board is: 180 East Broad street, Columbus, Ohio 43215-3793.
- (2) Filings for the board shall be addressed to: "Ohio Power Siting Board, Docketing Division, 180 East Broad Street, Columbus, Ohio 43215-3797."
- (3) The internet address of the docketing division is <http://dis.puc.state.oh.us>.
- (4) The docketing division is open from seven-thirty a.m. to five-thirty p.m., Monday through Friday, except on state holidays.
- (5) Except as discussed in paragraph (D) of this rule, no document shall be considered filed with the board until it is received and date-stamped by the docketing division.
- (6) The board reserves the right to redact any material from a filed document prior to posting the document on the docketing information system if the board finds the material to be confidential personal information, a trade secret, or inappropriate for posting to its website.
- (7) A party seeking to consolidate a new case with one or more previously filed cases, or with cases being concurrently filed, shall file a motion to consolidate the cases.

(B) Paper filing

- (1) All applications, complaints, reports, pleadings, or other documents to be paper filed with

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the board shall be mailed or delivered to the docketing division at the address shown in paragraph (A) of this rule. In addition to the original, any person paper filing a document for inclusion in a case file must submit the required number of copies of the document. Information regarding the number of copies required by the board is available under procedural filing requirements on the docketing information system website, by calling the docketing division at 614-466-4095, or by visiting the docketing division at the offices of the commission. ~~As an alternative, a filer may submit twenty copies of the filing.~~ Failure to submit the required copies may result in the document being stricken from the case file. An administrative law judge may require a party to provide additional paper copies of any filed document.

- (2) Unless a request for a protective order is made in accordance with rule 4906-2-21 of the Administrative Code, concurrent with or prior to receipt of the document by the docketing division, any document filed with the docketing division will be made publicly available on the docketing information system.

(C) Facsimile transmission (fax) filing

A person may file documents with the board via fax under the following conditions:

- (1) The following documents may not be delivered via fax:
  - (a) The application or other initial pleading that is responsible for the opening of a case.
  - (b) Any document for which protective or confidential treatment is requested under rule 4906-2-21 of the Administrative Code.
  - (c) A notice of appeal of a board order to the Ohio supreme court filed pursuant to section 4903.13 of the Revised Code or service of that notice upon the ~~chairman~~chairperson.
- (2) All documents sent via fax must include a transmission sheet that states the case number, case title, date of transmission, number of pages, brief description of the document, and the name and telephone number of the sender.
- (3) The originator of a fax document must contact the docketing division at (614) 466-4095 prior to sending a fax. A person must notify the docketing division of its intent to send a document by fax by five p.m. on the date the document is to be sent. The person must be prepared to commence transmission at the time the docketing division is notified.
- (4) All documents must be sent to the fax machine in the docketing division at (614) 466-0313. If that machine is inoperable, directions for alternative arrangements will be given when

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the originator calls to commence a fax. Unrequested documents sent to any of the board's other facsimile machines will not be relayed to the docketing division by board employees.

- (5) Excluding the transmission sheet, all documents transmitted by fax must be thirty pages or less.
- (6) All documents must be legible when received. Illegible documents received via fax will not be filed. If the document is illegible, the docketing division will attempt to contact the sender to resolve the problem. The person making a fax filing shall bear all risk of transmission, including all risk of equipment, electric, or telephonic failure or equipment overload or backup. Any document sent by fax that is received in whole or in part after five-thirty p.m. will be considered filed the next business day.
- (7) No document received via fax will be given confidential treatment by the board.
- (8) If a document is delivered via fax, the party must make arrangements for the original signed document and the required number of copies of the pleading to be delivered to the board no later than the next business day. Failure to comply with this requirement may result in the document being stricken from the case file.
- (9) Because a document sent to the board by fax will be date-stamped, and thus filed, the day it is received by the docketing division, the originator of the document shall serve copies of the document upon other parties to the case no later than the date of filing.

(D) Electronic filing (e-file)

A person may e-file documents with the board under the following conditions:

- (1) All filings must comply with the electronic filing manual and technical requirements at the docketing information system website and any additional guidelines provided by the board.
- (2) All filings must be searchable and the electronic file must be able to be reproduced in hard copy at the same quality as the original.
- (3) The service of a notice of appeal of a board order pursuant to sections 4903.13 of the Revised Code upon the chairperson following documents shall not be delivered via e-filing.÷

~~(a) Any document for which protective or confidential treatment is requested under rule-~~

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~~4906-2-21 of the Administrative Code.~~

~~(b) A notice of appeal of a board order to the Ohio supreme court filed pursuant to section 4903.13 of the Revised Code or service of that notice upon the chairman.~~

- (4) An applicant may electronically file a certificate application pursuant to section 4906.06 of the Revised Code, ~~provided that the applicant provides ten computer disks, each~~ containing the full electronic copy of the application. The applicant also shall submit five complete paper copies of the application to the docketing division on the same day that an e-filing of the application is made and will be expected to provide additional paper copies or disk-electronic copies upon request.
- (5) Provided that a document is not subsequently rejected by the docketing division, an e-filed document will be considered filed as of the date and time recorded on the confirmation page that is electronically inserted as the last page of the filing upon receipt by the docketing division, except that any e-filed document received after five-thirty p.m. shall be considered filed at seven-thirty a.m. the next business day. The docketing division may reject any filing that does not comply with the electronic filing manual and technical requirements, is unreadable, includes anything deemed inappropriate for inclusion on the docketing information system, or is submitted for filing in a closed or archived case. If an e-filing is rejected by the docketing division, an email message will be sent to inform the filer of the rejection and the reason for the rejection.
- (6) If an e-filing is accepted, notice of the filing will be sent via electronic mail to all persons who have electronically subscribed to the case, including the filer. This email notice will constitute service of the e-filed document upon those persons electronically subscribed to the case. Upon receiving the email notice that the e-filed document has been accepted by the docketing division, the filer shall serve copies of the document in accordance with rule 4906-2-05 of the Administrative Code upon parties to the case who are not electronically subscribed to the case.
- (7) The docketing division closes at five-thirty p.m. To allow time for same-day review and acceptance of e-filings, persons making e-filings are encouraged to make their filings by no later than four p.m.
- (8) The person making an e-filing shall bear all risk of transmitting a document including, but not limited to, all risk of equipment, electric, or internet failure.
- (9) If an electronic filing of a certificate application cannot be made due to electronic or other problems that prevent either all or part of the certificate application to go through the



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docketing division equipment, the applicant shall file the five paper copies of the certificate application, fifteen-five computer disks-portable solid-state drives containing the complete application, and a geographic information systems map-diskdata drive with the docketing division in lieu of the electronic filing. The applicant will then have an additional one business day either to complete the electronic filing of the certification application or to provide fifteen more paper copies of the certificate application unless a longer period is granted by the administrative law judge. If the additional paper copies are made timely, the certificate application shall be considered filed on the day the electronic filing could not be made but the five paper copies, the fifteenfive-disks portable solid-state drives, and the geographic information systems data drives disk-were filed.

- (10) E-filed documents must be complete documents. Appendices or attachments to an e-filed document may not be filed by other methods without prior approval. Large documents may be e-filed in parts as long as all parts are e-filed on the same day.
  - (11) Except as otherwise provided by this rule or directed by an administrative law judge, a person filing a document electronically need not submit any paper copy of an e-filed document to the docketing division.
- (E) The docketing division designates the status of each case under the case number and case name on the docket card. As discussed in this rule, attempts to make filings in certain designated cases will be denied.
- (1) An open case is an active case in which filings may be made.
  - (2) A closed case is one in which no further filings may be made without the consent of the administrative law judge. When a case is closed, any person seeking to make a filing in a case must first contact the administrative law judge assigned to the case. If the administrative law judge agrees to permit the filing, the docketing division will be notified to reopen the case. If an additional filing is permitted, the case status will be changed to open and service of the filing must be made by the filer upon the parties to the case in accordance with rule 4906-2-05 of the Administrative Code.
  - (3) An archived case is a closed case that will not be reopened and in which no further filings will be permitted. If additional activity is thereafter required on any matter addressed in an archived case, the board will open a new case and designate the new case as a related case. The docketing information system displays for each case a related cases tab to provide a link to related cases.
  - (4) A reserved case is one set aside for future use. No filings should be made in the case until



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the party for who it was reserved makes an initial filing.

(5) A void case is one that was opened in error and no documents may be filed in it.

**NO CHANGE**

**4906-2-03 Form of pleadings and other papers.**

- (A) Except as provided by rule 4906-2-04 of the Administrative Code, all pleadings or other papers to be filed with the board shall contain a caption or cover sheet setting forth the name of the board, the title of the proceeding, and the nature of the pleading or paper. All pleadings or papers filed subsequently to the original filing or board entry initiating the proceeding shall contain the case name and docket number of the proceeding. Such pleadings or other papers shall also contain the name, address, and telephone number of the person filing the paper, or the name, address, telephone number, and attorney registration number of his or her attorney, if such person is represented by counsel. The party making a filing should include a fax number and/or an email address if the party is willing to accept service of pleadings by fax or email. An attorney or party who is willing to accept service of filed documents by fax shall include the following phrase next to or below its fax number: (willing to accept service by fax). An attorney or party who is willing to accept service of filed documents by email shall include the following phrase next to or below its email address: (willing to accept service by email).
- (B) All pleadings or other papers to be filed with the board shall be printed, typewritten, or legibly handwritten on eight and one-half by eleven-inch paper. Widths of the margins shall be no less than one inch. The impression may be printed on both sides of the page, and shall have at least one and a half line spacing, except that quotations in excess of five typewritten lines shall be single spaced and indented. This requirement does not apply to:
- (1) Original documents to be offered as exhibits.
  - (2) Copies of original documents to be offered as exhibits, where compliance with this requirement would be impracticable.
  - (3) Forms approved or supplied by the board.
- (C) Nothing in paragraph (B) of this rule prohibits the filing of photocopies of documents that otherwise meet the requirements of that paragraph.
- (D) Maps and exhibits that are printed on large format paper (greater than eleven inches by seventeen inches) should be provided in a roll or tube, and not folded.

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**4906-2-04 Form and general content requirements for certificate applications.**

- (A) In addition to the requirements of rule 4906-2-03 of the Administrative Code, the following conditions apply to certificate applications:
- (1) Each page of the certificate application shall be numbered.
  - (2) Copies of the standard certificate application shall be submitted in hard-cover, loose-leaf binders labeled with the following information:
    - (a) Name of applicant.
    - (b) Name of the proposed facility.
    - (c) Year of submittal of the certificate application.
    - (d) Case number.
  - (3) Each certificate application shall be accompanied by a cover letter containing the following information:
    - (a) Name and address of the applicant.
    - (b) Name and location of the proposed facility.
    - (c) Name and address of the applicant's authorized representative.
    - (d) An explanation of any information that was presented by the applicant in the preapplication notification letter that has been revised by the applicant since the issuance of the letter.
    - (e) Notarized statement that the information contained in the certificate application is complete and correct to the best knowledge, information and belief of the applicant.
- (B) The information contained within the certificate application shall conform to the requirements of Chapters 4906-4 to 4906-6 of the Administrative Code, whichever is applicable, except that a standard certificate application for a major utility facility which is related to a coal research and development project as defined in section 1555.01 of the Revised Code, or to a coal development project as defined in section 1551.30 of the Revised Code, submitted to the Ohio coal development office for review under division (B)(8) of section 1551.33 of the Revised Code, shall be the full final proposal as accepted by the Ohio coal development office.

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(C) The following general instructions apply to certificate applications:

- (1) The costs and benefits of the direct and indirect effects of siting decisions shall be expressed in monetary and quantitative terms whenever doing so is practicable. All responses shall be supported by:
  - (a) An indication of the source of data.
  - (b) The assumptions made.
  - (c) The methods of reaching the conclusions.
  - (d) The justification for selection of alternatives.
- (2) Information filed by the applicant in response to the requirements of one section without a clear reference to the information that was given in a prior section shall not be deemed responses to any other section of the certificate application requirements.
- (3) If an applicant asserts that a particular requirement is not applicable to the proposed facility, the applicant must provide an explanation why the requirement is not applicable.
- (4) Information shall be derived from onsite surveys, as needed, and the best available, most current reference materials. The applicant shall provide all required information for each facility alternative.
- (5) The applicant may provide a copy of any study produced by or for the applicant for the proposed project as an attachment to the application. The study may be submitted in response to a specific requirement, provided that the information contained therein is responsive to the requirement. A brief summary of the study shall be provided in the body of the application.
- (6) If the applicant has prepared the required hard copy maps using digital, geographically referenced data, an electronic copy of all such data, excluding data obtained by the applicant under a licensing agreement which prohibits distribution, shall be provided to staff on ~~computer disk~~ portable solid-state drive concurrent with submission of the application.
- (7) All maps shall be produced at a scale such that all required features are legible, with minimal overlap. If a map requires shading or colors to distinguish different classes of the same feature (e.g., land use types), no more than six colors or shading patterns should be used for one set of features. Mapping requirements may be combined in a common map or

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maps, provided that the common map(s) remain legible and references to the common map(s) are included in the application. Maps shall include a representation of the map scale and the date upon which the map was produced.

**NO CHANGE**

**4906-2-05 Service of pleadings and other papers.**

- (A) Unless otherwise ordered by the board or the administrative law judge, all pleadings or papers filed with the board subsequent to the original filing or board entry initiating the proceeding shall be served upon all parties no later than the date of filing. Such pleadings or other papers shall contain a certificate of service. The certificate of service shall state the date and manner of service, identify the names of the persons served, and be signed by the attorney or the party who files the document. The certificate of service for a document served by mail or personal service also shall include the address of the person served. The certificate of service for a document served by fax also shall include the fax number of the person to whom the document was transmitted. The certificate of service for a document served by email also shall include the email address of the person to whom the document was sent.
- (B) If an e-filing is accepted by the docketing division, an email notice of the filing will be sent by the docketing division's e-filing system to all persons who have electronically subscribed to the case. The email notice will constitute service of the document upon the recipient. Upon receiving notice that an e-filing has been accepted by the docketing division, the filer shall serve copies of the document in accordance with this rule upon all other parties to the case who are not served via the email notice. A person making an e-filing shall list in the certificate of service included with the e-filing the parties who will be served by email notice by the docketing division's e-filing system and the parties who will be served by traditional methods by the person making the filing. The certificate of service for an e-filed document shall include the following notice: The docketing division's e-filing system will electronically serve notice of the filing of this document on the following parties: (list the names of the parties referenced on the service list of the docket card who have electronically subscribed to the case). The docketing division shall serve all parties to a proceeding with copies of the staff report in a proceeding.
- (C) If a party has entered an appearance through an attorney, service of pleadings or other papers shall be made upon the attorney instead of the party. If the party is represented by more than one attorney, service need only be made upon the "counsel of record" designated under rule 4906-2-26 of the Administrative Code.
- (D) Service upon an attorney or party may be personal, by mail, by fax, or by email. Personal,

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facsimile transmission, or electronic message service made after five-thirty p.m. shall be considered complete on the next business day.

- (1) Personal service is complete by delivery of the copy to the attorney or to a responsible person at the office of the attorney. Personal service to a party not represented by an attorney is complete by delivery to the party or to a responsible person at the address provided by the party in its pleadings.
- (2) Service by mail to an attorney or party is complete by mailing a copy to his or her last known address. If the attorney or party to be served has previously filed and served one or more pleadings or documents in the proceeding, the term "last known address" means the address set forth in the most recent pleading or document.
- (3) Service of a document to an attorney or party by fax may be made only if the person to be served has consented to receive service of the document by fax. Service by fax is complete upon the sender receiving a confirmation generated by the sender's fax equipment that the fax has been sent. The sender shall retain the confirmation as proof of service until the case is completed.
- (4) Service of a document by email to an attorney or party may be made only if the person to be served has consented to receive service of the document by email. Service by email is complete upon the sender receiving a confirmation generated by the sender's computer that the email has been sent. The sender shall retain the confirmation as proof of service until the case is completed.
- (E) For purposes of this rule, the term "party" includes all persons who have filed notices or petitions to intervene that are pending at the time a pleading or document is to be served, provided that the person serving the pleading or document has been served with a copy of the notice or petition to intervene.
- (F) The board or the administrative law judge may order in certain cases that pleadings or documents be served in a specific manner to expedite the exchange of information.

**NO CHANGE**

**4906-2-06      Computation of time.**

Unless otherwise provided by law or by the board:

- (A) In computing any period of time prescribed or allowed by the board, the date of the event from which the period of time begins to run shall not be included. Going forward, the last day of the

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period so computed shall be included, unless it falls on a Saturday, Sunday, or legal holiday, in which case the period of time shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. Going backwards (e.g., expert testimony shall be filed five days before the start of the hearing), the last day of the period so computed shall be included, unless it falls on a Saturday, Sunday, or holiday, in which case the period of time shall move forward (e.g., toward the start of the hearing) to a day that is not a Saturday, Sunday, or legal holiday. Unless otherwise noted, time is measured in calendar, not business days.

- (B) If the board office is closed to the public for the entire day that constitutes the last day for doing an act or closes before its usual closing time on that day, the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

**NO CHANGE**

**4906-2-07 Continuances and extensions of time.**

- (A) Except as otherwise provided by law, and notwithstanding any other provision in this chapter, continuances of public hearings and extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown, or upon motion of the board or the administrative law judge.
- (B) A motion for an extension of time to file a document must be timely filed so as to permit the board or administrative law judge sufficient time to consider the request and to make a ruling prior to the established filing date. If two or more parties have similar documents due the same day and a party intends to seek an extension of the filing date, the moving party must file its motion for an extension sufficiently in advance of the existing filing date so that other parties who might be disadvantaged by submitting their filing prior to the movant submitting its filing will not be disadvantaged. If two or more parties have similar documents due the same day and the motion for an extension is filed fewer than five business days before the document is scheduled to be filed, then the moving party, in addition to regular service of the motion for an extension, must provide a brief summary of the request to all other parties orally, by facsimile transmission, or by electronic message by no later than five-thirty p.m. on the day the motion is filed.
- (C) A copy of any written ruling granting or denying a request for a continuance or extension of time shall be served upon all parties to the proceeding.
- (D) Nothing in this rule restricts or limits the authority of the administrative law judge to issue oral rulings during public hearings or transcribed prehearing conferences.

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**NO CHANGE**

**4906-2-08      Signing of pleadings.**

- (A) Except for e-filed documents, every notice, motion, petition, complaint, brief, memorandum, or other paper filed by any person shall be signed by that person or by his or her attorney but need not be verified unless specifically required by law or by the board. Persons who e-file documents shall use "/s/" followed by their name to indicate a signature or an electronic signature where applicable.
- (B) Each application for a certificate shall include a statement, signed by a person having authority with respect thereto, and having knowledge of the matters presented in the certificate application of the company submitting such document, that the statements set forth in the document are true and correct to the best of his/her knowledge, information, and belief.

**NO CHANGE**

**4906-2-09      Hearings.**

- (A) Unless otherwise ordered, all hearings shall be held at the principal office of the board. However, where practicable, the board shall schedule a session of the hearing for the purpose of taking public testimony in the vicinity of the project. Reasonable notice of each hearing shall be provided to all parties.
- (B) The administrative law judge shall regulate the course of the hearing and conduct of the participants. Unless otherwise provided by law, the administrative law judge may without limitation:
  - (1) Administer oaths and affirmations.
  - (2) Determine the order in which the parties shall present testimony and the order in which witnesses shall be examined.
  - (3) Issue subpoenas.
  - (4) Rule on objections, procedural motions, and other procedural matters.
  - (5) Examine witnesses.
  - (6) Grant continuances.
  - (7) Require expert or factual testimony to be offered in board proceedings to be reduced to

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writing, filed with the board, and served upon all parties and the staff prior to the time such testimony is to be offered and according to a schedule to be set by the administrative law judge.

(8) Take such actions as are necessary to:

- (a) Avoid unnecessary delay.
- (b) Prevent the presentation of irrelevant or cumulative evidence.
- (c) Prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The administrative law judge may, upon motion of any party, direct that a portion of the hearing be conducted in camera and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information or confidential research, development, or commercial materials and information. The party requesting such protection shall have the burden of establishing that such protection is required.
- (d) Assure the hearing proceeds in an orderly and expeditious manner.

(C) Members of the public to offer testimony may be sworn in or affirmed at the portion or session of the hearing designated for the taking of public testimony.

(D) Formal exceptions to rulings or orders of the administrative law judge are unnecessary if, at the time any ruling or order is made, the party makes known the action which he or she desires the presiding hearing officer to take, or his or her objection to action which has been taken and the basis for that objection.

**AMENDED**

**4906-2-10 Ex parte discussion of cases.**

Except as provided in section 4906.024, of the Revised Code After a case has been assigned a formal docket number, no board member or administrative law judge assigned to the case shall discuss the merits of the case with any party or intervenor to the proceeding, unless all parties and intervenors have been notified and have been given the opportunity of being present or a full disclosure of the communication insofar as it pertains to the subject matter of the case has been made.

When an ex parte discussion occurs, a representative of the party or parties at the discussion



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shall prepare a document listing the parties in attendance and providing a full disclosure of the communications made. Within two business days of the occurrence of the ex parte discussion, the document shall be provided to the ~~chairman~~chairperson or board member or to an administrative law judge present at the discussion for review. Upon completion of the review, the final document shall be filed with the board's docketing division and served upon the parties to the case within two business days and the filer shall serve a copy upon the parties to the case and to each participant in the discussion. The document filed and served shall include the following language: Any participant in the discussion who believes that any representation made in this document is inaccurate or that the communications made during the discussion have not been fully disclosed shall prepare a letter explaining the participant's disagreement with the document and shall file the letter with the board and serve the letter upon all parties and participants in the discussion within two business days of receipt of this document.

**NO CHANGE**

**4906-2-11 Parties.**

- (A) The parties to a board proceeding concerning an application for a certificate shall include:
- (1) Any person who files an application or a petition for a jurisdictional determination.
  - (2) Any person who is designated as the subject of a board investigation.
  - (3) Any person granted leave to intervene under rule 4906-2-12 of the Administrative Code.
  - (4) Any other person expressly made a party by order of the board or administrative law judge.
- (B) If any owner of a major utility facility is operated by a receiver or trustee, the receiver or trustee shall also be made a party.
- (C) Except for purposes of rules 4906-2-05, 4906-2-13, 4906-2-16, 4906-2-22, 4906-2-24, 4906-2-26, 4906-2-27, 4906-2-28, and 4906-2-29 of the Administrative Code, the board staff shall not be considered a party to any proceeding.

**AMENDED**

**4906-2-12 Intervention.**

- (A) Persons who desire to intervene in a board proceeding shall comply with the following requirements:
- (1) The chief executive officer of each municipal corporation and county and the head of each

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public agency charged with the duty of protecting the environment or of planning land use in the area in which any portion of such facility is to be located may intervene by preparing and filing with the board, within thirty days after the date he or she was served with a copy of the application under division (B) of section 4906.06 of the Revised Code, a notice of intervention containing the following information:

- (a) A certification or affirmation as to the legal title and authority of such official.
- (b) A statement demonstrating the fact that all or part of the proposed facility is to be located within the area under the jurisdiction of such official.
- (c) A statement indicating that such official intends to intervene in the proceedings, together with the grounds for which intervention is sought and the interest of the official in the proceeding, if known.

(2) All other persons may petition for leave to intervene by:

- (a) Preparing a petition for leave to intervene setting forth the grounds for the proposed intervention and the interest of the petitioner in the proceedings.
- (b) Filing said petition within thirty days after the date of publication of the notice required in accordance with paragraph (A)(1) of rule 4906-3-09 of the Administrative Code or in accordance with division (B) of section 4906.08 of the Revised Code or as otherwise directed by the board or the administrative law judge.

(3) Copies of all notices of intervention and petitions for leave to intervene shall be sent to all parties by the prospective intervenor, and a certificate of service shall be filed with the board at the time of filing said notice or petition pursuant to rule 4906-2-05 of the Administrative Code.

(B) The board or the administrative law judge shall grant petitions for leave to intervene only upon a showing of good cause.

(1) In deciding whether to permit intervention under this paragraph, the board or the administrative law judge may consider:

- (a) The nature and extent of the person's interest.
- (b) The extent to which the person's interest is represented by existing parties.
- (c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.

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- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.
- (C) The board or the administrative law judge may, in extraordinary circumstances and for good cause shown, grant a petition for leave to intervene in subsequent phases of the proceeding, filed by a person identified in paragraph (A)(1) or (A)(2) of this rule, who failed to file a timely notice of intervention or petition for leave to intervene. Any petition filed under this paragraph must contain, in addition to the information set forth in paragraph (A)(1) or (A)(2) of this rule, a statement of good cause for failing to timely file the notice or petition and shall be granted only upon a finding that:
- (1) Extraordinary circumstances justify the granting of the petition.
  - (2) The intervenor agrees to be bound by agreements, arrangements, and other matters previously made in the proceeding.
- (D) Unless otherwise provided by law, the board or the administrative law judge may:
- (1) Grant limited participation, which permits a person to participate with respect to one or more specific issues, if:
    - (a) The person has no real and substantial interest with respect to the remaining issues.
    - (b) The person's interest with respect to the remaining issues is adequately represented by existing parties.
  - (2) Require intervenors with substantially similar interests to consolidate their examination of witnesses or presentation of testimony.

**AMENDED**

**4906-2-13      Role of participants in public hearings.**

At the public hearing, the board or the administrative law judge shall accept written or oral testimony from any person regardless of that person's status. However, the right to examine witnesses is reserved exclusively for parties, board members, administrative law judges, and the staff.

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**NO CHANGE**

**4906-2-14      General provisions and scope of discovery.**

- (A) The purpose of rules 4906-2-14 to 4906-2-22 of the Administrative Code is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in board proceedings. These rules are intended to minimize board intervention in the discovery process.
- (B) Except as otherwise provided in this rule, any party to a board proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of that proceeding. It is not grounds for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained through interrogatories, requests for the production of documents and things or permission to enter upon land or other property, depositions and requests for admission. The frequency of using these discovery methods is not limited unless the board orders otherwise under rule 4906-2-21 of the Administrative Code.
- (C) Any party may, through interrogatories, require any other party to identify each expert witness expected to testify at the hearing and to state the subject matter on which the expert is expected to testify. Thereafter, any party may discover from the expert or other party facts or data known or opinions held by the expert which are relevant to the stated subject matter. A party who has retained or specially employed an expert may, with the approval of the board, require the party conducting discovery to pay the expert a reasonable fee for the time spent responding to discovery requests.
- (D) Discovery responses which are complete when made need not be supplemented with subsequently acquired information unless:
  - (1) The response did not fully identify each expert witness expected to testify at the hearing and stated the subject matter upon which each expert was expected to testify.
  - (2) The responding party later learned that the response was incorrect or otherwise materially deficient.
  - (3) The response indicated that the information sought was unknown or nonexistent and such information subsequently became known or existent.
  - (4) An order of the board or agreement of the parties provides for the supplementation of responses.

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- (5) Requests for the supplementation of responses are submitted prior to the commencement of the hearing.
- (E) The supplementation of responses required under paragraph (D) of this rule and requests for supplementation of responses submitted pursuant to paragraph (D)(5) of this rule shall be provided within five business days of discovery of the new information.
- (F) Nothing in rules 4906-2-14 to 4906-2-22 of the Administrative Code precludes parties from conducting informal discovery by mutually agreeable methods or by stipulation.
- (G) A discovery request under rules 4906-2-14 to 4906-2-22 of the Administrative Code may not seek information from any party which is available in prefiled testimony, prehearing data submissions, or other documents which that party has filed with the board in the pending proceeding. Before serving any discovery request, a party must first make a reasonable effort to determine whether the information sought is available from such sources.
- (H) For purposes of rules 4906-2-14 to 4906-2-22 of the Administrative Code, the term "party" includes any person who has filed a notice or petition to intervene which is pending at the time a discovery request or motion is to be served or filed.
- (I) Rules 4906-2-14 to 4906-2-22 of the Administrative Code do not apply to board staff.
- (J) Discovery may not be used to harass or delay existing procedural schedules.

**NO CHANGE**

**4906-2-15 Time period for discovery.**

- (A) Discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible. Unless otherwise ordered for good cause shown, discovery must be completed prior to the commencement of the hearing.
- (B) The board or the administrative law judge may shorten or extend the time period for discovery upon their own motion or upon motion of any party for good cause shown.

**NO CHANGE**

**4906-2-16 Filing and service of discovery requests and responses.**

Except as otherwise provided in rules 4906-2-21 and 4906-2-22 of the Administrative Code or unless otherwise ordered for good cause shown, discovery requests and responses shall be served upon all parties and staff. Upon a showing of good cause, the board or the

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administrative law judge may determine that the responding party may recover the reasonable cost of providing copies from the party making the request. For purposes of this rule the term "response" includes written responses or objections to interrogatories, requests for the production of documents or tangible things, requests for permission to enter upon land or other property, and requests for admission.

**NO CHANGE**

**4906-2-17 Interrogatories and response time.**

- (A) Any party may serve upon any other party written interrogatories, to be answered by the party served. If the party served is a corporation, partnership, association, government agency, or municipal corporation, it shall designate one or more of its officers, agents, or employees to answer the interrogatories, who shall furnish such information as is available to the party. Each interrogatory shall be answered separately and fully, in writing and under oath, unless it is objected to, in which case the reason for the objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers or objections upon the party submitting the interrogatories and all other parties within twenty days after the service thereof, or within such shorter or longer time as the board or the administrative law judge may allow. The party submitting the interrogatories may move for an order under rule 4906-2-22 of the Administrative Code with respect to any objection or other failure to answer an interrogatory.
- (B) Subject to the scope of discovery set forth in rule 4906-2-14 of the Administrative Code, interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served. An interrogatory which is otherwise proper is not objectionable merely because it calls for an opinion, contention, or legal conclusion, but the board or the administrative law judge may direct that such interrogatory need not be answered until certain designated discovery has been completed, or until some other designated time. The answers to interrogatories may be used to the extent permitted by the rules of evidence, but such answers are not conclusive and may be rebutted or explained by other evidence.
- (C) Where the answer to an interrogatory may be derived or ascertained from public documents on file in this state, or from documents which the party served with the interrogatory has furnished to the party submitting the interrogatory within the preceding twelve months, it is a sufficient answer to such interrogatory to specify the title of the document, the location of the document or the circumstances under which it was furnished to the party submitting the interrogatory, and the page or pages from which the answer may be derived or ascertained.

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- (D) Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, and the burden of deriving the answer is substantially the same for the party submitting the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party submitting the interrogatory a reasonable opportunity to examine, audit, or inspect such records.

**NO CHANGE**

**4906-2-18      Depositions.**

- (A) Any party to a board proceeding may take the testimony of any other party or person, other than a member of the board staff, by deposition upon oral examination with respect to any matter within the scope of discovery set forth in rule 4906-2-14 of the Administrative Code. The attendance of witnesses and production of documents may be compelled by subpoena as provided in rule 4906-2-23 of the Administrative Code.
- (B) Any party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to the deponent, to all parties, and to the board. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient for identification. If a subpoena duces tecum is to be served upon the person to be examined, a designation of the materials to be produced thereunder shall be attached to or included in the notice.
- (C) If any party shows that he or she was unable with the exercise of due diligence to obtain counsel to represent him or her at the taking of a deposition, the deposition may not be used against such party.
- (D) The board or the administrative law judge may, upon motion, order that a deposition be recorded by other than stenographic means, in which case the order shall designate the manner of recording the deposition, and may include provisions to assure that the recorded testimony will be accurate and trustworthy. If such an order is made, any party may arrange to have a stenographic transcription made at his or her own expense.
- (E) A party may, in the notice and in a subpoena, name a corporation, partnership, association, government agency, or municipal corporation and designate with reasonable particularity the matters on which examination is requested. The organization so named shall choose one or

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more of its officers, agents, employees, or other persons duly authorized to testify on its behalf, and shall set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

- (F) Depositions may be taken before any person authorized to administer oaths under the laws of the jurisdiction in which the deposition is taken, or before any person appointed by the board or the administrative law judge. Unless all of the parties expressly agree otherwise, no deposition shall be taken before any person who is a relative, employee, or attorney of any party, or a relative or employee of such attorney.
- (G) The person before whom the deposition is to be taken shall put the witness on oath or affirmation, and shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness. Examination and cross-examination may proceed as permitted in board hearings. The testimony shall be recorded stenographically or by any other means ordered under paragraph (D) of this rule. If requested by any of the parties, the testimony shall be transcribed at the expense of the party making the request.
- (H) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope upon the party taking the deposition, who shall transmit them to the officer, who in turn shall propound them to the witness and record the answers verbatim.
- (I) At any time during the taking of a deposition, the board or the administrative law judge may, upon motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass, or oppress the deponent or party, order the person conducting the examination to cease taking the deposition, or may limit the scope and manner of taking the deposition as provided in rule 4906-2-21 of the Administrative Code. Upon demand of the objecting party or deponent, the taking of the depositions shall be suspended for the time necessary to make a motion for such an order.
- (J) If and when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him or her, unless such examination and reading are expressly waived by the witness and the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making the changes. The deposition shall then be signed



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by the witness unless the signing is expressly waived by the parties or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within ten days after its submission to him or her, the officer shall sign it and state on the record the fact of the waiver or the illness or absence of the witness, or the fact of the refusal to sign together with the reason, if any, given for such refusal. The deposition may then be used as fully as though signed, unless the administrative law judge upon motion to suppress, holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

- (K) The officer shall certify on the deposition that the witness was duly sworn by him or her and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.
- (L) Documents and things produced for inspection during the examination of the witness shall, upon request of any party, be marked for identification and annexed to the deposition, except that:
- (1) The person producing the materials may substitute copies to be marked for identification, if all parties are afforded a fair opportunity to verify the copies by comparison with the originals.
  - (2) If the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to deposition.
- (M) Depositions may be used in board hearings to the same extent permitted in civil actions in courts of record. Unless otherwise ordered for good cause shown, any depositions to be used as evidence must be filed with the board at least three days prior to the commencement of the hearing. A deposition need not be prefiled if used to impeach the testimony of a witness at hearing.
- (N) The notice to a party deponent may be accompanied by a request made in compliance with rule 4906-2-19 of the Administrative Code for the production of documents or tangible things at the taking of the deposition.

**NO CHANGE**

**4906-2-19      Production of documents and things, entry upon land or other property.**

- (A) Subject to the scope of discovery set forth in rule 4906-2-14 of the Administrative Code, any

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party may serve upon any other party a written request to:

- (1) Produce and permit the party making the request, or someone acting on his or her behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, or data compilations, which are in the possession, custody, or control of the party upon whom the request is served.
  - (2) Produce for inspection, copying, sampling, or testing any tangible things which are in the possession, control, or custody of the party upon whom the request is served.
  - (3) Permit entry upon designated land or other property for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.
- (B) The request shall set forth the items to be inspected either by individual item or by category, and shall describe each category with reasonable particularity. The request shall also specify a reasonable time, place, and manner for conducting the inspection and performing the related acts.
- (C) The party upon whom the request is served shall serve a written response within twenty days after the service of the request, or within such shorter or longer time as the board or the administrative law judge may allow. The response shall state, with respect to each item or category, that the inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reason for the objection shall be stated. If an objection is made to part of an item or category, that part shall be specified. The party submitting the request may move for an order under rule 4906-2-22 of the Administrative Code with respect to any objection or other failure to respond to a request or any part thereof, or any failure to permit inspection as requested.
- (D) Where a request calls for the production of a public document on file in this state, or a document which the party upon whom the request is served has furnished to the party submitting the request within the preceding twelve months, it is a sufficient response to such request to specify the location of the document or the circumstances under which the document was furnished to the party submitting the request.

**NO CHANGE**

**4906-2-20 Request for admission.**

- (A) Any party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any specific matter within the scope of discovery

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set forth in rule 4906-2-14 of the Administrative Code, including the genuineness of any documents described in the request. Copies of any such documents shall be served with the request unless they are or have been otherwise furnished for inspection or copying.

- (B) Each matter for which an admission is requested shall be separately set forth. The matter is admitted unless, within twenty days after the service of the request, or within such shorter or longer time as the board or the administrative law judge may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection, signed by the party or by his or her attorney. If an objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully make an admission or denial. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only part of the matter of which an admission is requested, the party shall specify that portion which is true and qualify or deny the remainder. An answering party may not give lack of information as a reason for failure to admit or deny a matter unless the party states that he or she has made reasonable inquiry and that information known or readily obtainable is insufficient to enable him or her to make an admission or denial. A party who considers the truth of a matter of which an admission has been requested to be a genuine issue for the hearing may not, on that basis alone, object to the request, but may deny that matter or set forth the reasons why an admission or denial cannot be made.
- (C) Any party who has requested an admission may move for an order under rule 4906-2-22 of the Administrative Code with respect to any answer or objection. Unless it appears that an objection is justified, the board or the administrative law judge shall order that an answer be served. If an answer fails to comply with the requirements of this rule, the board or the administrative law judge may:
- (1) Order that the matter be admitted for purposes of the pending proceeding.
  - (2) Order that an amended answer be served.
  - (3) Determine that final disposition of the matter should be deferred until a prehearing conference or some other designated time prior to the commencement of the hearing.
- (D) Unless otherwise ordered by the board or the administrative law judge, any matter admitted under this rule is conclusively established against the party making the admission, but such admission may be rebutted by evidence offered by any other party. An admission under this rule is an admission for the purposes of the pending proceeding only and may not be used for any other purposes.

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**NO CHANGE**

**4906-2-21      Motions for protective orders.**

- (A) Upon motion of any party or person from whom discovery is sought, the board or the administrative law judge may issue any order which is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such a protective order may provide that:
- (1) Discovery not be had.
  - (2) Discovery may be had only on specified terms and conditions.
  - (3) Discovery may be had only by a method of discovery other than that selected by the party seeking discovery.
  - (4) Certain matters not be inquired into.
  - (5) The scope of discovery be limited to certain matters.
  - (6) Discovery be conducted with no one present except persons designated by the board or the administrative law judge.
  - (7) A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.
  - (8) Information acquired through discovery be used only for purposes of the pending proceeding, or that such information be disclosed only to designated persons or classes of persons.
- (B) No motion for a protective order shall be filed under this rule until the person or party seeking the order has exhausted all other reasonable means of resolving any differences with the party seeking discovery. A motion for a protective order shall be accompanied by:
- (1) A memorandum in support, setting forth the specific basis of the motion and citations to any authorities relied upon.
  - (2) Copies of any specific discovery request which are the subject of the request for a protective order.
  - (3) An affidavit of counsel, or of the person seeking a protective order if such person is not represented by counsel, setting forth the efforts which have been made to resolve any

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differences with the party seeking discovery.

- (C) If a request for a protective order is denied in whole or in part, the board or the administrative law judge may require that the party or person seeking the order provide or permit discovery on such terms and conditions as are just.
- (D) Upon motion of any party or person filing a document with the board's docketing division relative to a case before the board, the board or the administrative law judge assigned to the case may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where it is determined that both of the following criteria are met: The information is deemed by the board or administrative law judge assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure. The following requirements apply to a motion filed under this paragraph.
- (1) All documents submitted pursuant to this rule should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information. Such redacted documents should be filed with the otherwise required number of copies for inclusion in the public case file.
  - (2) Three unredacted copies of the allegedly confidential information shall be filed under seal, along with a motion for protection of the information, with the chief of the docketing division, or the chief's designee. Each page of the allegedly confidential material filed under seal must be marked as "confidential," "proprietary", or "trade secret".
  - (3) The motion for protection of allegedly confidential information shall be accompanied by a memorandum in support setting forth the specific basis of the motion, including a detailed discussion of the need for protection from disclosure, and citations of any authorities relied upon. The motion and memorandum in support shall be made part of the public record of the proceeding.
- (E) Pending a ruling on a motion filed in accordance with this rule, the information filed under seal will not be included in the public record of the proceeding or disclosed to the public until otherwise ordered or released pursuant to this rule. The board and its employees will undertake reasonable efforts to maintain the confidentiality of the information pending a ruling on the motion. A document or portion of a document filed with the docketing division that is marked "confidential", "proprietary", "trade secret", or with any other such marking, will not be afforded confidential treatment and protected from disclosure unless it is filed in accordance

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with this rule.

- (F) Unless otherwise ordered, any order prohibiting public disclosure pursuant to this rule shall automatically expire twenty-four months after the date of its issuance, and such information may then be included in the public record of the proceeding. Exceptions may be made for motions seeking to protect critical energy infrastructure information. A party wishing to extend a protective order beyond twenty-four months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure.
- (G) Nothing precludes the board from reexamining the need for protection issue de novo during the twenty-four month period if there is an application for rehearing on confidentiality or a public records request for the redacted information.

**NO CHANGE**

**4906-2-22 Motions to compel discovery.**

- (A) Any party, upon reasonable notice to all other parties and any persons affected thereby, may move for an order compelling discovery, with respect to:
- (1) Any failure of a party to answer an interrogatory served under rule 4906-2-17 of the Administrative Code.
  - (2) Any failure of a party to produce a document or tangible thing or permit entry upon land or other property as requested under rule 4906-2-19 of the Administrative Code.
  - (3) Any failure of a deponent to appear or to answer a question propounded under rule 4906-2-18 of the Administrative Code.
  - (4) Any other failure to answer or respond to a discovery request made under rules 4906-2-17 to 4906-2-20 of the Administrative Code.
- (B) For purposes of this rule, an evasive or incomplete answer shall be treated as a failure to answer.
- (C) No motion to compel discovery shall be filed under this rule until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought. A motion to compel discovery shall be accompanied by:
- (1) A memorandum in support, setting forth:

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- (a) The specific basis of the motion, and citations of any authorities relied upon.
  - (b) A brief explanation of how the information sought is relevant to the pending proceeding.
  - (c) Responses to any objections raised by the party or person from whom discovery is sought.
- (2) Copies of any specific discovery requests which are the subject of the motion to compel, and copies of any responses or objections thereto.
- (3) An affidavit of counsel, or of the party seeking to compel discovery if such party is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party or person from whom discovery is sought.
- (D) The board or the administrative law judge may grant or deny the motion in whole or in part. If the motion is denied in whole or in part, the board or the administrative law judge may issue such protective order as would be appropriate under rule 4906-2-21 of the Administrative Code.
- (E) Any order of the administrative law judge granting a motion to compel discovery in whole or in part may be appealed to the board in accordance with rule 4906-2-29 of the Administrative Code. If no application for review is filed within the time limit set forth in that rule, the order of the administrative law judge becomes the order of the board.
- (F) If any party or person disobeys an order of the board compelling discovery, the board may:
- (1) Seek appropriate judicial relief against the disobedient person or party under section 4903.04 of the Revised Code.
  - (2) Prohibit the disobedient party from further participation in the pending proceeding.
  - (3) Prohibit the disobedient party from supporting or opposing designated claims or defenses, or from introducing evidence or conducting cross-examination on designated matters.
  - (4) Dismiss the pending proceeding if such proceeding was initiated by an application or petition, unless such a dismissal would unjustly prejudice any other party.
  - (5) Take such other action as the board considers appropriate.

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## **NO CHANGE**

### **4906-2-23 Subpoenas.**

- (A) The board, any board member empowered to vote, or the administrative law judge assigned to a case may issue subpoenas, upon their own motion or upon motion of any party or the staff. A subpoena shall command the person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command such a person to produce the books, papers, documents, or other tangible things described therein. A copy of the motion for a subpoena and the subpoena itself should be submitted in person to the board, any board member entitled to vote, or the administrative law judge assigned to the case for signature of the subpoena. After the subpoena is signed, a copy of the motion for a subpoena and a copy of the signed subpoena shall be docketed and served upon the parties of the case. The person seeking the subpoena shall file the original signed subpoena and make arrangements for its service.
- (B) Arranging for service of a signed subpoena is the responsibility of the requesting person. A subpoena may be served by a sheriff, deputy sheriff, or any other person who is not a party and who is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering it to such person, reading it to him or her in person, leaving it at his or her place of residence, leaving it at his or her business address if the person is a party or employee of a party to the case, or mailing the subpoena via United States mail as certified or express mail, return receipt requested, with instructions to the delivering postal authority to show to whom delivered, date of delivery, and address where delivered. A subpoena may be served at any place within this state. The person serving the subpoena shall file a return thereof with the docketing division. When a subpoena is served by mail, the person filing the return shall include the signed receipt with the return.
- (C) The board or the administrative law judge may, upon their own motion or upon motion of any party, quash a subpoena if it is unreasonable or oppressive, or condition the denial of such a motion upon the advancement by the party on whose behalf the subpoena was issued of the reasonable costs of producing the books, papers, documents, or other tangible things described therein.
- (D) A subpoena may require a person, other than a member of the board staff, to attend and give testimony at a deposition, and to produce designated books, papers, documents, or other tangible things within the scope of discovery set forth in rule 4906-2-14 of the Administrative Code. Such a subpoena is subject to the provisions of rule 4906-2-21 of the Administrative Code as well as paragraph (C) of this rule.



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- (E) Unless otherwise ordered for good cause shown, all motions for subpoenas requiring the attendance of witnesses at a hearing must be filed with the board no later than five days prior to the commencement of the hearing.
- (F) Any persons subpoenaed to appear at a board hearing, other than a party or an officer, agent, or employee of a party, shall receive the same witness fees and mileage expenses provided in civil actions in courts of record. For purposes of this paragraph, the term "employee" includes consultants and other persons retained or specially employed by a party for purposes of the proceeding. If the witness is subpoenaed at the request of one or more parties, the witness fees and mileage expenses shall be paid by such party or parties. If the witness is subpoenaed upon motion of the board, any board member entitled to vote, or the administrative law judge, the witness fees and mileage expenses shall be paid by the state, in accordance with section 4903.05 of the Revised Code. Unless otherwise ordered, an application for a subpoena requiring the attendance of a witness at a hearing shall be accompanied by a deposit sufficient to cover the required witness fees and mileage expenses for one day's attendance. The deposit shall be tendered to the fiscal officer of the board, who shall retain it until the hearing is completed, at which time the officer shall pay the witness the necessary fees and expenses, and shall either charge the party making the deposit for any deficiency or refund to such party any surplus remaining from the deposit.
- (G) If any person fails to obey a subpoena issued by the board, any board member entitled to vote or an administrative law judge, the board may seek appropriate judicial relief against such person under section 4903.02 or 4903.04 of the Revised Code.
- (H) A sample subpoena is provided in the appendix to this rule.

**NO CHANGE**

**4906-2-24      Stipulations.**

- (A) Any two or more parties may enter into a written or oral stipulation concerning issues of fact or the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding.
- (B) A written stipulation must be signed by all of the parties joining therein, and must be filed with the board and served upon all parties to the proceeding twenty-four hours before the commencement of the hearing in a proceeding.
- (C) An oral stipulation may be made only during a public hearing or recorded at a prehearing conference, and all parties joining in such a stipulation must acknowledge their agreement thereto on the record. The board or the administrative law judge may require that an oral

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stipulation be reduced to writing and filed and served in accordance with paragraph (B) of this rule.

- (D) Unless otherwise ordered, parties who file a full or partial written stipulation or make an oral stipulation must file or provide testimony that supports the stipulation. Parties that do not join the stipulation may offer evidence and/or argument in opposition. No stipulation shall be considered binding upon the board.

**NO CHANGE**

**4906-2-25 Prehearing conferences.**

- (A) In any proceeding, the board or the administrative law judge may, upon motion of any party or upon their own motion, hold one or more prehearing conferences for the purpose of:
- (1) Resolving outstanding discovery matters, including:
    - (a) Ruling on pending motions to compel discovery or motions for protective orders.
    - (b) Establishing a schedule for the completion of discovery.
  - (2) Ruling on any other pending procedural motions.
  - (3) Identifying the witnesses to be presented in the proceeding and the subject matter of their testimony.
  - (4) Identifying and marking exhibits to be offered in the proceeding.
  - (5) Discussing possible admissions or stipulations regarding issues of fact or the authenticity of documents.
  - (6) Clarifying the issues involved in the proceeding.
  - (7) Discussing or ruling on any other procedural matter which the board or the administrative law judge considers appropriate.
- (B) Reasonable notice of any prehearing conference shall be provided to all parties. Unless otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at such conference.
- (C) Following the conclusion of a prehearing conference, the board or the administrative law judge may issue an appropriate prehearing order, reciting or summarizing any agreements reached or

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rulings made at such conference. Unless otherwise ordered for good cause shown, such order shall be binding upon all persons who are or subsequently become parties, and shall control the subsequent course of the proceeding.

**NO CHANGE**

**4906-2-26 Practice before the board and designation of counsel of record.**

- (A) Except as otherwise provided in paragraphs (B), (C), and (D) of this rule, each party shall be represented by an attorney at law authorized to practice before the courts of this state, with the exception of an individual person who is appearing on his or her own behalf.
- (B) An out-of-state attorney may seek permission to appear pro hac vice before the board in any activity of a case upon the filing of a motion. The motion shall include all the information and documents required by paragraph (A)(6) of section 2 of rule XII of the Rules of the Government of the Bar of Ohio.
- (C) Certified legal interns may appear before the board under the direction of a supervising attorney in accordance with rule II of the Supreme Court Rules for the Government of the Bar of Ohio. No legal intern shall participate in a board hearing in the absence of the supervising attorney without:
  - (1) The written consent of the supervising attorney.
  - (2) The approval of the board or the administrative law judge.
- (D) Where a party is represented by more than one attorney, one of the attorneys shall be designated as the "counsel of record," who shall have principal responsibility for the party's participation in the proceeding. The designation "counsel of record" shall appear following the name of that attorney on all pleadings or papers submitted on behalf of the party.
- (E) No attorney shall withdraw from a board proceeding without prior written notice to the board and shall serve a copy of the notice upon the parties to the proceeding.

**NO CHANGE**

**4906-2-27 Motions.**

- (A) All motions, unless made at a public hearing or transcribed prehearing conference, or unless otherwise ordered for good cause shown, shall be in writing and shall be accompanied by a memorandum in support. The memorandum in support shall contain a brief statement of the grounds for the motion and citations of any authorities relied upon.

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(B) Except as otherwise provided in paragraphs (C) and (F) of this rule:

- (1) Any party may file a memorandum contra within fifteen days after the service of a motion, or such other period as the board or the administrative law judge requires.
- (2) Any party may file a reply memorandum within seven days after the service of a memorandum contra, or such other period as the board or the administrative law judge requires.

(C) Any motion may include a specific request for an expedited ruling. The grounds for such a request shall be set forth in the memorandum in support. If the motion requests an extension of time to file pleadings or other papers of five days or less, an immediate ruling may be issued without the filing of memoranda. In all other cases, the party requesting an expedited ruling must first contact all other parties to determine whether any party objects to the issuance of such a ruling without the filing of memoranda. If the moving party certifies that no party objects to the issuance of such a ruling, an immediate ruling may be issued. If any party objects to the issuance of such a ruling, or if the moving party fails to certify that no party has any objections, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the board or the administrative law judge requires. No reply memoranda shall be filed in such cases unless specifically requested by the board or the administrative law judge.

(D) All written motions and memoranda shall be filed with the board and served upon all parties in accordance with rules 4906-2-02 and 4906-2-05 of the Administrative Code.

(E) For purposes of this rule, the term "party" includes all persons who have filed notices or petitions to intervene which are pending at the time a motion or memorandum is to be filed or served.

(F) Notwithstanding paragraphs (B) and (C) of this rule, the board or the administrative law judge may, upon their own motion, issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party.

(G) The administrative law judge may direct that any motion made at a public hearing or transcribed prehearing conference be reduced to writing and filed and served in accordance with this rule.

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**NO CHANGE**

**4906-2-28 Procedural rulings.**

The board or the administrative law judge may rule, in writing, upon any procedural motion or other procedural matter. A copy of any such ruling shall be served upon all parties to the proceeding.

**NO CHANGE**

**4906-2-29 Interlocutory appeals.**

- (A) Any party who is adversely affected thereby may take an immediate interlocutory appeal to the board from any ruling issued under rule 4906-2-28 of the Administrative Code or any oral ruling issued during a hearing or prehearing conference which:
- (1) Grants a motion to compel discovery or denies a motion for a protective order.
  - (2) Denies a motion to intervene or terminates a party's right to participate in a proceeding.
  - (3) Refuses to quash a subpoena.
  - (4) Requires the production of documents or testimony over an objection based on privilege.
- (B) Except as provided in paragraph (A) of this rule, no party may take an interlocutory appeal from any ruling issued under rule 4906-2-28 of the Administrative Code or any oral ruling issued during a hearing or prehearing conference unless the appeal is certified to the board by the administrative law judge. The administrative law judge shall not certify such an appeal unless he or she finds that:
- (1) The appeal presents a new or novel question of law or policy.
  - (2) The appeal is taken from a ruling which represents a departure from past precedent and an immediate determination by the board is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the board ultimately reverse the ruling in question.
- (C) Any party wishing to take an interlocutory appeal from any ruling must file an application for review with the board within five days after the ruling is issued. An extension of time for the filing of an interlocutory appeal may be granted only under extraordinary circumstances. The application for review shall set forth the basis of the appeal and citations of any authorities relied upon. A copy of the ruling or the portion of the record which contains the ruling shall be

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attached to the application for review. If the record is unavailable, the application for review must set forth the date the ruling was issued and must describe the ruling with reasonable particularity.

- (D) Any party intending to file an interlocutory appeal on the day before a day on which board offices are closed shall notify all other parties of the intent to file an interlocutory appeal by three p.m. on the day of filing. Notice may be personal or by phone or email. The party filing the interlocutory appeal shall serve, upon request, a copy of the appeal by email or fax. Unless otherwise ordered by the board, any party may file a memorandum contra within five days after the filing of any interlocutory appeal.
- (E) Upon consideration of an interlocutory appeal, the board may, in its discretion:
- (1) Affirm, reverse, or modify the ruling of the administrative law judge.
  - (2) Dismiss the appeal, if the board is of the opinion that:
    - (a) The issues presented are moot.
    - (b) The party taking the appeal lacks the requisite standing to raise the issues presented or has failed to show prejudice as a result of the ruling in question.
    - (c) The issues presented should be deferred and raised at some later point in the proceeding.
- (F) Any party that is adversely affected by a ruling issued under rule 4906-2-28 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference and that (1) elects not to take an interlocutory appeal from the ruling or (2) files an interlocutory appeal that is not certified by the administrative law judge may still raise the propriety of that ruling as an issue for the board's consideration by discussing the matter as a distinct issue in its initial brief or in any other appropriate filing prior to the issuance of the board's order in the case.

**NO CHANGE**

**4906-2-30      Decision by the board.**

Within a reasonable time after the conclusion of the hearing, the board shall issue a final decision based only on the record, including such additional evidence as it shall order admitted. The board may determine that the location of all or part of the proposed facility should be modified. If it so finds, it may condition its certificate upon such modifications. Persons and municipal corporations shall be given reasonable notice thereof. The decision of

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the board shall be entered on the board journal and into the record of the hearing. Copies of the decision or order shall be served on all attorneys of record and all unrepresented parties in the proceedings by ordinary mail.

**NO CHANGE**

**4906-2-31 Reopening of proceedings.**

- (A) The board or the administrative law judge may, upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order.
- (B) A motion to reopen a proceeding shall specifically set forth the nature and purpose. If the purpose is to permit the presentation of additional evidence, the motion shall specifically describe the nature and purpose of the requested reopening of such evidence and shall set forth facts showing why such evidence could not with reasonable diligence have been presented earlier in the proceeding.

**NO CHANGE**

**4906-2-32 Applications for rehearing.**

- (A) Any party or any affected person, firm, or corporation may file an application for rehearing, within thirty days after the issuance of a board order, in the manner and form and circumstances set forth in section 4903.10 of the Revised Code. An application for rehearing must set forth the specific ground or grounds upon which the applicant considers the board order to be unreasonable or unlawful. An application for rehearing must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the application for rehearing and which shall be filed no later than the application for rehearing.
- (B) Any party may file a memorandum contra within ten days after the filing of an application for rehearing.
- (C) As provided in section 4903.10 of the Revised Code, all applications for rehearing must be submitted within thirty days after an order has been journalized by the secretary of the board, or in the case of an application that is subject to automatic approval under the board's procedures, an application for rehearing must be submitted within thirty days after the date on which the automatic time frame has expired, unless the application has been suspended by the board.

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- (D) A party or any affected person, firm, or corporation may only file one application for rehearing to a board order within thirty days following the entry of the order upon the journal of the board.
- (E) The board, the chairman of the board, or the administrative law judge may issue an order granting rehearing for the purpose of affording the board more time to consider the issues raised in an application for rehearing.

**NO CHANGE**

**4906-2-33 Supreme court appeals.**

Consistent with the requirements of section 4903.13 of the Revised Code, a notice of appeal of a board order to the Ohio supreme court must be filed with the board's docketing division within the time period prescribed by the court and served upon the chairman of the board or, in his absence, upon any voting board member, or by leaving a copy at the offices of the board. A notice of appeal of a board order to the Ohio supreme court may not be delivered via fax or email.





## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio (PUCO)

**Rule Contact Name and Contact Information:**

Angela Hawkins, Legal Director

Phone: 614-466-0122

Email: [Angela.Hawkins@puco.ohio.gov](mailto:Angela.Hawkins@puco.ohio.gov)

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

Ohio Power Siting Board (OPSB) Procedural Provisions

Rule Number(s): 4906-2-01 through 4906-2-33

Date of Submission for CSI Review: N/A

Public Comment Period End Date: August 12, 2022

**Rule Type/Number of Rules:**

☐ New/\_\_\_ rules

☒ No Change/ 27 rules (FYR? Y)

☒ Amended/ 6 rules (FYR? Y)

☐ 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

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[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

**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 rules for CSI review.**

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

**The rule:**

- ☒ 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.
- ☒ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **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.***

The proposed revisions to the rules in Chapter 4906-2, Ohio Adm.Code (OAC), make general revisions to align the procedural provisions of the OPSB with those of the Public Utilities Commission of Ohio, which should improve stakeholder understanding and compliance with the rules based on the number of stakeholders that regularly practice before both agencies.

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**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.**

The amendments to the rules in Chapter 4901-1, OAC, are proposed pursuant to Section 119.032, Revised Code, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The OPSB is authorized to adopt the proposed rules pursuant to Chapter 4906, Revised Code, which governs the rules and regulations promulgated by the OPSB. Further, on July 12, 2021, the governor of the state of Ohio signed into law Am. S.B. 52 (S.B. 52) amending provisions that govern OPSB certificates, including those contained in Chapter 4906, Revised Code. The OPSB intends to combine the review of its rules with its review of possible provisions to the rules resulting from the enactment of S.B. 52.

**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 rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to enforce a federal requirement.

**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)?**

Chapter 4906-2, OAC, describes the procedural standards that apply to all persons or entities that participate in cases before the OPSB.

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

The rules contained in this chapter are general provisions that govern matters before the OPSB pursuant to Chapter 4906 of the Revised Code. As such, there will not be measurable outputs or outcomes as a result of the adoption of Chapter 4906-2, OAC.

- 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.*

The OPSB conducted a three-part workshop on October 4 and October 8, 2021, using virtual hearing technology, to receive feedback from interested stakeholders and the general public in Case No. 21-902-GE-ORD. Additionally, the OPSB conducted three stakeholder engagement meetings on March 11, March 12, and May 12, 2020, to gather stakeholder information as to the rules.

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

The OPSB considered recommendations by stakeholders at the engagement meetings and workshop are as follows:

- (1) Additional project information should be included in certificate applications.
- (2) Specific to electric transmission and gas pipeline projects, the types of information that should be required in relation to the public interest, convenience, and necessity of the project.
- (3) In regard to project siting, the types of information that a certificate applicant should submit in consideration of public involvement as to the site/route selections.
- (4) The types of information that should be filed regarding public interaction and any complaint resolution issues concerning significant preconstruction and pre-operation project developments.
- (5) The types of information that a wind or solar facility applicant should file regarding decommissioning plans.
- (6) The types of information that an applicant should file regarding interactions with local governments in a project area.

(7) The types of information that an applicant should file regarding environmental, aviation, noxious weed management, irrigation and filed drainage system mitigation, storm water runoff management, and communication system mitigation.

(8) Additional considerations the OPSB should utilize as to solar project certifications.

(9) The types of additional enforcement measures the OPSB should consider, and how they are best funded.

**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 considered. In adopting changes to Chapter 4906-2, OAC, the OPSB takes into account feedback from stakeholders and the general public regarding the rules in effect prior to the proposed changes. Stakeholder and public feedback can be made directly to the OPSB by filing comments from such entities as persons proposing, owning or operating major utility facilities or economically significant wind farms, electric distribution utilities, gas and natural gas local distribution companies, the Ohio Gas Association, the Oil and Gas Association, applicants who have filed cases with the OPSB, members of the general public, or any other entity. The requirements in S.B. 52 were also taken into account.

**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?**

The operation of the OPSB is specifically provided for in Chapter 4906 of the Revised Code, and the promulgation of rules governing the siting process is specifically provided for in Section 4906.03, Revised Code. As a result, regulatory alternatives were not available.

**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.***

No performance-based regulations were considered, as the rules in Chapter 4906-2, OAC, are specifically mandated by Section 4906.03, Revised Code, and dictate process and do not define a required outcome. Thus, performance-based regulation is not appropriate.

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

The OPSB has reviewed other state regulations and found no duplication as to the adoption of these rules pursuant to Chapter 4906, Revised Code, and S.B. 52.

**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.**

Chapter 4906-2, OAC, has been in effect without complaints about inconsistent application of the Chapter. The proposed changes that result of the proposed amendments to this chapter will be communicated via distribution of the final rules in Case No. 21-902-GE-BRO, as well as through updates to the OPSB website.

**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**

Chapter 4906-2, OAC, provides guidance to entities seeking to site facilities within the state of Ohio. Only entities seeking certificates to build, own, or operate facilities will be affected by these rules. Effects to business include the continuing application fees and the time it takes for compliance with application and certificate monitoring requirements.

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

Costs of compliance vary greatly depending on the nature of the facility that is seeking or operating pursuant to a OPSB certificate. Costs include environmental studies, application preparation, service and distribution of the application, participation in the public review process, and the OPSB’s cost of reviewing applications and ongoing operations to ensure that they align with certificate conditions.

**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.*

There is no representative business for purpose of quantifying any adverse business impact from the regulation. Cost estimates are billed according to the estimated cost of construction of the project that is being considered for OPSB certification.

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

Chapter 4906-2, OAC, is required by Section 4906.03, Revised Code. Therefore, these rules are required by law and were drafted to minimize adverse impacts on business while maintaining a strong focus on the rights and protections afforded the public.

**Regulatory Flexibility**

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

Chapter 4906-2, OAC, reflects the legislative intent of Section 4906.03, Revised Code, and provides for the certification of new facilities in Ohio. This is not an activity typically undertaken by an entity that would be defined as a small business,

**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 OPSB only assesses penalties for violations of certificates, which occur after an applicant has begun construction of an approved facility.

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

The OPSB actively works with applicants, as well as parties who have been granted certificates, to assure compliance with the OPSB's rules and the terms and conditions of their certificates.



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**AMENDED**

**4906-3-01 Purpose and scope.**

- (A) This chapter sets forth the specific procedural requirements for the filing of a standard certificate application.
- (B) The board may, upon its own motion, or upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.
- (C) With respect to any aspect of the public ~~information program~~ notification requirements, including all notices, service requirements, and other forms of public information, inadvertent failure of service on, or notice to, any of the persons entitled to receive service pursuant to the requirements of this chapter, may be cured pursuant to orders of the board or the administrative law judge, designed to afford such persons adequate notice to enable their effective participation in the proceeding.

**AMENDED**

**4906-3-02 Preapplication ~~conference~~meeting.**

An applicant considering construction of a major utility facility or economically significant wind farm may request a preapplication ~~conference~~meeting with the board staff prior to submitting an application. The results of such ~~conference~~meeting(s) ~~shall~~ in no way constitutes approval or disapproval of a particular site or route, and ~~shall~~ in no way predetermines the board's decision regarding subsequent certification or approval.

**AMENDED**

**4906-3-03 Public notification requirements~~information program~~.**

- (A) The applicant shall file a preapplication notification letter with the board at least twenty-one ~~fifteen~~ days prior to the date of any public informational meeting(s) held pursuant to paragraph (B) of this rule. The preapplication notification letter shall include the following information:
- (1) A basic description of the project that shall include information about the anticipated function, equipment size, approximate ~~areal extent~~acreage, general location, schedule, and purpose of the project.
  - (2) The date, time, and location of the public informational meetings to be held pursuant to paragraph (B) of this rule.



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(3) A list of any ~~anticipated~~ waivers of the board's rules that the applicant anticipates it will be requesting for the project.

(4) Confirmation that the applicant has prominently posted the information described in this section on its website prior to filing the preapplication notification letter.

(B) ~~No~~ After satisfying any applicable meeting requirements under section 303.61 of the Revised Code, and no more than ninety days prior to submitting a standard certificate application to the board, the applicant shall conduct at least ~~one~~ two informational meetings open to the public to be held in the area in which the project is located. The first of these informational meetings should notify the public and solicit input on the scope of the project. The second of these informational meetings should present the project to the public in a manner consistent with what will be presented in the application. If substantial changes are made to the application after the second informational meeting, the executive director of the board ~~shall have the authority to may~~ require that the applicant hold another informational meeting at his/her discretion. If, under division (A)(2) of section 303.62 of the Revised Code, a county adopts a resolution limiting the boundaries of the proposed facility, the applicant will reconduct any public informational meeting or meetings that it had conducted under this paragraph prior to the county's adoption of that resolution, to reflect the updated boundaries under the county's resolution.

(1) The applicant will give at least one public notice of each of the informational meetings in newspapers of general circulation in the project area, to be published not more than twenty-one days or fewer than seven days before the date for the meeting. ~~The Each~~ notice shall occupy not less than one-fourth of each newspaper's standard page, with letters not less than ten-point type, and shall bear the heading "Notice of Public Informational Meeting for Proposed Major Utility Facility" or "Notice of Public Informational Meeting for Proposed Economically Significant Wind Farm," as applicable, in bold letters not less than one-fourth inch high or thirty-point type. ~~The Each~~ notice shall not be published in the legal notices section of the newspaper. ~~The information~~ Each notice provided shall address the ~~need for purpose of~~ the project, the project construction schedule, and proposed location of the facility ~~the design of the facility, and other pertinent data.~~ Proof of publication, including a copy of the public notice, shall be filed ~~with the board in the case record~~ no later than thirty days from the date of publication.

(2) At least twenty-one days before the initial informational meeting, the applicant shall send a letter to each property owner and affected ~~tenant~~ resident. The letter shall briefly describe the certification process, including information on how to participate in the proceeding and how to request notification of the public hearing. The letter shall include the applicant's

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~~and board's website and contact information~~~~the website, mailing address, email address, and telephone number of the board.~~ The letter shall also include the date, time, and location of the informational meeting, and a ~~brief~~ description of the project. ~~The letter shall be sent by first class mail.~~ Notice of compliance with this requirement, including a copy of the letter, shall be filed ~~with the board~~in the case record and a list of the names of each ~~tenant-resident~~ and property owner shall be provided to staff. Inability or inadvertent failure to notify the persons described in this rule shall not constitute failure to give public notices, provided there is substantial compliance with these requirements. The letter shall be sent to each property owner and affected ~~tenant-resident~~:

- (a) Within the planned site or along the proposed route ~~options~~ for the proposed facility.
  - (b) Contiguous to the planned site or contiguous to the preferred or alternate route(s) of the proposed facility.
  - (c) Who may be approached by the applicant for any additional easement or land access necessary for the construction, operation, or maintenance of the facility.
  - (d) If the property owner's address is not the same as the address affected by the proposed facility, then the applicant shall also send a letter to the affected property.
- (3) At least twenty-one days before each informational meeting, the applicant shall also display information required by B(1) and (2) of this rule in a prominent location on the applicant's website.
- (4) If the location of the proposed facility changes after the informational meetings, the applicant shall send a letter to any property owner and affected ~~tenant-resident~~, as defined by paragraph (B)(2) of this rule. The letter shall be sent at least twenty-one days prior to the public hearing. The letter shall ~~briefly~~ describe the certification process, including information on how to participate in the proceeding, and the date, time, and location of the public hearing. The letter shall also include a ~~brief~~ description of the project. The letter shall include the applicant's ~~and board's website and contact information~~~~the website, mailing address, email address, and telephone number of the board.~~ ~~The letter shall be sent by first class mail.~~ Notice of compliance with this requirement shall be filed ~~with the board~~in the case record and a list of the names of each ~~tenant-resident~~ and property owner shall be provided to staff.
- (45) At the public informational meetings, the applicant shall present maps showing the proposed facility, as well as mapping software with aerial imagery that contains layers representing facility components along with sensitive receptors and address search

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~~capabilities at a scale that allows affected property owners to identify the location of their property in relation to the facility.~~ The applicant shall solicit written comments from the attendees. The applicant shall summarize in its certificate application how many and what types of comments were received and include all written comments with its application filing.

**AMENDED**

**4906-3-04 Combined standard and accelerated certificate applications.**

- (A) ~~If a~~ project that qualifies for accelerated review by the board and is an associated facility of a major utility facility that is subject to filing as a standard certificate application with the board, ~~the projects~~ may be ~~combined into one~~ included in the standard certificate application.
- (B) Electric generation plants and associated electric power transmission lines or gas pipeline projects that do not qualify for accelerated review shall be filed in separate standard certificate applications.

**AMENDED**

**4906-3-05 Fully developed site or route information ~~Alternatives in standard certificate applications.~~**

All standard certificate applications ~~for electric power transmission facilities and gas pipelines~~ shall include fully developed information on two sites/routes. Applicants for electric power generation facilities may choose to include fully developed information on two or more sites. Each proposed site/route shall be designated as a preferred or an alternate site/route. Each proposed site/route shall be a viable alternative on which the applicant could construct the proposed facility. Two routes shall be considered as alternatives if not more than twenty per cent of the routes are in common. The percentage in common shall be calculated based on the shorter of the two routes. Any segment of a route that makes use of existing transmission structures or is entirely within existing transmission rights-of-way may be excluded from the calculation of the percentage in common. Standard certificate applications may include information on additional alternatives, which may include site, route, major equipment, or other alternatives.

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**AMENDED**

**4906-3-06      Completeness of standard certificate applications, staff investigations, and staff reports.**

- (A) Upon receipt of a standard certificate application for an economically significant wind farm or major utility facility, excluding those filed under paragraph (B) of this rule, the ~~chairman~~ chairperson, or the chairperson's designee, shall examine the certificate application to determine compliance with Chapters 4906-1 to 4906-7 of the Administrative Code. Within sixty days following receipt, the ~~chairman~~ chairperson or designee shall either:
- (1) Accept the standard certificate application as complete and ~~complying with the content requirements of section 4906.06 of the Revised Code and Chapters 4906-1 to 4906-7 of the Administrative Code, and~~ notify the applicant to serve and file a certificate of service for the accepted, complete application.
  - (2) Reject the standard certificate application as incomplete and mail a copy of the completeness decision to the applicant, setting forth specific grounds on which the rejection is based. ~~The chairman shall mail a copy of the completeness decision to the applicant. If an application is determined as incomplete, any person may appeal for redetermination by an administrative law judge.~~
- (B) Upon receipt of a standard certificate application for a major utility facility which is related to a coal research and development project as defined in section 1551.01 of the Revised Code, or to a coal development project as defined in section 1551.30 of the Revised Code, submitted to the Ohio coal development office for review under division (B)(8) of section 1551.33 of the Revised Code, the ~~chairman~~ chairperson shall promptly accept the certificate application as complete and shall notify the applicant to file the accepted, complete application in accordance with the provisions of rules 4906-3-08 and 4906-3-09 of the Administrative Code.
- (C) Staff shall conduct an investigation of each accepted, complete application and submit a written report as provided by division (C) of section 4906.07 of the Revised Code not less than fifteen days prior to the beginning of public hearings.
- (1) The staff report for an economically significant wind farm or major utility facility, excluding those filed under paragraph (B) of this rule shall set forth the nature of the investigation, and shall contain recommended findings with regard to division (A) of section 4906.10 of the Revised Code and all applicable rules contained in Chapters 4906-1 to 4906-7 of the Administrative Code.

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- (2) The staff report for a major utility facility that is filed under paragraph (B) of this rule shall set forth the nature of the investigation and shall contain recommended findings with regard to divisions (A)(2), (A)(3), (A)(5), (A)(6), and (A)(7) of section 4906.10 of the Revised Code.
- (3) The staff report shall be filed by staff and become part of the official record in the case pursuant to section 4906.07 of the Revised Code.
- (4) Copies of the staff report shall be provided to the board members, the administrative law judge assigned to the case, the applicant, ~~and~~ all persons who have become parties to the proceedings, ~~and. Copies shall be made available~~ to any person upon request.
- (5) The ~~chairman~~ chairperson shall cause either a copy of such staff report or a notice of the availability of such staff report to be placed in the main public library of each political subdivision as referenced in division (B) of section 4906.06 of the Revised Code. If a notice is provided, that notice shall state that an electronic or paper copy of the staff report is available from staff (with instructions as to how to obtain an electronic or paper copy) and available for inspection at the board's main office. Staff will also maintain on the board's website information as to how to request an electronic or paper copy of the staff report. Upon request for a paper copy of the staff report, staff shall supply the report without cost.

**AMENDED**

**4906-3-07 Service and publication of accepted, complete applications.**

**(A) Except as provided in paragraph (B) of this rule:**

**(1)** Upon receipt of notification from the ~~chairman~~ chairperson that the standard certificate application is complete, the applicant shall:

**(1a)** Serve a copy of the accepted, complete application, either electronically or by portable solid-state drive~~disk~~, on the chief executive officer of each municipal corporation, county, township, and the head of each public agency charged with the duty of protecting the environment or of planning land use in the area in which any portion of such facility is to be located. Hard copies shall be made available upon request. As used in this rule, "any portion" includes site or route alternatives as provided in rule 4906-3-05 of the Administrative Code.

**(2b)** Place a copy of the accepted, complete application or place a notice of the availability of such application in the main public library of each political subdivision as referenced in

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division (B) of 4906.06 of the Revised Code. If a notice is provided, that notice shall state that an electronic or paper copy of the accepted, complete application is available from the applicant (with instructions as to how to obtain an electronic or paper copy), available for inspection at the applicant's main office, available for inspection at the board's main office, and available at any other sites at which the applicant will maintain a copy of the accepted, complete application.

(~~3c~~) Supply the board's staff with such additional copies of the accepted, complete application as the board's staff ~~shall~~ requires.

(~~4d~~) Supply the board with a certificate of its service of such accepted, complete standard certificate application, which shall include the name, address, and official title of each person so served, together with the date on which service was performed and a description of the method by which service was obtained.

(~~5e~~) Submit the application fee.

(~~B2~~) The applicant shall maintain on its website, information as to how to request an electronic or paper copy of the accepted, complete application. Upon request for a paper copy of the accepted, complete application, the applicant shall supply the copy within five business days and at no more than cost.

(~~E3~~) Proof of compliance with the requirements of this rule shall be filed in the case.

(B) In the case of a standard certificate application regarding a jurisdictional wind or solar facility, or an application for a material amendment as defined in section 303.57 of the Revised Code, not later than three days after the administrative law judge determines the applicant's compliance with division (A) of section 4906.31 of the Revised Code, the board will provide a full and complete copy of the application to each board of trustees and each board of county commissioners of the townships or counties in which the facility is to be located. In this case, the applicant need not provide a copy of the application to those entities under paragraph (A) of this rule.

**AMENDED**

**4906-3-08      Scheduling for accepted, complete applications and the effective date of filing.**

(A) ~~Once~~ After the applicant has complied with rule 4906-3-07 of the Administrative Code, the board or administrative law judge shall file an entry in the case indicating the date on which the accepted, complete application is deemed as filed.

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- (B) Upon an accepted, complete application being deemed filed, the board or administrative law judge shall promptly fix the date(s) for the public hearing(s) and notify the parties.

**AMENDED**

**4906-3-09 Public notice of accepted, complete applications.**

- (A) After filing an accepted, complete application with the board, the applicant shall give two notices of the proposed utility facility.
- (1) The initial notice shall be a written notice to those persons that received service of a copy of the application pursuant to rule 4906-3-07 of the Administrative Code and each owner and resident of a property that would contain or be crossed by the proposed equipment, route, or facility or any proposed alternatives, and each owner and resident of a property that would be adjacent to a property that would contain or be crossed by the proposed equipment, route, or facility or any proposed alternatives ~~and/or adjacent to the preferred and alternative routes for transmission lines and/or a new generation site~~ within fifteen days of the filing of the accepted, complete application and shall contain the following information:
- (a) The name and a brief description of the proposed facility, including type and capacity.
  - (b) A map showing the location and general layout of the proposed facility.
  - (c) A list of officials served with copies of the accepted, complete application pursuant to rule 4906-3-07 of the Administrative Code.
  - (d) A list of public libraries that were sent paper copies or notices of availability of the accepted, complete application, and other readily accessible locations (including the applicant's website and the website, mailing address, and telephone number of the board) where copies of the accepted, complete application are available for public inspection.
  - (e) A statement, including the assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is now pending before the board.
  - (f) A statement setting forth the eight criteria listed in division (A) of section 4906.10 of the Revised Code used by the board to review an application.
  - (g) Section 4906.07 of the Revised Code, including the time and place of the public and adjudicatory hearings.



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(h) Division (C) of section 4906.08 of the Revised Code, including the deadline for filing a notice of intervention or petition for leave to intervene as established by the board or administrative law judge.

(2) The second public notice shall be a written notice to those persons ~~that received to whom~~ the initial notice is required to be sent pursuant to paragraph (A)(1) of this rule and shall be published in newspapers of general circulation in those municipal corporations and counties in which the chief executive received service of a copy of the application pursuant to rule 4906-3-07 of the Administrative Code at least seven days but no more than twenty-one days before the public hearing. The notice shall be published with letters not less than ten-point type, shall bear the heading "Notice of Proposed Major Utility Facility" in bold type not less than one-fourth inch high or thirty-point type and shall contain the following information:

- (a) The name and a brief description of the project.
- (b) A map showing the location and general layout of the proposed facility.
- (c) A statement, including the assigned docket number that an application for a certificate to construct, operate, and maintain said facility is now pending before the board.
- (d) The date, time, and location of the public and adjudicatory hearings.
- (e) A statement that the public will be given an opportunity to comment on the proposed facility.
- (f) A reference to the date of the first public notice.

(B) Except as required by Revised Code, ~~if~~ inability or inadvertent failure to notify the persons or publish the notice described in this rule shall not constitute a failure to give public notice, provided substantial compliance with these requirements is met.

**NO CHANGE**

**4906-3-10 Proof of publication.**

- (A) The applicant shall file a copy of the initial notice with the board within fourteen days after the notice is sent.
- (B) The applicant shall provide proof of the second public notice to the board at least three days before the public hearing by filing a copy of the notice sent to persons pursuant to rule 4906-3-09 of the Administrative Code and providing either a copy of the entire date-marked



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newspaper page that contains the actual notice or copy of the proof of publication from the newspaper(s) in which the notice was published.

- (C) Inadvertent failure of service on, or notice to, any of the persons entitled to receive service pursuant to the requirements for this chapter, may be cured pursuant to orders of the board or the administrative law judge, designed to afford such persons adequate notice to enable their effective participation in the proceeding. In addition, the board or the administrative law judge may, after filing, require the applicant to serve notice of the accepted, complete application or copies thereof, or both, upon such other persons, and file proof thereof, as the board or the administrative law judge considers appropriate.

**AMENDED**

**4906-3-11 Amendments of accepted, complete applications and of certificates.**

- (A) The applicant shall submit to the board any applications for amendment to a pending accepted, complete application in accordance with rule 4906-3-06 or 4906-6-06 of the Administrative Code.
- (1) Each application for amendment shall specifically identify the portion of the pending accepted, complete application which has been amended.
- (2) The applicant shall serve a copy of the application for amendment upon all persons previously entitled to receive a copy of the application, and shall supply the board with proof of such service.
- (3) The applicant shall place a copy of such application for amendment or notice of its availability in all libraries consistent with rule 4906-3-07 of the Administrative Code, and shall supply the board with proof of such action.
- (4) Upon review, the board or the administrative law judge may require such additional action as is determined necessary to inform the general public of the proposed amendment, including, but not limited to:
- (a) Ordering the applicant to issue public notice pursuant to rule 4906-3-09 of the Administrative Code.
- (b) If a hearing is required, the hearing may be postponed on the pending, accepted, complete application and/or application for amendment up to ninety days after receipt of said application for amendment.

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(5) Staff shall review the application for amendment pursuant to paragraph (C) of rule 4906-3-06 of the Administrative Code.

(6) Unless otherwise ordered by the board or administrative law judge, modifications to a proposed route that are introduced into the record by the applicant during review of the accepted, complete application and during the hearing process shall not be considered amendments if such modifications are within the two thousand foot study corridor and do not impact additional landowners by requiring easements for construction, operation, or maintenance or appear to create further additional adverse impacts within the planned right-of-way of the proposed facility. Unless otherwise ordered by the board or administrative law judge, modifications to the footprint of an electric power generation facility that are introduced into the record by the applicant during review of the accepted, complete application and during the hearing process shall not be considered amendments if such modifications do not appear to create further additional adverse impacts ~~for each property owner to properties adjacent to~~ or within the planned site, or adjacent to or within the right-of-way of the proposed facility.

(B) Applications for amendments to certificates shall be submitted in the same manner as if they were applications for a certificate.

(1) Staff shall review applications for amendments to certificates pursuant to rule 4906-3-06 or 4906-6-06, as applicable, of the Administrative Code and make appropriate recommendations to the board and the administrative law judge.

(a) If the board, its executive director, or the administrative law judge determines that the proposed change in the certified facility would result in any ~~significant adverse material~~ increase in any environmental impact of the certified facility, or a substantial change in the location of all or a portion of such certified facility other than as provided in the alternates set forth in the application, then a hearing shall be held in the same manner as a hearing is held on a certificate application.

(b) If the board, its executive director, or the administrative law judge determines that a hearing is not required, as defined in paragraph (B)(1)(a) of this rule, the applicant shall be directed to take such steps as are necessary to notify all parties of that determination.

(2) The applicant shall:

(a) Serve a copy of the application for amendment to a certificate upon:

(i) The persons entitled to service pursuant to rule 4906-3-07 or 4906-6-07, as

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applicable, of the Administrative Code.

- (ii) All parties to the original certificate application proceedings.
  - (iii) Any property owner(s) and residents along the new route.
- (b) File with the board proof of service and, if required, proof of notice pursuant to this chapter.

**RESCIND**

**~~4906-3-12 — Application fees and board expenses.~~**

- ~~(A) The board's expenses associated with the review, analysis, processing, and monitoring of applications made pursuant to Chapters 4906-1 to 4906-7 of the Administrative Code shall be borne by the person submitting the application and shall include all expenses associated with monitoring, construction, and operation of the facility and compliance with certificate conditions. Application fees submitted to the board shall be utilized for all direct expenses associated with the consideration of an application and granting of a certificate and monitoring of construction and initial operation of the facility. The chairman shall provide, annually to each applicant, a current summary of the applicant's active cases showing case numbers, fees received, and board expenses.~~
- ~~(B) The application filing fee for a certificate for a single or multiple unit electric power generation plant and associated facilities, or substantial additions thereto, shall consist of the product of fifty cents times the maximum kilowatt electric capacity, as determined by the estimated net demonstrated capability of the highest capacity alternative. The maximum application filing fee shall be one hundred fifty thousand dollars.~~
- ~~(1) After accepting an application as complete, the chairman, using paragraph (B) of this rule, shall determine the amount of the application filing fee, advise the applicant of the fee amount and advise the applicant that it is payable upon filing the accepted, complete application.~~
  - ~~(2) Board expenses associated with a preapplication conference will be included as part of the application review expenses. If the applicant fails to file an application within twelve months of the preapplication conference, the chairman shall invoice the applicant for the board's expenses incurred as a result of the preapplication conference.~~
- ~~(C) The application filing fee for a certificate for a gas pipeline and associated facilities or an electric power transmission line and associated facilities shall consist of:~~

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~~(1) An amount based on the estimated construction cost of the most costly alternative route as follows:-~~

Construction cost	Fee
up to \$500,000	\$10,000
\$500,000—1,000,000	\$25,000
1,000,001—2,000,000	\$35,000
2,000,001—5,000,000	\$50,000
5,000,001—up	\$65,000

~~(2) After accepting an application as complete, the chairman, using paragraph (C)(1) of this rule, shall determine the amount of the application filing fee, advise the applicant of the fee amount, and advise the applicant that it is payable upon filing the accepted, complete application.~~

~~(3) Board expenses associated with a preapplication conference will be included as part of the application review expenses. If the applicant fails to file an application within twelve months of the preapplication conference, the chairman shall invoice the applicant for the expenses the board incurred as a result of the preapplication conference.~~

~~(4) If an associated transmission substation is included in the application for an electric transmission line, the application fee for the substation shall be calculated separately and added to the filing fee for the transmission line.~~

~~(D) The application filing fee for an amendment to a certificate shall consist of:~~

~~(1) An amount based on the estimated construction cost of the amended portion of the facility as follows:~~

Construction cost	Fee
up to \$500,000	\$3,000
\$500,000—1,000,000	6,000
1,000,000—2,000,000	9,000
2,000,001—5,000,000	12,000
5,000,001—up	15,000

~~(2) After accepting an amendment application as complete, the chairman, using paragraph-~~

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~~(D)(1) of this rule, shall determine the amount of the application filing fee, advise the applicant of the fee amount, and advise the applicant that it is payable upon filing the accepted, complete amendment application.~~

~~(E) If the chairman determines that the initial application fee paid under paragraph (B), (C) or (D) of this rule will not be adequate to pay for the board's expenses associated with the application prior to the end of the year in which the certificate is issued, the chairman may charge the applicant a supplemental application fee in an amount necessary to cover such expenses.~~

~~(F) At the end of the calendar year in which the certificate is issued, the chairman shall determine if the application filing fee was adequate to pay the actual expenses for review of the application. If the fee was inadequate, the chairman shall invoice the applicant for the amount of the shortage, and shall do so, at least, annually thereafter to cover the board's expenses until the project has been completed. If there are adequate funds, no annual invoicing will be required until a shortage occurs. The review will be done annually. Final reconciliation, including refunds in cases where fees paid exceed the amount needed to cover the board's expenses, will be done at the end of the calendar year in which the applicant notifies the board that the project has been completed. If a certificate application is withdrawn, the chairman shall cause a refund to be issued in the amount of the application fee in excess of the costs incurred to date.~~

~~(G) For purposes of this rule, "construction cost" shall include all costs of the project including rights-of-way, land acquisition, clearing, material and equipment, erection of the facility and any other capital cost applicable to that project.~~

~~(H) Board expenses for the resolution of jurisdictional issues, and all other incidental services will be invoiced at cost. Payment shall be due upon receipt of an invoice.~~

~~(I) The board shall publish annually a report accounting for the collection and expenditure of fees. The annual report shall be published not later than the last day of June of the year following the calendar year to which the report applies.~~

**NEW**

**4906-3-12 Application fees and board expenses.**

(A) The board's expenses associated with the review, analysis, processing, and monitoring of applications made pursuant to Chapters 4906-1 to 4906-7 of the Administrative Code shall be borne by the person submitting the application. The board's expenses shall also include all expenses associated with monitoring, construction, and operation of the facility to assure compliance with certificate conditions.

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(B) Application fees submitted to the board shall be utilized for all identifiable expenses, as described in paragraph (A) of this rule.

(C) The application fee to initiate the review of a standard certificate application is \$10,000, to be paid at the time that a case for a standard certificate application is opened by an applicant. The standard certificate application fee will be applied against all costs incurred by the board in processing the applicant's case prior to the time of issuance of a letter accepting the application as complete and in compliance with board rules.

(D) Application fees for the board's expenses following the determination that an application is complete shall be determined as follows:

1. For a single or multiple unit electric power generation plant and associated facilities, or substantial additions thereto, the fee is the product of fifty cents times the maximum kilowatt electric capacity, as determined by the estimated net demonstrated capability of the highest capacity alternative.
2. For a gas pipeline and associated facilities or an electric power transmission line and associated facilities consist of an amount based on the estimated construction cost of the most costly alternative route as follows:

<u>Construction cost</u>	<u>Fee</u>
<u>up to \$500,000</u>	<u>\$10,000</u>
<u>\$500,000 - 1,000,000</u>	<u>\$25,000</u>
<u>1,000,001 - 2,000,000</u>	<u>\$35,000</u>
<u>2,000,001 - 5,000,000</u>	<u>\$50,000</u>
<u>5,000,001-up</u>	<u>One percent of the most costly estimated route cost</u>

(E) After accepting an application as complete, the chairperson, using paragraph (D) of this rule,

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will determine the amount of the application filing fee, advise the applicant of the fee amount, and advise the applicant that it is payable upon filing the accepted, complete application.

(F) Board expenses associated with a preapplication conference will be included as part of the application review expenses. If the applicant fails to file an application within twelve months of the preapplication conference, the chairperson will invoice the applicant for the expenses the board incurred as a result of the preapplication conference.

(G) If an associated transmission substation is included in the application for an electric power transmission line, the application fee for the substation is calculated separately and added to the filing fee for the electric power transmission line.

(H) The application filing fee for an amendment to a certificate is to be paid by the applicant upon filing the amendment application, and consist of:

1. An amount based on the estimated construction cost of the amended portion of the facility as follows:

<u>Construction cost</u>	<u>Fee</u>
<u>up to - \$500,000</u>	<u>\$3,000</u>
<u>\$500,000 - 1,000,000</u>	<u>\$6,000</u>
<u>1,000,001 - 2,000,000</u>	<u>\$9,000</u>
<u>2,000,001 - 5,000,000</u>	<u>\$12,000</u>
<u>5,000,001 – 25,000,000</u>	<u>\$15,000</u>
<u>25,000,001 - 50,000,000</u>	<u>\$18,000</u>
<u>50,000,001 - 75,000,000</u>	<u>\$21,000</u>
<u>75,000,001 - up</u>	<u>\$24,000</u>

(I) If the chairperson determines that the application fee paid under paragraph (D) or (H) of this rule will not be adequate to pay for the board's identifiable expenses as described in paragraph (A) of this rule, the chairperson may charge the applicant a supplemental application fee in an amount necessary to cover such expenses.

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- (J) For purposes of this rule, “construction cost” includes all costs of the project including rights-of-way, land acquisition, clearing, material and equipment, erection of the facility and any other capital cost applicable to the project.
- (K) Board expenses for the resolution of jurisdictional issues, and all other incidental services will be invoiced at cost. Payment is due upon receipt of an invoice.
- (L) The board will publish annually a report accounting for the collection and expenditure of fees. The annual report will be published not later than the last day of June of the year following the calendar year to which the report applies.

**AMENDED**

**4906-3-13 Construction and operation.**

- ~~(A) The standard certificate application shall be filed no more than five years prior to the planned date of commencement of construction. The five year period may be waived by the board for good cause shown.~~
- ~~(B)~~ (A) The applicant shall notify the board, through timely filings made in the docket of the case, of the date on which construction will begin, the date on which construction was completed, and the date on which the facility began commercial operation.
- ~~(C)~~ (B) The certificate shall become invalid if the applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of issuance of the certificate.
- (C) The certificate authority provided by the board does not exempt the facility from any other applicable and lawful local, state, or federal rules or regulations nor can it be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
- (D) An applicant may seek review of a proposed modification(s) of a certificated facility by filing the proposed modification(s) in the public docket of the certificate case and by providing written notification of such filing to staff and all owners and residents of each property that would hold the proposed modified facility, or a portion of the proposed modified facility, or would necessitate an easement for the proposed modified facility. The applicant will also send a letter to the owner and resident of each property that is separated by a distance of less than forty feet from the aforementioned properties. Unless otherwise ordered by the board or



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administrative law judge, modification(s) will not be considered amendments to the certificate if such modification(s) would be minimal in nature and would be adequately addressed by the conditions of the certificate. The applicant's written notification will reference, and include a copy of, paragraph (D) of this rule. In the filing submitted in the public docket, the applicant will present its rationale as to why the applicant is seeking the proposed modification(s) and will demonstrate that the proposed modification(s) would be minimal in nature and would be adequately addressed by the conditions of the certificate. Staff or any interested person may file objections to the applicant's proposal within twenty-one days. If no objections are filed within the twenty-one day period, the applicant may proceed with the proposed modification(s). If objections are filed within the twenty-one day period, the board's staff may subsequently docket its recommendation on the proposal. The board will process proposed modification(s) with filed objections under the suspension process set forth for accelerated applications as outlined in rule 4906-6-09 of the Administrative Code. The applicant may start or continue construction activities during review of a proposed modification on any portion or segment of the certificated facility that is not impacted by the proposed modification. If any changes are made to the project layout after the certificate is issued, all changes shall be provided to staff in hard copy and as geographically-referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally sensitive areas are subject to staff review and acceptance prior to construction in those areas.

- (E) Within sixty days after the commencement of commercial operation, the applicant shall submit on the docket of its certificate case ~~to staff~~ a copy of the as-built drawings for the entire facility. The applicant also shall use reasonable efforts to provide to the board's staff as-built drawings in both hard copy and as geographically-referenced electronic data.
- (F) Within six months of commencement of operation of the facility, the applicant shall register the as-built locations of the underground electric lines or gas pipelines referenced in the application with the Ohio utilities protection service. The applicant shall also register with the Ohio oil and gas producers underground protection service, if it operates in the project area. Confirmation of registration(s) shall be filed on the docket of the certificate case ~~provided to the board~~.
- (G) Proof of condition compliance is to be provided to staff and filed in the case docket, subject to any protective treatment authorized by board staff or an administrative law judge, in accordance with the timelines established in each respective condition.

**AMENDED**

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- (A) Prior to commencement of any construction activities, the applicant shall inform affected property owners and ~~tenants-residents~~ of the nature of the project, specific contact information of ~~applicant~~ personnel who are familiar with the project, the proposed schedule for project construction and restoration activities, and a complaint resolution process. Notification to affected property owners and ~~tenants-residents~~ shall be given at least seven days prior to work on the affected property.
- (B) Prior to commencement of any construction activities for a standard certificate application, the applicant shall conduct a preconstruction conference. Staff, the applicant, and representatives of the prime contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the applicant and contractors to ensure compliance with the certificate, and discussion of the procedures for on-site investigations by staff during construction. Prior to the conference, the applicant shall provide a proposed conference agenda to staff. The applicant may conduct separate preconstruction conference for each stage of construction.
- (C) At least thirty days prior to the preconstruction conference, the applicant shall:
- (1) submit to staff and on the docket of the certificate case one set of ~~detailed~~ engineering drawings of the final project design, including associated facilities and construction access plans. The engineering drawings shall be ~~at least as~~ sufficiently detailed and complete, so that staff can determine that the final project design is in compliance with the certificate. The final project layout shall be provided to staff in hard copy and as geographically-referenced electronic data. The drawings shall include references at the locations where the applicant and/or its contractors must adhere to a specific avoidance or mitigation measure in order to comply with the certificate.
  - (2) submit to staff, for review and acceptance, mapping in the form of PDF and geographically referenced electronic data (such as shapefiles or geodatabases based on final engineering drawings to confirm that the final design would be sited as certificated. Mapping will include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically delineate any adjustments made from the siting detailed in the application.
- (D) Prior to commencement of construction of any electric generation project or associated facilities, the applicant shall provide on the docket of the case ~~to staff a letter stating that an interconnection service agreement has been signed or shall submit~~ a copy of a signed interconnection service agreement.
- (E) At least seven days prior to a preconstruction conference, the applicant will file a table listing

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each preconstruction condition deliverable, the corresponding condition number, status of compliance, and date on which the compliance was filed.

**NEW**

**4906-3-15 Change in corporate structure.**

Any certificate granted by the board is granted pursuant to the corporate structure of the certificate holder as presented in the application, unless otherwise specified in the board's order. Within thirty days of any change to such corporate structure, the holder of a certificate will notify the board of such change by filing notification of the change in the case docket in which the certificate was granted.

**NEW**

**4906-3-16 Certificate transfer.**

At the board's discretion, any certificate granted by the board may be transferred to another person, subject to the requirement that the person agrees to comply with the terms, conditions, and modifications contained within the certificate. An application for board approval of a transfer of a certificate is to be made by filing a request for certificate transfer in the docket of the case in which the certificate was granted. Both persons will indicate, either in a joint filing or separate filings, their agreement to the transfer, subject to the requirements of this rule. Unless otherwise ordered by the board or an administrative law judge, the transfer is deemed approved, and the effective date of the transfer of the certificate will be on the thirtieth day after the filing that requests the certificate transfer.



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio (PUCO)

**Rule Contact Name and Contact Information:**

Angela Hawkins, Legal Director

Phone: 614-466-0122

Email: [Angela.Hawkins@puco.ohio.gov](mailto:Angela.Hawkins@puco.ohio.gov)

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

Ohio Power Siting Board (OPSB) Procedural Provisions for Standard Certificate Applications

Rule Number(s): 4906-3-01 through 4906-3-16

Date of Submission for CSI Review: N/A

Public Comment Period End Date: August 12, 2022

**Rule Type/Number of Rules:**

X New/ 3 rules

X No Change/ 1 rules (FYR? Y)

X Amended/ 12 rules (FYR? Y)

X Rescinded/ 1 rules (FYR? Y)

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

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**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 rules for CSI review.**

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

**The rule:**

- |  |  |
|--|--|
| <input checked="checked" type="checkbox"/> | a. Requires a license, permit, or any other prior authorization to engage in or      |
| <input checked="checked" type="checkbox"/> | operate a line of business.  |
| <input checked="checked" type="checkbox"/> | b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a    |
| <input checked="checked" type="checkbox"/> | cause of action for failure to comply with its terms.                                |
| <input checked="checked" type="checkbox"/> | c. Requires specific expenditures or the report of information as a condition of     |
| <input checked="checked" type="checkbox"/> | compliance.  |
| <input checked="checked" type="checkbox"/> | d. Is likely to directly reduce the revenue or increase the expenses of the lines of |
|  | business to which it will apply or applies.  |

### **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.***

The proposed revisions to the rules in Chapter 4906-3, Ohio Adm.Code (OAC), make general revisions to the procedural requirements for filing standard certificate applications.

**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.**

The amendments to the rules in Chapter 4906-3, OAC, are proposed pursuant to Section 119.032, Revised Code, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The OPSB is authorized to adopt the proposed rules pursuant to Chapter 4906, Revised Code, which governs the rules and regulations promulgated by the OPSB. Further, on July 12, 2021, the governor of the state of Ohio signed into law Am. S.B. 52 (S.B. 52) amending provisions that govern OPSB certificates, including those contained in Chapter 4906, Revised Code. The OPSB intends to combine the review of its rules with its review of possible provisions to the rules resulting from the enactment of S.B. 52.

**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 rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to enforce a federal requirement.

**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)?**

Chapter 4906-3, OAC, describes the OPSB's procedural requirements for the filing and determination of standard certificate applications.

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

The rules contained in this chapter are general provisions that govern matters before the OPSB pursuant to Chapter 4906 of the Revised Code. As such, there will not be measurable outputs or outcomes as a result of the adoption of Chapter 4906-3, OAC.

- 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.*

The OPSB conducted a three-part workshop on October 4 and October 8, 2021, using virtual hearing technology, to receive feedback from interested stakeholders and the general public in Case No. 21-902-GE-ORD. Additionally, the OPSB conducted three stakeholder engagement meetings on March 11, March 12, and May 12, 2020, to gather stakeholder information as to the rules.

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

The OPSB considered recommendations by stakeholders at the engagement meetings and workshop as follows:

- (1) Additional project information should be included in certificate applications.
- (2) Specific to electric transmission and gas pipeline projects, the types of information that should be required in relation to the public interest, convenience, and necessity of the project.
- (3) In regard to project siting, the types of information that a certificate applicant should submit in consideration of public involvement as to the site/route selections.
- (4) The types of information that should be filed regarding public interaction and any complaint resolution issues concerning significant preconstruction and pre-operation project developments.
- (5) The types of information that a wind or solar facility applicant should file regarding decommissioning plans.
- (6) The types of information that an applicant should file regarding interactions with local governments in a project area.



(7) The types of information that an applicant should file regarding environmental, aviation, noxious weed management, irrigation and filed drainage system mitigation, storm water runoff management, and communication system mitigation.

(8) Additional considerations the OPSB should utilize as to solar project certifications.

(9) The types of additional enforcement measures the OPSB should consider, and how they are best funded.

**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 considered. In adopting changes to Chapter 4906-3, OAC, the OPSB takes into account feedback from stakeholders and the general public regarding the rules in effect prior to the proposed changes. Stakeholder and public feedback can be made directly to the OPSB by filing comments from such entities as persons proposing, owning or operating major utility facilities or economically significant wind farms, electric distribution utilities, gas and natural gas local distribution companies, the Ohio Gas Association, the Oil and Gas Association, applicants who have filed cases with the OPSB, members of the general public, or any other entity. The requirements in S.B. 52 were also taken into account.

**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?**

The operation of the OPSB is specifically provided for in Chapter 4906 of the Revised Code, and the promulgation of rules governing the siting process is specifically provided for in Section 4906.03, Revised Code. As a result, regulatory alternatives were not available.

**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.***

No performance-based regulations were considered, as the rules in Chapter 4906-3, OAC, are specifically mandated by Section 4906.03, Revised Code, and dictate process and do not define a required outcome. Thus, performance-based regulation is not appropriate.

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

The OPSB has reviewed other state regulations and found no duplication as to the adoption of these rules pursuant to Chapter 4906, Revised Code, and S.B. 52.

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**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.**

Chapter 4906-3, OAC, has been in effect without complaints about inconsistent application of the Chapter. The proposed changes that result of the proposed amendments to this chapter will be communicated via distribution of the final rules in Case No. 21-902-GE-BRO, as well as through updates to the OPSB website.

**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**

Chapter 4906-3, OAC, provides guidance to entities seeking to site facilities within the state of Ohio. Only entities seeking certificates to build, own, or operate facilities will be affected by these rules. Effects to business include the continuing application fees and the time it takes for compliance with application and certificate monitoring requirements. OPSB modified the application fee provision in 4906-3-12(D) to eliminate fee caps in order to better align application fees with the costs of certificate consideration and monitoring of the largest class of certificate applicants.

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

Costs of compliance vary greatly depending on the nature of the facility that is seeking or operating pursuant to a OPSB certificate. Costs include environmental studies, application preparation, service and distribution of the application, participation in the public review process, and the OPSB’s cost of reviewing applications and ongoing operations to ensure that they align with certificate conditions.

**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.*

There is no representative business for purpose of quantifying any adverse business impact from the regulation. Cost estimates are billed according to the estimated cost of construction of the project that is being considered for OPSB certification.

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

Chapter 4906-3, OAC, is required by Section 4906.03, Revised Code. Therefore, these rules are required by law and were drafted to minimize adverse impacts on business while maintaining a strong focus on the rights and protections afforded the public.

**Regulatory Flexibility**

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

Chapter 4906-3, OAC, reflects the legislative intent of Section 4906.03, Revised Code, and provides for the certification of new facilities in Ohio. This is not an activity typically undertaken by an entity that would be defined as a small business.

**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 OPSB only assesses penalties for violations of certificates, which occur after an applicant has begun construction of an approved facility.

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

The OPSB actively works with applicants, as well as parties who have been granted certificates, to assure compliance with the OPSB's rules and the terms and conditions of their certificates.

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## **AMENDED**

### **4906-4-01 Purpose and scope.**

- (A) This chapter sets forth the rules governing standard certificate applications for electric generation facilities, electric power transmission lines, and gas pipelines.
- (B) The board may, upon its own motion, or upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

## **AMENDED**

### **4906-4-02 Project summary and applicant information.**

~~(A)~~ The applicant shall provide a summary of the proposed project at both the scoping and public informational meetings. The summary should be suitable as a reference for state and local governments and for the public. The summary shall include the following:

~~(1A)~~ A statement explaining the ~~general~~ purpose of the facility.

~~(2B)~~ A description of the ~~general~~ location, size, acreage, and operating characteristics of the proposed facility.

~~(3C)~~ A discussion of the suitability of the site or route for the proposed facility.

~~(4) An explanation of the project schedule (a Gantt chart is acceptable).~~

~~(B) The applicant shall provide information regarding its future plans for additional generation units or facilities in the region, if any.~~

~~(1) The applicant shall provide a description of any plans for future additions of electric power generation units for the site (including the type and timing) and the maximum electric power generation capacity anticipated for the site.~~

~~(2D)~~ ~~The applicant shall provide a brief~~A description of the applicant's history, affiliate relationships, and current operations, and a description of the ~~company entity~~ that will construct and operate the facility, if different from the applicant.

(E) For a proposed electric generation facility, a description of any plans for future additions of

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electric power generation units for the site and region (including the type and timing) and the capacity anticipated for the site.

**RESCIND**

**~~4906 4 03 — Project description in detail and project schedule in detail.~~**

- ~~(A) The applicant shall provide a description of the project area's geography, topography, population centers, major industries, and landmarks.~~
- ~~(1) The applicant shall provide a map of at least 1:24,000 scale containing a two mile radius from the project area and showing the following features:~~
- ~~(a) The proposed facility.~~
  - ~~(b) Population centers and administrative boundaries.~~
  - ~~(c) Transportation routes and gas and electric transmission corridors.~~
  - ~~(d) Named rivers, streams, lakes, and reservoirs.~~
  - ~~(e) Major institutions, parks, and recreational areas.~~
- ~~(2) The applicant shall provide the area, in acres, of all owned and leased properties that will be used for construction and/or operation of the project, and the number of properties.~~
- ~~(B) The applicant shall provide a detailed description of the proposed generation facility.~~
- ~~(1) The applicant shall submit the following for each generation equipment alternative, where applicable:~~
- ~~(a) Type, number of units, estimated net demonstrated capacity, heat rate, annual capacity factor, and hours of annual generation.~~
  - ~~(b) For wind farms, the turbine hub height, tip height, rotor diameter, and blade length for each model under consideration.~~
  - ~~(c) Fuel quantity and quality (i.e., ash, sulfur, and British thermal unit value).~~
  - ~~(d) A list of types of pollutant emissions and estimated quantities.~~

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- ~~(e) Water volume requirement, source of water, treatment, quantity of any discharge and names of receiving streams.~~
- ~~(2) The applicant shall describe, in as much detail as is available at the time of submission of the application, the construction method, site preparation and reclamation method, materials, color and texture of surfaces, and dimensions of all facility components, including the following:~~
  - ~~(a) Electric power generation plant or wind powered electric generation turbines, including towers and foundations.~~
  - ~~(b) Fuel, waste, water, and other storage facilities.~~
  - ~~(c) Fuel, waste, water, and other processing facilities.~~
  - ~~(d) Water supply, effluent, and sewage lines.~~
  - ~~(e) Associated electric transmission and distribution lines and gas pipelines.~~
  - ~~(f) Electric collection lines.~~
  - ~~(g) Substations, switching substations, and transformers.~~
  - ~~(h) Temporary and permanent meteorological towers.~~
  - ~~(i) Transportation facilities, access roads, and crane paths.~~
  - ~~(j) Construction laydown areas.~~
  - ~~(k) Security, operations, and maintenance facilities or buildings.~~
  - ~~(l) Other pertinent installations.~~
- ~~(3) The applicant shall submit a brief description of the need for new electric transmission line(s) or gas pipelines associated with the proposed facility.~~
- ~~(4) The applicant shall supply a map of at least 1:12,000 scale of the project area, showing the following features:~~
  - ~~(a) An aerial photograph.~~
  - ~~(b) The proposed facility, including all components listed in paragraph (B)(2) of this rule.~~

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~~(c) Road names.~~

~~(d) Property lines.~~

~~(C) The applicant shall provide a detailed project schedule.~~

~~(1) The applicant shall provide a proposed project schedule in Gantt chart format covering all major activities and milestones, including:~~

~~(a) Acquisition of land and land rights.~~

~~(b) Wildlife and environmental surveys/studies.~~

~~(c) Receipt of grid interconnection studies and other critical path milestones for project construction.~~

~~(d) Preparation of the application.~~

~~(e) Submittal of the application for certificate.~~

~~(f) Issuance of the certificate.~~

~~(g) Preparation of the final design.~~

~~(h) Construction of the facility.~~

~~(i) Placement of the facility in service.~~

~~(2) The applicant shall describe the proposed construction sequence.~~

~~(3) The applicant shall describe the potential impact of critical delays on the in-service date.~~

**NEW**

**4906-4-03 Project description in detail and project schedule in detail.**

(A) For all applications:

(1) In addition to the requirements specific to the projects described herein, applicants shall provide a proposed project schedule in Gantt chart format covering all major activities and milestones, including:

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- (a) Preparation of the application.
  - (b) Acquisition of rights-of-way, land, and land rights.
  - (c) Submittal of the application for certificate.
  - (d) Issuance of the certificate.
  - (e) Preparation of the final design.
  - (f) Construction of the facility.
  - (g) Placement of the facility in service.
  - (h) For a proposed electric power transmission line or gas pipeline, receipt of grid interconnection studies and other critical path milestones for project construction.
- (2) The applicant shall describe the proposed construction sequence.
- (3) The applicant shall provide a description of the project area's geography, topography, population centers, major industries, and landmarks.
- (a) The applicant shall provide a map of not less than at least 1:24,000 scale, submitted in a shapefile or geodatabase, including the area one thousand feet on each side of the proposed facilities, for electric power transmission lines and gas pipelines or a two-mile radius from the project area for a generation facility, which shall include the following features:
    - (i) The proposed facilities, route corridor, and potential right-of-way extents.
    - (ii) Roads and railroads.
    - (iii) Major institutions, parks, and recreational areas that are publicly identified and publicly owned.
    - (iv) Existing gas pipeline and electric power transmission line corridors.
    - (v) Named lakes, reservoirs, streams, canals, and rivers.
    - (vi) Population centers and legal boundaries of cities, villages, townships, and counties.
    - (vii) Sensitive receptors within 500 feet of the route or site (such as occupied buildings).

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(b) The applicant shall provide the area, in acres, of the proposed site or right-of-way for the facility, the length of the electric power transmission line or gas pipeline, in miles, and the number of properties crossed by the facility.

(4) The applicant will describe the installation methods as detailed in this rule.

(a) The applicant shall describe the proposed site clearing, construction methods, and reclamation operations, including:

(i) Surveying and soil testing.

(ii) Grading and excavation.

(iii) Construction of temporary and permanent access roads and trenches.

(iv) Stringing of cable and/or laying of pipe.

(v) Installation of electric transmission line poles and structures, including foundations.

(vi) Post-construction reclamation.

(b) The applicant shall provide the layout of facilities. The applicant shall:

(i) Provide a map of at least 1:12,000 scale of the electric power transmission line or gas pipeline routes and associated facilities such as substations, compressor stations, and other stations, showing the following proposed features:

(a) Temporary and permanent access roads, staging areas, and laydown areas.

(b) Proposed location of major structures, including electric power transmission line poles and structures, and buildings.

(c) Fenced-in or secured areas.

(ii) Describe reasons for the proposed layout and any unusual features.

(iii) Describe plans for any future modifications in the proposed layout, including the nature and approximate timing of contemplated changes.

(B) For a proposed electric generation facility:

(1) The applicant will post an interactive map on the project's website containing a two-mile



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radius from the project area and showing the features listed in rule 4906-4-03(A)(3)(a) of the Administrative Code at least fourteen days before the first public informational meeting under rule 4906-3-03 of the Administrative Code and will keep such map up to date until construction completes.

- (2) The applicant shall provide the area, in acres, of all owned and leased properties that will be used for construction and/or operation of the facility, and the number of properties.
- (3) The applicant shall submit the following for each generation equipment alternative, where applicable:
  - (a) Type, number of units, estimated net demonstrated capacity, heat rate, annual capacity factor, and hours of annual generation.
  - (b) The manufacturers, models, specifications, and material safety data sheets for all solar panels, inverters, racking systems, wind turbine models, and all other components selected for the facility. For wind farms, this includes the turbine hub height, tip height, rotor diameter, and blade length for each model under consideration.
  - (c) Fuel quantity and quality (i.e., ash, sulfur, and British thermal unit value).
  - (d) A list of types of pollutant emissions and estimated quantities.
  - (e) Water volume requirement, source of water, treatment, quantity of any discharge and names of receiving streams.
- (4) The applicant shall describe, in as much detail as is available at the time of submission of the application, the construction method, site preparation and reclamation method, materials, color and texture of surfaces, dimensions, and structures included to assure safe operation of all facility components, including the following:
  - (a) Electric power generation plant or wind-powered electric generation turbines, including towers and foundations.
  - (b) All proposed storage facilities, including those for fuel, waste, water, and hazardous chemicals.
  - (c) All proposed processing facilities, including those for fuel, waste, water, and hazardous chemicals.
  - (d) Water supply, effluent, and sewage lines.

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(e) Associated electric collection, transmission and distribution lines and gas pipelines.

(f) Substations, switching substations, and transformers.

(g) Temporary and permanent meteorological towers.

(h) Transportation facilities and proposed upgrades, access roads, and crane paths.

(i) Construction laydown areas.

(j) Security, operations, and maintenance facilities or buildings.

(k) Other pertinent installations.

(5) The applicant shall supply a map of at least 1:12,000 scale of the project area, showing the following features:

(a) An aerial photograph.

(b) The proposed facility, including all components listed in paragraph (B)(4) of this rule.

(c) Road names.

(d) Property lines.

(C) For a proposed electric power transmission line or gas pipeline:

(1) The applicant shall provide a statement explaining the need for the proposed facility, including a listing of the factors upon which it relied to reach that conclusion and references to the most recent long-term forecast report (if applicable).

(a) The applicant shall explain the purpose of the proposed facility.

(b) The applicant shall provide specific projections of system conditions, local requirements, or any other pertinent factors that impacted the applicant's opinion on the need for the proposed facility.

(c) The applicant shall provide relevant load flow studies and contingency analyses, if appropriate, identifying the need for system improvement.

(2) The applicant shall describe why the proposed facility was selected to meet the projected need. The applicant shall also describe how the facility will serve the public interest, convenience,

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and necessity.

(D) For a proposed electric power transmission line:

- (1) The applicant shall present load flow data and one-line diagrams in the form of transcription diagrams depicting system performance with and without the proposed facility.
- (2) The applicant shall provide an analysis of the impact of the proposed facility on the electric power system economy and reliability. The impact of the proposed facility on all interconnected utility systems shall be evaluated, and all conclusions shall be supported by relevant load flow studies. Any load flow(s) relied upon by the applicant shall be provided to staff.
- (3) The applicant shall provide an analysis and evaluation of the options considered which would eliminate the need for construction of an electric power transmission line, including electric generation options and options involving changes to existing and planned electric transmission substations.
- (4) The applicant shall provide a brief statement of how the proposed facility fit into the applicant's most recent long-term electric forecast report and the regional plans for expansion, including, but not limited to, the following:
  - (a) Reference to any description of the proposed facility in the most recent long-term electric forecast report of the applicant.
  - (b) If no description was contained in the most recent long-term electric forecast report, an explanation as to why none was filed in the most recent long-term electric forecast report.
  - (c) Reference to regional expansion plans, when applicable (if the electric power transmission line will not affect regional plans, the applicant shall so state).

(E) For a proposed gas pipeline project:

- (1) The applicant shall provide one copy in electronic format of the relevant base case system data on a portable solid-state drive, in a format acceptable to the board staff, with a description of the analysis program and the data format.
- (2) The applicant shall provide a brief statement of how the proposed facility fit into regional expansion plans and the applicant's most recent long-term gas forecast report, including the following:

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(a) Reference to any description of the proposed facility in the most recent long-term gas forecast report of the applicant.

(b) If no description was contained in the most recent long-term gas forecast report, an explanation as to why none was filed in the most recent long-term gas forecast report.

**AMENDED**

**4906-4-04 Project area selection and site design.**

- (A) The applicant shall describe the selection of the project area.
- (1) The applicant shall provide a description of the study area or the geographic boundaries of the area considered for development of the project, including the rationale for the selection.
  - (2) The applicant shall provide a map of suitable scale that depicts the boundary of the study area, all siting constraints, and the general sites, routes, and/or route segments which were evaluated.
  - (3) The applicant shall provide a comprehensive list and description of all qualitative and quantitative siting criteria utilized by the applicant, including any weighting values assigned to each.
  - (4) The applicant shall provide a description of the process by which the applicant utilized the siting criteria to determine the proposed project area and any alternative area(s).
  - (5) The applicant shall describe all public involvement that was undertaken in the site/route selection process. The applicant shall provide a description of how many and what types of comments were received.~~provide a description of the project area(s) selected for evaluation, and the factors and rationale used by the applicant for selecting the proposed project area and any alternative area(s).~~
- (B) ~~For a proposed electric generation facility: The applicant shall describe the process of designing the facility layout.~~
- (1) The applicant shall provide a constraint map showing setbacks from residences, property lines, utility corridors, and public rights-of-way, and any other constraints of the site design.
  - (2) The applicant shall provide a description of the criteria used to determine the facility layout and site design, and a comparison of any site design alternatives considered, including equipment alternatives where the use of such alternatives influenced the site design.

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~~(3) The applicant shall provide a description of how many and what types of comments were received.~~

(C) For a proposed electric power transmission line or gas pipeline:

- (1) The applicant shall conduct a site and route selection study prior to submitting an application for an electric power transmission line or gas pipeline, and associated facilities. The study shall be designed to evaluate all practicable sites, routes, and route segments for the proposed facility within the study area.
  - (a) The applicant shall provide a description of the study area, or the geographic boundaries of the area considered for development of the project, including the rationale for the selection.
  - (b) The applicant shall provide a map of suitable scale that depicts the boundary of the study area and all siting constraints and/or suitability analysis utilized for the study.
  - (c) The applicant shall provide a map of suitable scale that depicts the boundary of the study area and the routes, route segments, and sites which were evaluated.
  - (d) The applicant shall provide a comprehensive list and description of all qualitative and quantitative siting criteria utilized by the applicant, including any weighting values assigned to each.
  - (e) The applicant shall provide a description of the process by which the applicant utilized the siting criteria to determine the route or site.
  - (f) The applicant shall provide a description of the routes and sites selected for evaluation, and the factors and rationale used by the applicant for selecting the route or site.
- (2) The applicant shall provide a summary table comparing the routes, route segments, and sites, utilizing the technical, financial, environmental, socioeconomic, and other factors identified in the study. Design and equipment alternatives shall be included where the use of such alternatives influenced the siting decision.

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- (A) The applicant shall provide a description of the proposed electric power transmission lines or gas pipelines, as well as switching, capacity, metering, safety, and other equipment pertinent to the operation of the proposed electric power transmission lines and gas pipelines and associated facilities. Include any provisions for future expansion.
- (1) The applicant shall provide the following information for electric power transmission lines:
- (a) Design voltage.
  - (b) Tower designs, pole structures, conductor size and number per phase, and insulator arrangement.
  - (c) Base and foundation design.
  - (d) Cable type and size, where underground.
  - (e) Other major equipment or special structures.
- (2) The applicant shall provide a single-line diagram of electric power transmission substations and a description of the proposed major equipment, such as:
- (a) Breakers.
  - (b) Switchgear.
  - (c) Bus arrangement and structures.
  - (d) Transformers.
  - (e) Control buildings.
  - (f) Other major equipment.
- (3) The applicant shall describe the following for gas pipelines:
- (a) Maximum allowable operating pressure.
  - (b) Pipe material.
  - (c) Pipe dimensions and specifications.
  - (d) Control buildings.

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(e) Heaters, odorizers, and above-ground facilities.

(f) Any other major equipment.

(B) Additional requirements for electric generation facilities.

(1) The applicant shall describe how the facility will be connected to the regional electric grid.

(B2) The applicant shall provide information on interconnection of the facility to the regional electric power grid.

(4a) The applicant shall provide information relating to their generation interconnection request, including interconnection queue name, number, date, and website.

(2b) The applicant shall provide system studies on their generation interconnection request. The studies shall include, but are not limited to, the feasibility study and system impact study.

**AMENDED**

**4906-4-06 Economic impact and public interaction.**

(A) The applicant shall state the current and proposed ownership status of the proposed facility, including leased and purchased land, rights-of-way, structures, and equipment.

(B) The applicant shall provide information regarding capital and intangible construction costs.

(1) The applicant shall provide estimates of applicable capital and intangible costs for the facility and various applicable alternatives. The data submitted shall be classified according to federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital and intangible costs classified in the accounting format ordinarily used by the applicant in its normal course of business). The cost estimates shall include, but not be limited to:

(a) Land and land rights.

(b) Structures and improvements.

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(c) Substation equipment.

(d) Poles and fixtures.

(e) Towers and fixtures.

(f) Overhead conductors.

(g) Underground conductors and insulation.

(h) Underground-to-overhead conversion equipment.

(i) Pipes.

(j) Valves, meters, boosters, regulators, tanks, and other equipment.

(k) Right-of-way clearing and roads, trails, or other access.

(2) The applicant shall provide a comparison of the total costs (per kilowatt for generation facilities or per mile for electric power transmission lines and gas pipelines) with the applicant's similar facilities, and explain any substantial differences.

(3) The applicant shall provide a tabulation of the present worth and annualized cost for capital costs and any additional cost details as required to compare capital cost of alternates (using the start of construction date as reference date), and describe techniques and all factors used in calculating present worth and annualized costs.

(C) The applicant shall provide information regarding operation and maintenance expenses.

(1) The applicant shall provide applicable estimated annual operation and maintenance expenses for the first two years of commercial operation. The data submitted shall be classified according to federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the operation and maintenance expenses classified in the accounting format ordinarily used by the applicant in its normal course of business).

(2) The applicant shall provide a comparison of the total operation and maintenance cost (per kilowatt for generation facilities or per mile for electric power transmission lines and gas pipelines) with applicant's similar facilities and explain any substantial differences.



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- (3) The applicant shall provide a tabulation of the present worth and annualized expenditures for operating and maintenance costs as well as any additional cost breakdowns as required to compare alternatives, and describe techniques and factors used in calculating present worth and annualized costs.
- (D) The applicant shall submit an estimate of the cost for a delay prorated to a monthly basis beyond the projected in-service date.
- (E) The applicant shall provide information regarding the economic impact of the project.
- (1) The applicant shall provide an estimate of the annual total and present worth of construction and operation payroll.
- (2) The applicant shall provide an estimate of the construction and operation employment and estimate the number that will be employed from the region.
- (3) The applicant shall provide an estimate of the increase in county, township, and municipal tax revenue accruing from the facility.
- (4) The applicant shall provide an estimate of the economic impact of the proposed facility on local commercial and industrial activities.
- (F) The applicant shall provide information regarding public ~~responsibility~~interaction.
- (1) The applicant shall describe the applicant's program for public interaction during the siting, construction, and operation of the proposed facility in the area in which any portion of such facility is to be located. This description shall include detailed information regarding the applicant's public information and complaint resolution programs as well as how the applicant will notify affected property owners and ~~tenants-residents~~ about these programs at least seven days prior to the start of construction.
- (2) The applicant shall describe any insurance or other corporate programs for providing liability compensation for damages, if such should occur, to the public resulting from construction, operation, or decommissioning of the proposed facility.
- (3) The applicant shall evaluate and describe the anticipated impact to roads and bridges associated with construction vehicles and equipment delivery, ~~and~~ ~~D~~describe measures that will be taken to improve inadequate roads and repair roads and bridges to at least the condition present prior to the project.

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- (4) The applicant shall list all transportation permits required for construction and operation of the project, and describe any necessary coordination with appropriate authorities for temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility.
- (5) The applicant shall describe the plan for decommissioning the proposed facility, including a discussion of any financial arrangements designed to assure the requisite financial resources. For a jurisdictional wind or solar facility, the plan shall be consistent with sections 4906.21 to 4906.222 of the Revised Code and rule 4906-4-09 of the Administrative Code.
- (6) The applicant shall provide a list of counties, townships, villages, and cities within the project area.
- (7) The applicant shall provide a list of the public officials contacted regarding the application, including their office addresses, email addresses, and office telephone numbers.
- (8) For an electric generation facility, the applicant shall file a copy of the final complaint resolution plan on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of facility operations, the applicant shall notify via mail affected property owners and residents, including those individuals who were provided notice of the public informational meeting, residences located within one mile of the project area, parties to this case, county commissioners, township trustees, emergency responders, airports, schools, and libraries, as well as anyone who has requested updates regarding the project. These notices shall provide information about the project, including contact information and a copy of the complaint resolution plan. The start of construction notice shall include written confirmation that the applicant has complied with all preconstruction-related conditions of the certificate, as well as a timeline for construction and restoration activities. The start of facility operations notice shall include written confirmation that the applicant has complied with all construction-related conditions of the certificate, as well as a timeline for the start of operations. The applicant shall file a copy of these notices on the public docket. During the construction and operation of the facility, the applicant shall submit to staff a complaint summary report by the fifteenth day of April, July, October, and January of each year through the first five years of operation. The report shall include a list of all complaints received through the applicant's complaint resolution process, a description of the actions taken toward the resolution of each complaint, and a status update if the complaint has yet to be resolved. The applicant shall file a copy of these complaint summaries on the public docket.

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**AMENDED**

**4906-4-07 Compliance with air, water, solid waste, and aviation regulations.**

- (A) The information requested in this rule shall be used to determine whether the facility will comply with regulations for air and water pollution, solid and hazardous wastes, and aviation. Where appropriate, the applicant may substitute all or portions of documents filed to meet federal, state, or local regulations. Existing data may be substituted for physical measurements.
- (B) The applicant shall provide information on compliance with air quality regulations.
- (1) The applicant shall submit information regarding preconstruction air quality and permits.
- (a) Provide available information concerning the ambient air quality of the proposed project area and any proposed alternative project area(s).
- (b) Describe the air pollution control equipment for the proposed facility. Stack gas parameters including temperature and all air pollutants regulated by the federal or state environmental protection agency shall be described for each proposed fuel. These parameters shall be included for each electric power generation unit proposed for the facility. Include tabulations of expected efficiency, power consumption, and operating costs for supplies and maintenance. Describe the reliability of the equipment and the reduction in efficiency for partial failure.
- (c) Describe applicable federal and/or Ohio new source performance standards (NSPS), applicable air quality limitations, applicable national ambient air quality standards (NAAQS), and applicable prevention of significant deterioration (PSD) increments.
- (d) Provide a list of all required permits to install and operate air pollution sources. If any such permit(s) have been issued more than thirty days prior to the submittal of the certificate application, the applicant shall provide a list of all special conditions or concerns attached to the permit(s).
- (e) Except for wind ~~farms~~ and solar ~~farms~~ facilities, provide a map of at least 1:100,000 scale containing:
- (i) The location and elevation (ground and sea level) of Ohio environmental protection agency primary and secondary air monitoring stations or mobile vans which supplied data used by the applicant in assessing air pollution potential.

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- (ii) The location of major present and anticipated air pollution point sources.
- (f) Describe how the proposed facility will achieve compliance with the requirements identified in paragraphs (B)(1)(c) and (B)(1)(d) of this rule.
- (2) The applicant shall describe plans to control emissions and fugitive dust during the site clearing and construction phase.
- (3) Except for wind ~~farms~~ and solar ~~farms~~ facilities, the applicant shall provide information regarding air quality for the operation of the proposed facility.
  - (a) Describe ambient air quality monitoring plans for air pollutants regulated by the federal or state environmental protection agency.
  - (b) On a map of at least 1:24,000 scale, show three isopleths of estimated concentrations that would be in excess of the U.S. environmental protection agency-defined "significant emission rates" when the facility is operating at its maximum rated output. The intervals between the isopleths shall depict the concentrations within a five-mile radius of the proposed facility. A screening analysis may be used to estimate the concentrations.
  - (c) Describe procedures to be followed in the event of failure of air pollution control equipment, including consideration of the probability of occurrence, expected duration and resultant emissions.
- (C) The applicant shall provide information on compliance with water quality regulations.
  - (1) The applicant shall provide information regarding preconstruction water quality and permits.
    - (a) Provide a list of all permits required to install and operate the facility, including water pollution control equipment and treatment processes.
    - (b) On a map of at least 1:24,000 scale, show the location and sampling depths of all water monitoring and gauging stations used in collecting preconstruction survey data. Samples shall be collected by standard sampling techniques and only in bodies of water likely to be affected by the proposed facility. Information from U.S. geological survey (USGS), Ohio environmental protection agency, and similar agencies may be used where available, but the applicant shall identify all such sources of data.
    - (c) Describe the ownership, equipment, capability, and sampling and reporting procedures of each station.

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- (d) Describe the existing water quality of the receiving stream based on at least one year of monitoring data, using appropriate Ohio environmental protection agency reporting requirements.
  - (e) Provide available data necessary for completion of any application required for a water discharge permit from any state or federal agency for this project. Comparable information shall be provided for the proposed site and any proposed alternative site(s).
- (2) The applicant shall provide information regarding water quality during construction.
- (a) Indicate, on a map of at least 1:24,000 scale, the location of the water monitoring and gauging stations to be utilized during construction.
  - (b) Provide an estimate of the quality and quantity of aquatic discharges from the site clearing and construction operations, including runoff and siltation from dredging, filling, and construction of shoreside facilities.
  - (c) Describe any plans to mitigate the above effects in accordance with current federal and Ohio regulations.
  - (d) Describe any changes in flow patterns and erosion due to site clearing and grading operations.
  - (e) Describe the equipment proposed for control of effluents discharged into bodies of water and receiving streams.
- (3) The applicant shall provide information on water quality during operation of the facility.
- (a) Indicate, on a map of at least 1:24,000 scale, the location of the water quality monitoring and gauging stations to be utilized during operation.
  - (b) Describe the water pollution control equipment and treatment processes planned for the proposed facility.
  - (c) Describe the schedule for receipt of the national pollution discharge elimination system permit.
  - (d) Provide a quantitative flow diagram or description for water and water-borne wastes through the proposed facility, showing the following potential sources of pollution, including:

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- (i) Sewage.
  - (ii) Blow-down.
  - (iii) Chemical and additive processing.
  - (iv) Waste water processing.
  - (v) Run-off and leachates from fuels and solid wastes.
  - (vi) Oil/water separators.
  - (vii) Run-off from soil and other surfaces.
- (e) Describe how the proposed facility incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives.
- (D) The applicant shall provide information on compliance with solid waste regulations.
- (1) The applicant shall provide information regarding preconstruction solid waste.
    - (a) Describe the nature and amount of debris and solid waste in the project area.
    - (b) Describe any plans to deal with such wastes.
  - (2) The applicant shall provide information regarding solid waste during construction.
    - (a) Provide an estimate of the nature and amounts of debris and other solid waste generated during construction.
    - (b) Describe the proposed method of storage and disposal of these wastes.
  - (3) The applicant shall provide information regarding solid waste during operation of the facility.
    - (a) Provide an estimate of the amount, nature, and composition of solid wastes generated during the operation of the proposed facility.
    - (b) Describe proposed methods for storage, treatment, transport, and disposal of these wastes.
  - (4) The applicant shall describe its plans and activities leading toward acquisition of waste generation, storage, treatment, transportation and/or disposal permits. If any such permit(s)

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have been issued more than thirty days prior to the submittal of the certificate application, the applicant shall provide a list of all special conditions or concerns attached to the permit(s).

- (E) The applicant shall provide information on compliance with environmental and aviation regulations.

(1) Provide the height of the tallest anticipated installed, above ground structures.

(12) List all ~~public use~~ airports, ~~helicopter pad~~heliports, ~~and~~ landing strips, ~~medical use heliports,~~ and seaplane landing sites within ~~five~~ six nautical miles of the project area ~~and all known private use airports, helicopter pads, and landing strips~~ or property within or adjacent to the project area, and show these facilities on a map(s) of at least 1:24,000 scale. For all structures located within the six nautical miles, the applicant shall provide the maximum possible height of construction equipment, and include a list of air transportation facilities, existing or proposed, and copies of any coordination with the federal aviation administration and the Ohio office of aviation. Additionally, applicant shall provide confirmation that the owners of these ~~airports~~ facilities have been notified of the proposed facility and any impacts it will have on ~~airport~~ aviation operations.

(23) Provide the FAA filing status of each ~~airport~~ structure and describe any potential conflicts with air navigation or air traffic communications that may be caused by the proposed facility.

(4) Describe if the proposed facility or a specific structure that is part of the proposed facility has any 14 CFR part 77 impacts.

(5) Provide a list and brief discussion of all licenses, permits, and authorizations that will be required for construction of the facility.

(6) Provide a description, quantification and characterization of debris that will result from construction of the facility, and the plans for disposal of the debris.

(7) Provide a discussion of the process that will be used to control storm water and minimize erosion during construction and restoration of soils, wetlands, and streams disturbed as a result of construction of the facility.

(8) Provide a discussion of plans for disposition of contaminated soil and hazardous materials generated from clearing of land, excavation or any other action that would adversely affect the natural environment of the project site during construction. Responsibility for removal of contaminated soil shall be limited solely to soil and material from clearing of land, excavation, or any other action that would adversely affect the natural environment of the

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project site, and shall not include additional remediation measures beyond the scope of the project.

(9) Provide a description of the plans for construction during excessively dusty or excessively muddy soil conditions.

**AMENDED**

**4906-4-08 Health and safety, land use and ecological information.**

(A) The applicant shall provide information on health and safety.

(1) Equipment safety. The applicant shall provide information on the safety and reliability of all equipment.

(a) Describe how the facility will be constructed, operated, and maintained to comply with the requirements of applicable state and federal statutes and regulations, including, but not limited to, the national electrical safety code, applicable occupational safety and health administration regulations, U.S. department of transportation gas pipeline safety standards, and Chapter 4901:1-16 of the Administrative Code.

(ab) Describe all proposed major public safety equipment.

(bc) Describe the reliability of the equipment.

(ed) Provide the generation equipment manufacturer's safety standards. Include a complete copy of the manufacturer's safety manual or similar document and any recommended setbacks from the manufacturer.

(de) Describe the measures that will be taken to restrict public access to the facility.

(ef) Describe the fire protection, safety, and medical emergency plan(s) to be used during construction and operation of the facility, and how such plan(s) will be developed in consultation with local emergency responders.

(g) Describe sensitive receptor considerations, ensuring that sensitive receptor index numbering is the same for all reports and maps listing sensitive receptors.

(2) Air pollution control. Except for wind ~~farm~~s and solar ~~farm~~s facilities, the applicant shall describe in conceptual terms the probable impact to the population due to failures of air



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pollution control equipment.

- (3) Noise. The applicant shall provide information on noise from the construction, ~~and~~ operation, and maintenance of the facility.
- (a) Estimate the nature of any intermittent, recurring, or particularly annoying sounds from the following sources~~Describe the construction noise levels expected at the nearest property boundary. The description shall address:~~
- (i) Blasting activities.
  - (ii) Operation of earth moving equipment.
  - (iii) Driving of piles, rock breaking or hammering, and horizontal directional drilling.
  - (iv) Erection of structures.
  - (v) Truck traffic.
  - (vi) Installation of equipment.
- (b) Describe the operational noise levels expected at the nearest property boundary. The description shall address:
- (i) Operational noise from generation equipment. In addition, for a wind ~~farm~~facility, cumulative operational noise levels at the property boundary for each property adjacent to or within the project area, under both day and nighttime operations. The applicant shall use generally accepted computer modeling software (developed for wind turbine noise measurement) or similar wind turbine noise methodology, including consideration of broadband, tonal, and low-frequency noise levels.
  - (ii) Processing equipment.
  - (iii) Associated road traffic
- (c) Indicate the location of any noise-sensitive areas within one mile of the facility, and the operational noise level at each habitable residence, school, church, and other noise-sensitive receptors, under both day and nighttime operations. Sensitive receptor, for the purposes of this rule, refers to any occupied building.
- (d) Describe equipment and procedures to mitigate the effects of noise emissions from the

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proposed facility during construction and operation, including limits on the time of day at which construction activities may occur.

- (e) Submit a preconstruction background noise study of the project area that includes measurements taken under both day and nighttime conditions.
- (4) Water impacts. The applicant shall provide information regarding water impacts
- (a) Provide an evaluation of the [potential](#) impact to public and private water supplies due to construction and operation of the proposed facility.
  - (b) Provide an evaluation of the impact to public and private water supplies due to pollution control equipment failures.
  - (c) Provide existing maps of aquifers, water wells, and drinking water source protection areas that may be directly affected by the proposed facility, [including, at a minimum, an additional one-mile buffer around the project area.](#)
  - (d) Describe how construction and operation of the facility will comply with any drinking water source protection plans near the project area.
  - (e) Provide an analysis of the prospects of floods for the area, including the probability of occurrences and likely consequences of various flood stages, and describe plans to mitigate any likely adverse consequences.
- (5) Geological features. The applicant shall provide a map of suitable scale showing the proposed facility, geological features of the proposed facility site, topographic contours, existing gas and oil wells, ~~and~~ injection wells, [and underground abandoned mines](#). The applicant shall also:
- (a) Describe the suitability of the site geology and plans to remedy any [site-specific](#) inadequacies, [including proposed mitigation](#).
  - (b) Describe the suitability of soil for grading, compaction, and drainage, and describe plans to remedy any inadequacies and restore the soils during post-construction reclamation, [including a grading plan and maximum graded acreage](#).
  - (c) [Describe the suitability of the soils for foundation construction, and areas with slopes that exceed twelve per cent and/or highly erodible soils \(according to both the natural resource conservation service and county soil surveys and any other available survey](#)

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resources representative of the project area) that may be affected by the proposed facility.

(ed) Provide results and initial analysis of preliminary test borings and dDescribe plans for additional the test borings, including closure plans for such borings. Plans for the test borings shall contain a timeline for providing the test boring logs and the following information to the board:

- (i) Subsurface soil properties.
- (ii) Static water level.
- (iii) Rock quality description.
- (iv) Per cent recovery.
- (v) Depth and description of bedrock contact.

(e) Coordinate with the Ohio department of natural resources on the geological suitability of the project within the proposed site in order to provide a response letter from the department to staff.

- (6) Wind velocity. The applicant shall provide an analysis of high wind velocities for the area, including the probability of occurrences and likely consequences of various wind velocities, and describe plans to mitigate any likely adverse consequences.
- (7) Blade shear. For a wind farm, the applicant shall evaluate and describe the potential impact from blade shear at the nearest property boundary and public road.
- (8) Ice throw. For a wind farm, the applicant shall evaluate and describe, by providing a site-specific ice throw risk analysis and assessment study, the potential impact from ice throw at the nearest property boundary and public road.
- (9) Shadow flicker, For a wind farm, the applicant shall evaluate and describe the potential cumulative impact from shadow flicker at the property boundary and sensitive receptors within a distance of ten rotor diameters or at least one-half mile, whichever is greater, of a turbine, including its plans to minimize potential impacts.
- (10) Radio and TV reception. The applicant shall evaluate and describe the potential for the facility to interfere with radio and TV reception and describe measures that will be taken to minimize interference.

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- (11) Radar interference. The applicant shall evaluate and describe the potential for the facility to interfere with military and civilian radar systems and describe measures that will be taken to minimize interference.
- (12) Navigable airspace interference. The applicant shall evaluate and describe the potential for the facility to interfere with navigable airspace and describe measures that will be taken to minimize interference. The applicant shall coordinate such efforts with appropriate state and federal agencies.
- (13) Communication interference. The applicant shall evaluate and describe the potential for the facility to interfere with microwave communication paths and systems and describe measures that will be taken to minimize interference. Include all licensed systems and those used by electric service providers and emergency personnel that operate in the project area.
- (14) Electric and magnetic fields. For electric power transmission facilities where the centerline of the facility is within one hundred feet of a residence or institution, and for electric substations where the boundary of the footprint is within one hundred feet of a residence or institution, the applicant shall discuss the production of electric and magnetic fields during operation of the preferred and alternate site/route. If more than one conductor configuration is to be used on the proposed facility, information shall be provided for each configuration that constitutes more than ten per cent of the total line length, or more than one mile of the total line length being proposed. Where an alternate structure design is submitted, information shall also be provided on the alternate structure. The discussion shall include:
  - (a) Calculated electric and magnetic field strength levels at one meter above ground, under the conductors and at the edge of the right-of-way for:
    - (i) Winter normal conductor rating.
    - (ii) Emergency line loading.
    - (iii) Normal maximum loading. Provide corresponding current flows, conductor ground clearance for normal maximum loading and distance from the centerline to the edge of the right-of-way. Estimates shall be made for minimum conductor height. The applicant shall also provide typical cross-section profiles of the calculated electric and magnetic field strength levels at the normal maximum loading conditions.
    - (iv) Where there is only one occupied residence or institution within one hundred feet of the centerline, only one set of field strength values are to be provided. Where there

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are two or more occupied residences or institutions within one hundred feet of the centerline, field strength values shall be provided for each configuration that includes these occupied residences and institutions, and constitutes more than ten percent of the total line length, or more than one mile of the total line length being certificated.

- (b) References to the current state of knowledge concerning possible health effects of exposure to electric and magnetic field strength levels.
- (c) Description of the company's consideration of electric and magnetic field strength levels, both as a general company policy and specifically in the design and siting of the electric power transmission line project including: alternate conductor configurations and phasing, tower height, corridor location, and right-of-way width.
- (d) Description of the company's current procedures for addressing public inquiries regarding electric and magnetic field strength levels, including copies of informational materials and company procedures for customer electric and magnetic field strength level readings.

(B) The applicant shall provide information on ecological resources.

(1) Ecological information. The applicant shall provide information regarding ecological resources in the project area.

- (a) Provide a map of at least 1:24,000 scale, including the area one thousand feet on each side of the proposed facilities containing a one half mile radius from the project area, showing which shall include the following features:
  - (i) The proposed facility and ~~project area boundary~~ limits of disturbance.
  - (ii) Undeveloped or abandoned land such as wood lots or vacant tracts of land subject to past or present surface mining activities, not used as a registered game preserve or in agricultural production.
  - (iii) Wildlife areas, nature preserves, and other conservation areas.
  - (iv) Surface bodies of water, including wetlands, ditches, streams, lakes, reservoirs, ~~and ponds,~~ and drainage channels. For wetlands, include the entire area of the wetland if it extends outside of the project area.
  - (v) Highly-erodible soils and slopes of twelve percent or greater.
  - (vi) Areas of proposed vegetative clearing, including the vegetative community type.

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- (vii) Woody and herbaceous vegetation land.
  - (viii) Sensitive habitat or young rearing areas of species identified as potentially impacted by the project through coordination with the Ohio department of natural resources and the United States fish and wildlife service in the project area, if present.
  - (b) Provide the results of a field survey of the vegetation and surface waters within one-hundred feet of the potential construction impact area of the facility. The survey should include a description of the vegetative communities, and delineations of wetlands and streams. Provide a map of at least 1:12,000 scale showing all delineated resources. The applicant shall describe the probable impact of the operation and maintenance of the proposed facility on vegetation and surface waters.
  - (c) Provide a description of the probable impact of the construction of the proposed facility on the vegetation and surface waters. This shall include impacts from route/site clearing and grading, and disposal of vegetation. Include the linear feet and acreage impacts, and the proposed crossing methodology of each stream and wetland that would be crossed by any part of the facility during construction equipment.
  - (ed) Provide the results of a literature survey of the plant and animal life within at least one-fourth mile of the project area boundary. The literature survey shall include aquatic and terrestrial plant and animal species that are of commercial or recreational value, or species designated as endangered or threatened.
  - (de) Conduct and provide the results of field surveys of the plant and animal species identified in the literature survey, including their federal and state protection status. The applicant shall also provide a description of the probable impact of the construction, operation, and maintenance of the proposed facility on the species described in this rule and procedures to minimize such impacts. This would include impacts from route clearing and any impact to natural nesting areas.
  - (ef) Provide a summary of any additional studies which have been made by or for the applicant addressing the ecological impact of the proposed facility
- (2) Ecological impacts. The applicant shall provide information regarding potential impacts to ecological resources during construction.
- (a) Provide an evaluation of the impact of construction on the resources surveyed in response to paragraph (B)(1) of this rule, including the following:-Include the

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- (i) A table displaying the report name, linear feet and acreage impacted, quality, flow regime, and the proposed crossing methodology of each stream and wetland that would be crossed by or within the footprint of any part of the facility or construction equipment.
  - (ii) A table displaying the report name, acreage impacted, quality, Cowardin classification, and the proposed crossing methodology of each delineated wetland that would be crossed by or within the footprint of any part of the facility or construction equipment.
  - (iii) A table displaying Specify the extent of ~~vegetation~~ clearing of each vegetative community type, including a clearing total.
  - (iv) A description of ~~, and describe~~ how such clearing work will be done so as to minimize removal of woody vegetation and minimize forest fragmentation. Describe potential impacts to wildlife and their habitat.
  - (iv) A description of impacts to wildlife, including listed species identified through coordination with the Ohio department of natural resources and/or the United States fish and wildlife service, will be avoided or minimized.
- (b) Describe the mitigation procedures to be utilized to minimize both the short-term and long-term impacts due to construction, including the following:
- (i) Plans for post-construction site restoration and stabilization of disturbed soils, especially in riparian areas and near wetlands. Restoration plans should include details on the removal and disposal of materials used for temporary access roads and construction staging areas, including gravel.
  - (ii) A detailed frac out contingency plan for stream and wetland crossings that are expected to be completed via horizontal directional drilling detailing environmental specialist presence, monitoring of drilling pressures and discharges within surface water resources, containment measures, cleanup and vacuum truck availability, and timelines and methods of restoration.
  - (iii) Methods to demarcate surface waters and wetlands and to protect them, including any proposed buffers, from entry of construction equipment and material storage or disposal.
  - (iv) Procedures for inspection and repair of erosion control measures, especially after

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rainfall events.

- (v) Methods to protect and plans for restoration of vegetation in proximity to any project facilities from damage, particularly mature trees, wetland vegetation, and woody vegetation in riparian areas.
  - (vi) Options for disposing of downed trees, brush, and other vegetation during initial clearing for the project, and clearing methods that minimize the movement of heavy equipment and other vehicles within the project area that would otherwise be required for removing all trees and other woody debris off site.
  - (vii) Avoidance measures for state ~~of~~ federally listed and protected species and their habitat, in accordance with paragraph (D) of rule 4906-4-09 of the Administrative Code.
  - (viii) Measures to divert storm water runoff away from fill slopes and other exposed surfaces.
  - (ix) A description of any expected use of herbicides for maintenance.
- (3) Operational ecological impacts. The applicant shall provide information regarding potential impacts to ecological resources during operation and maintenance of the facility.
- (a) Provide an evaluation of the impact of operation and maintenance on the undeveloped areas shown in response to paragraph (B)(1) of this rule.
  - (b) Describe the procedures to be utilized to avoid, minimize, and mitigate both the short- and long-term impacts of operation and maintenance. Describe methods for protecting streams, wetlands, and vegetation, particularly mature trees, wetland vegetation, and woody vegetation in riparian areas. Include a description of any expected use of herbicides for maintenance.
  - (c) Describe any plans for post-construction monitoring of wildlife impacts.
- (4) The applicant shall provide a description of any mitigation procedures to be used during construction, operation, and maintenance of the proposed facility to minimize the impact on vegetation, surface waters, and species identified in paragraph (B) of this rule.
- (5) The applicant shall take steps to prevent establishment and/or further propagation of noxious weeds identified in rule 901:5-37 of the Administrative Code and invasive species identified



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in rule 901:5-30-01 of the Administrative Code during implementation of any pollinator-friendly plantings. Additionally, the applicant shall comply with any public orders concerning the abatement of noxious weeds.

(C) The applicant shall provide information on land use and community development.

(1) Existing land use. The applicant shall provide information regarding land use in the region and potential impacts of the facility through the following maps and related information. A map of at least 1:24,000 scale shall be provided, showing the following:

(a) For a proposed electric generation facility, the following must be detailed Provide a map of at least 1:24,000 scale showing the following within one mile of the project area boundary and for a proposed electric power transmission, gas pipeline, or substation site the following must be detailed within one thousand feet:

(i) The proposed facility, substation, or compressor station.

(ii) Centerline and right-of-way, if applicable, for each electric power transmission line or gas pipeline being proposed.

(~~iii~~) Land use, depicted as areas on the map. Land use, for the purposes of paragraph (C) of this rule, refers to the current economic use of each parcel. Categories should include residential, commercial, industrial, institutional, recreational, agricultural, and vacant, or as classified by the local land use authority.

(~~iii~~) Structures, depicted as points on the map. Identified structures should include residences, commercial centers or buildings, industrial buildings and installations, schools, hospitals, churches, civic buildings, and other occupied places.

(~~iv~~) Incorporated areas and population centers.

(vi) Road names.

(b) Provide, for the types of structures identified on the map in paragraph (C)(1)(a) of this rule, a table showing the following:

(i) For all structures and property lines within one thousand five hundred feet of ~~the~~ generation equipment or a wind turbine, the distance between both the structure or property line and the equipment or nearest wind turbine. Or, for all structures within two hundred feet of the proposed facility right-of-way for an electric power

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transmission line, gas pipeline, or substation site, the distance between the nearest edge of the structure and the proposed facility right-of-way.

(ii) For all structures and property lines within two hundred fifty feet of a collection line, access road, substation, or other associated facility component, the distance between both the structure or property line and the associated facility component.

(iii) For each structure and property in the table, whether the property is being leased by the applicant for the proposed facility.

(iv) A description of the mitigation procedures to be used during the construction, operation, and maintenance of the proposed facility to minimize impact to structures near the facility.

(c) Provide an evaluation of the impact of the proposed facility on the above land uses identified on the map in paragraph (C)(1)(a) of this rule. Include, for each land use type, the construction impact area and the permanent impact area in acres, in total and for each project component (e.g., turbines, collection lines, access roads, substations), and the explanation of how such estimate was calculated. Also include the construction impact area and permanent impact area in acres total for all land use types.

(d) Identify structures that will be removed or relocated.

(2) Wind farm maps. For wind farms only, the applicant shall provide a map(s) of at least 1:24,000 scale showing the proposed facility, habitable residences, and parcel boundaries of all parcels within a half-mile of the project area. Indicate on the map, for each parcel, the parcel number and whether the parcel is being leased by the applicant for the proposed facility, as of no more than thirty days prior to the submission of the application. Include on the map the setbacks for wind turbine structures in relation to property lines, habitable residential structures, electric power transmission lines, gas pipelines, gas distribution lines, hazardous liquid(s) pipelines, and state and federal highways, consistent with no less than the following minimum requirements:

(a) The distance from a wind turbine base to the property line of the wind farm property shall be at least one and one-tenth times the total height of the turbine structure as measured from its tower's base (excluding the subsurface foundation) to the tip of a blade at its highest point.

(b) The wind turbine shall be at least one thousand, one hundred, twenty-five feet in horizontal

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distance from the tip of the turbine's nearest blade at ninety degrees to the property line of the nearest adjacent property, including a state or federal highway, at the time of the certification application.

- (c) The distance from a wind turbine base to any electric [power](#) transmission line, gas pipeline, gas distribution line, hazardous liquid(s) pipeline, or public road shall be at least one and one-tenth times the total height of the turbine structure as measured from its tower's base (excluding the subsurface foundation) to the tip of a blade at its highest point.
  - (d) Minimum setbacks from property lines and residences may be waived pursuant to the procedures set forth in paragraph (C)(3) of this rule.
- (3) Setback waivers. The setback shall apply in all cases except those in which all owner(s) of property adjacent to the wind farm property waive application of the setback to that property. The waiver(s) must meet the following requirements:
- (a) Content of waiver. The waiver shall:
    - (i) Be in writing;
    - (ii) Provide a brief description of the facility;
    - (iii) Notify the applicable property owner(s) of the statutory minimum setback requirements;
    - (iv) Describe the adjacent property subject to the waiver through a legal description;
    - (v) Describe how the adjacent property is subject to the statutory minimum setback requirements; and
    - (vi) Advise all subsequent purchasers of the adjacent property subject to the waiver that the waiver of the minimum setback requirements shall run with the land.
  - (b) Required signature. The waiver shall be signed by the applicant and the applicable property owner(s), indicating consent to construction activities without compliance with the minimum setback requirements.
  - (c) Recordation of waiver. The waiver shall be recorded in the county recorder's office where the property that is the subject of the waiver is located.
- (4) Land use plans. The applicant shall provide information regarding land use plans.

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- (a) Describe formally adopted plans for future use of the project area and surrounding lands for anything other than the proposed facility.
- (b) Describe the applicant's plans for concurrent or secondary uses of the site.
- (c) Describe the impact of the proposed facility on regional development, including housing, commercial and industrial development, schools, transportation system development, and other public services and facilities.
- (d) Assess the compatibility of the proposed facility and the anticipated resultant regional development with current regional plans.
- (e) Provide current population counts or estimates, current population density, and ten-year population projections for counties and populated places within five miles of the project area.

(D) The applicant shall provide information on cultural and archaeological resources

- (1) Landmark mapping. The applicant shall indicate, on a map of at least 1:24,000 scale, any formally adopted land and water recreation areas, recreational trails, scenic rivers, scenic routes or byways, and registered landmarks of historic, religious, archaeological, scenic, natural, or other cultural significance within ten miles of the project area if the proposed facility is an electric generation facility, or within one thousand feet if the facility is an electric power transmission line, gas pipeline, or substation. Landmarks to be considered for purposes of paragraph (D) of this rule are those districts, sites, buildings, structures, and objects that are recognized by, registered with, or identified as eligible for registration by the national registry of natural landmarks, the state historical preservation office, or the Ohio department of natural resources.

(2) A description of any studies used to determine the location of cultural resources within the area of potential effects. Correspondence with the state historic preservation office shall be included.

- (23) Impacts on mapped landmarks. The applicant shall provide an evaluation of the impact of the construction, operation, and maintenance of the proposed facility on the preservation and continued meaningfulness of these landmarks and describe plans to avoid or mitigate any adverse impact.

(34) Recreation and scenic areas. The applicant shall:

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(a) ~~d~~Describe the ~~identified~~ recreation and scenic areas ~~within ten miles of the project area~~ identified under paragraph (D)(1) of this rule in terms of their proximity to the project, population centers, uniqueness, topography, vegetation, hydrology, and wildlife.

(b) Provide an evaluation of the impact of the proposed facility on those identified recreational and scenic areas ~~within ten miles of the project area~~ and describe plans to mitigate any adverse impact.

(5) The applicant shall describe the plans to avoid or mitigate any adverse impacts to cultural resources. Mitigation procedures to be used during the operation and maintenance of the proposed facility shall be developed in consultation with the Ohio history connection. The plans shall detail procedures for flagging and avoiding all landmarks in the project area. The plans shall also contain measures to be taken should previously unidentified landmarks be discovered during construction of the project.

(46) Visual impact of facility. The applicant shall evaluate the visual impact of the proposed above-ground facility within at least a ten-mile radius from the project area. The evaluation shall be conducted or reviewed by a licensed landscape architect ~~ef~~or other professional with experience in developing a visual impact assessment. The applicant shall:

(a) Describe the visibility of the project, including a viewshed analysis and area of visual effect, shown on a corresponding map of the study area. The viewshed analysis shall not incorporate deciduous vegetation, agricultural crops, or other seasonal land cover as viewing obstacles. If the viewshed analysis includes atmospheric conditions, it shall incorporate the atmospheric conditions under which the facility would be most visible.

(b) Describe the visibility of the proposed facility from such sensitive vantage points as residential areas, lookout points, scenic highways, waterways, and landmarks identified in (D)(1) of this rule.

~~(b)~~ Describe the existing landscape and evaluate its scenic quality. This description shall include documentation of a review of existing plans, policies, and regulations of the communities within the study area, and list all references to identified visual resources or other indications of the visual preferences of the community.

~~(c)~~ Describe the alterations to the landscape caused by the facility, including a description and illustration of the scale, form, and materials of all facility structures, and evaluate the impact of those alterations to the scenic quality of the landscape. This description should also include a narrative of how the proposed facility will likely affect the aesthetic quality

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of the site and surrounding area.

- (~~de~~) Evaluate the visual impacts to the resources identified in paragraph (D) of this rule, and any such resources within ten miles of the project area that are valued specifically for their scenic quality.
  - (~~ef~~) Provide photographic simulations or artist's pictorial sketches of the proposed facility from public vantage points that cover the range of landscapes, viewer groups, and types of scenic resources found within the study area. The applicant should explain its selection of vantage points, including any coordination with local residents, public officials, and historic preservation groups in selecting these vantage points.
  - (~~fg~~) Describe measures that will be taken to minimize any adverse visual impacts created by the facility, including, but not limited to, project area location, lighting, turbine layout, visual screening, and facility coloration. In no event shall these measures conflict with relevant safety requirements.
- (E) The applicant shall provide information regarding agricultural districts and potential impacts to agricultural land.
- (1) Mapping of agricultural land. The applicant shall identify on a map of at least 1:24,000 scale the proposed facility, electric power transmission line or gas pipeline alignment, or substation site, inclusive of the potential disturbance area, and all agricultural land, and separately all agricultural district land existing at least sixty days prior to submission of the application located within the project area boundaries. Where available, distinguish between agricultural uses such as cultivated lands, permanent pasture land, managed woodlots, orchards, nurseries, livestock and poultry confinement areas, and agriculturally related structures.
  - (2) Agricultural information. The applicant shall provide, for all agricultural land, and separately for agricultural uses and agricultural districts identified under paragraph (E)(1) of this rule, the following:
    - (a) A quantification of the acreage impacted.
    - (b) An evaluation of the impact of the construction, operation, and maintenance of the proposed facility on the land and the following agricultural facilities and practices within the project area:
      - (i) Field operations such as plowing, planting, cultivating, spraying, aerial applications, and harvesting.

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- (ii) Irrigation. The applicant shall describe existing irrigation systems and demonstrate how impacts to those systems will be avoided or mitigated, and how damaged irrigation systems will be promptly repaired to original conditions.
  - (iii) Field drainage systems. The applicant shall describe and map knowable field drainage systems, demonstrate how impacts to those systems will be avoided or mitigated, and describe how damaged drainage systems will promptly be repaired to original conditions. Applicant must also provide a description of data sources and methods used to obtain information for field drainage system mapping.
  - (iv) Soils. The applicant shall describe the anticipated impacts to soils in agricultural lands, how topsoil will be excavated and restored, and how compaction of soil will be avoided and how compacted soil will be restored to original condition.
  - ~~(iv)~~ Structures used for agricultural operations. The applicant shall describe all agricultural structures that will be removed or repurposed, the impacts of removal or repurposing on agricultural operations, and how such impacts will be mitigated or avoided.
  - ~~(v)~~ The viability as agricultural district land of any land so identified. The applicant shall identify all agricultural district properties, discuss the specific impacts on each property, and provide an evaluation on how those impacts will affect the viability of the property as agricultural land.
- (c) A description of mitigation procedures to be utilized by the applicant during construction, operation, and maintenance to reduce impacts to agricultural land, structures, and practices. The description shall illustrate how avoidance and mitigation procedures will achieve ~~the following:~~
- ~~(i) Avoidance or minimization to the maximum extent practicable of any damage to field tile drainage systems and soils in agricultural areas.~~
  - ~~(ii) Timely repair of damaged field tile systems to at least original conditions, at the applicant's expense.~~
  - ~~(iii) Segregation of excavated topsoil, and decompaction and restoration of all topsoil to original conditions unless otherwise agreed to by the landowner.~~
- (3) Drain tile considerations. The applicant shall



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- (a) Document benchmark conditions of the project drain tile system by locating all mains and laterals using a perimeter dig utilizing a tile search trench and consult with owners of all parcels adjacent to the property, the county soil and water conservation district, and the county to request drainage system information over those parcels.
- (b) Avoid and repair all damaged drain tile systems that flow into or out of the construction area.
- (c) Locate, replace and avoid all mains and laterals in the construction area.
- (d) Avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas.
- (e) Promptly repair, at applicant's expense, damaged field tile systems to at least original conditions or modern equivalent. However, if the affected landowner agrees to not having the damaged field tile system repaired, the landowner may do so only if the field tile systems of adjacent landowners and public rights-of-way remain unaffected by the non-repair of the landowner's field tile system. The applicant shall compensate affected parcel owners whose crops were impacted by damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas.

**AMENDED**

**4906-4-09 Regulations associated with ~~wind farms~~ renewable energy generation facilities.**

~~For both an economically significant wind farm and a major utility facility consisting of wind-powered electric generating units, the application shall state the applicant's commitment to comply with the following regulations and the board shall require that each of the following requirements be satisfied. The following requirements are applicable to a renewable energy generation facility.~~

**(A) Construction, location, use, maintenance, and change.**

- (1) Adherence to other regulations. Construction and operation of all proposed ~~wind farms~~ facilities shall be consistent with all applicable state and federal requirements, including all applicable safety, construction, environmental, electrical, communications, and all federal aviation administration requirements. Except where compliance is waived by the board pursuant to



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section 4906.13 of the Revised Code, an ~~applicant~~ applicant will comply with state building code regulations in constructing structures not involved in generation or transmission of electricity. Construction of structures that are not directly associated with the generation of electricity, such as administrative offices and warehouses, shall be in compliance with applicable Ohio board of building standards as described in rule 4901:1 of the Administrative Code.

(2) Construction, operations, and maintenance safety.

(a) Equipment safety

- (i) The applicant shall comply with the manufacturer's most current safety manual, unless such safety manual conflicts with paragraph (C)(2) of rule 4906-4-08 of the Administrative Code.
- (ii) The applicant shall maintain a copy of this safety manual in the operations and management building of the facility.

(b) Geological features

- (i) Within the application, the applicant shall provide a preliminary geotechnical exploration and evaluation to confirm that there are no issues to preclude development of the facility, including, but not limited to: borings, test pits, and/or subsurface samples at the substation(s), overhead collection line pole locations, and representative samples of the project area.
- (ii) Sixty days prior to the preconstruction conference, the applicant shall provide a fully detailed geotechnical exploration and evaluation to confirm that there are no issues to preclude development of the facility.
- (iii) The geotechnical exploration and evaluation shall include borings ~~at each turbine location~~ to provide subsurface soil properties, static water level, rock quality description, per cent recovery, and depth and description of the bedrock contact and recommendations needed for the final design ~~and construction of each wind turbine foundation, as well as the final location of the transformer substation and interconnection substation.~~
- (iv) The applicant must fill all boreholes and borehole abandonment must comply with state and local regulations.

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- (iv) The applicant shall provide copies of all geotechnical boring logs to board staff and to the Ohio department of natural resources division of geological survey prior to construction.
- (c) Blasting. Should site-specific conditions warrant blasting, the applicant shall submit a blasting plan to the board, at least thirty days prior to blasting.
- (i) The applicant shall submit the following information as part of its blasting plan:
- (a) The name, address, and telephone number of the drilling and blasting company.
  - (b) A detailed blasting plan for dry and/or wet holes for a typical shot. The blasting plan shall address blasting times, blasting signs, warnings, access control, control of adverse effects, and blast records.
  - (c) A plan for liability protection and complaint resolution.
- (ii) Prior to the use of explosives, the applicant or explosive contractor shall obtain all required licenses and permits. The applicant shall submit a copy of the license or permit to the board within seven days of obtaining it from the local authority.
- (iii) The blasting contractor shall utilize two blasting seismographs that measure ground vibration and air blast for each blast. One seismograph shall be placed beside the nearest dwelling, or at least at the nearest accessible property line to the dwelling, and the other placed at the discretion of the blasting contractor.
- (iv) At least thirty days prior to the initiation of blasting operations, the applicant must notify, in writing, all residents or owners of dwellings or other structures within one thousand feet of the blasting site. The applicant or explosive contractor shall offer and conduct a pre-blast survey of each dwelling or structure within one thousand feet of each blasting site, unless waived by the resident or property owner. The survey must be completed and submitted to the board at least ten days before blasting begins.
- ~~(3) Location. Wind farms shall be sited in locations that comply with paragraph (C)(2) of rule 4906-4-08 of the Administrative Code and applicable provisions of this rule.~~
- (43) Maintenance and use.
- (a) The applicant shall maintain the wind farm equipment in good condition. Maintenance

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shall include, but not be limited to, painting, structural repairs, and security measures.

- (b) The applicant shall have a construction and maintenance access plan based on final plans for the facility, access roads, and types of equipment to be used. The plan shall consider the location of sensitive resources, as identified by the Ohio department of natural resources, and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan shall include locations of erosion control measures. The plan shall provide specific details on all wetlands, streams, and/or ditches to be impacted by the facility, including those where construction or maintenance vehicles and/or facility components such as access roads cannot avoid crossing the waterbody. In such cases, specific discussion of the proposed crossing methodology for each wetland and stream crossing, and post-construction site restoration, must be included. The plan shall include the measures to be used for restoring the area around all temporary access points, and a description of any long-term stabilization required along permanent access routes.
- (c) The applicant shall have a vegetation management plan. The plan must identify all areas of proposed vegetation clearing for the project, specifying the extent of the clearing, and describing how such clearing work will be done so as to minimize removal of woody vegetation. The plan must also describe how trees and shrubs around structures, along access routes, at construction staging areas, during maintenance operations, and in proximity to any other project facilities will be protected from damage. Priority should be given to protecting mature trees throughout the project area, and all woody vegetation in wetlands and riparian areas, both during construction and during subsequent operation and maintenance of all facilities; low-growing trees and shrubs in particular should be protected wherever possible within the proposed right-of-way. The vegetation management plan should also explore various options for disposing of downed trees, brush, and other vegetation during initial clearing for the project, and recommend methods that minimize the movement of heavy equipment and other vehicles within the right-of-way that would otherwise be required for removing all trees and other woody debris off site.
- (d) For both construction and future right-of-way maintenance, the applicant shall limit, to the greatest extent possible, the use of herbicides in proximity to surface waters, including wetlands along the right-of-way. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides during initial clearing or future right-of-way maintenance should only be used where no other options exist, and with prior approval from the Ohio environmental protection agency. Prior to

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commencement of construction, the applicant shall describe the planned herbicide use for all areas in or near any surface waters during initial project construction and/or future right-of-way maintenance.

(e) The Applicant shall prevent the establishment and propagation of noxious weeds identified in Ohio Adm.Code Chapter 901:5-37 in the project, including its setback areas, during construction, operation, and decommissioning via procedures and processes specified and required by the project's vegetation plan. The Applicant shall provide annual proof of weed control for the first four years of operation, with the goal of weed eradication significantly completed by year three of operation.

(f) The Applicant shall, to the extent practicable, minimize the clearing of wooded areas, including scrub/shrub areas, which would lead to fragmentation and isolation of woodlots or reduce connecting corridors between one woodlot and another.

(eg) Within its plans for post-construction site restoration and stabilization of disturbed soils, such restoration plans shall include:

- (i) The applicant shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner.
- (ii) The applicant shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. All construction debris and all contaminated soil shall be promptly removed and properly disposed of in accordance with Ohio environmental protection agency regulations.

(54) Change, reconstruction, alteration, or enlargement.

- (a) Any amendment to a ~~wind farm~~ facility certificate shall be proposed by the applicant to the board as an amendment application, as provided in rule 4906-3-11 of the Administrative Code.
- (b) Unless otherwise ordered by the board or administrative law judge, modification(s) shall not be considered amendments under this rule if such modification(s) would be minimal in nature, and would be adequately addressed by the conditions of a certificate.
- (c) An applicant may seek review of a proposed modification(s) sought under paragraph (A)(5)(b) of this rule by filing the proposed modification(s) in the public docket of the

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certificate case and shall provide written notification of such filing to staff and all landowners immediately adjacent to the site of the proposed modification(s). The notification shall reference, and include a copy of, paragraph (A)(5) of this rule. In the filing submitted in the public docket, the applicant shall present its rationale as to why the applicant is seeking the proposed modification(s) and must demonstrate that the proposed modification(s) satisfies paragraph (A)(5)(b) of this rule. Staff or any interested person may file objections to the applicant's proposal within twenty-one days. If no objections are filed within the twenty-one day period, the applicant may proceed with the proposed modification(s). If objections are filed within the twenty-one day period, board staff may subsequently docket its recommendation on the matter. The board will process proposed modification(s) under the suspension process set forth for accelerated applications as outlined in rule 4906-6-09 of the Administrative Code.

- (B) Erosion control. Within its procedures for inspection and repair of erosion control measures, the applicant shall employ the following erosion and sedimentation control measures, construction methods, and best management practices when working near environmentally-sensitive areas or when in close proximity to any watercourses:
- (1) During construction of the facility, seed all disturbed soil, except within actively cultivated agricultural fields, within seven days of final grading. Denuded areas, including spoils piles, shall be seeded and stabilized in accordance with the applicant's approved stormwater pollution prevention plan, if they will be undisturbed for more than twenty-one days. Re-seeding shall be conducted in accordance with the applicant's approved stormwater pollution prevention plan as necessary until sufficient vegetation in all areas has been established.
  - (2) Inspect and repair all erosion control measures after each rainfall event of one half of an inch or greater over a twenty-four-hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.
  - (3) Delineate all watercourses, including wetlands, by fencing, flagging, or other prominent means.
  - (4) Avoid entry of construction equipment into watercourses, including wetlands, except at specific locations where construction has been approved.
  - (5) Prohibit storage, stockpiling, and/or disposal of equipment and materials in these sensitive areas.
  - (6) Locate structures outside of identified watercourses, including wetlands, except at specific locations where construction has been approved.

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- (7) Divert all storm water runoff away from fill slopes and other exposed surfaces to the greatest extent possible, and direct instead to appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.

(C) Aesthetics and recreational land use.

- (1) In the event of vandalism on any generating facility, the applicant shall immediately remove or abate the damage to preserve the aesthetics of the project to pre-vandalism condition.
- (2) No commercial signage or advertisements may be displayed on any ~~turbine, tower, or related~~ infrastructure, except for reasonable identification of the manufacturer or operator of the ~~wind farm~~ facility.
- (3) All structures that require lighting by the federal aviation administration, including construction equipment, shall be lit with the minimum lighting required by the federal aviation administration. Lighting of other parts of the ~~wind farm~~ facility, such as associated structures and access roads, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from adjacent properties.
- ~~(4) The visible surfaces of wind farm structures shall be a non-reflective, matte finished, non-obtrusive, and neutral color such as white, off white, gray, or beige.~~
- (54) The applicant shall provide a plan to avoid adverse impacts of the proposed facility on landmarks in the surrounding area. Landmarks, for the purpose of this rule, refer to those districts, sites, buildings, structures, and objects that are recognized by, registered with, or identified as eligible for registration by the national registry of natural landmarks, the state historic preservation office, or the Ohio department of natural resources. If avoidance measures are not feasible, the applicant shall describe why impacts cannot be avoided and shall provide an evaluation of the impact of the proposed facility on the preservation and continued meaningfulness of registered or potentially eligible landmarks of historic, religious, archaeological, scenic, natural, or other cultural significance and describe plans to mitigate any adverse impact. The mitigation plan shall contain measures to be taken should previously-unidentified archaeological deposits or artifacts be discovered during construction of a project.
- (65) The applicant shall provide photographic simulations or artist's pictorial sketches of the proposed facility from at least one vantage point in each area of three square miles within the project area, showing views to the north, south, east, and west. The photographic simulations or artist's pictorial sketches shall incorporate the environmental and atmospheric conditions

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under which the facility would be most visible.

(D) Wildlife protection. The applicant shall satisfy the following requirements to avoid or mitigate impacts to federal or state listed and protected species.

- (1) The applicant shall coordinate with the United States fish and wildlife service, the Ohio department of natural resources division of wildlife, and board staff to determine if any actions are necessary to avoid impacts to federal or state listed and protected species or other species which may be impacted. The applicant shall provide coordination letters received from the United States fish and wildlife service and the Ohio department of natural resources division of wildlife. If the United States fish and wildlife service, the Ohio department of natural resources division of wildlife, or board staff identify any recommendations for the avoidance of impacts to specific species, the applicant shall describe how it shall address all recommendations.
- (2) The applicant shall contact board staff within twenty-four hours if federal or state listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the applicant, board staff, and other applicable administrative agencies.
- (3) The applicant shall avoid construction in federal or state listed and protected species' habitats during seasonally restricted dates, or at restricted habitat types, as provided by the Ohio department of natural resources and the United States fish and wildlife service, unless coordination efforts with the Ohio department of natural resources and the United States fish and wildlife service allows a different course of action.
- (4) ~~The applicant shall submit a post construction avian and bat monitoring plan to the board. During operation of the facility, if significant mortality occurs to birds or bats, the applicant will develop a mitigation plan.~~
- (5) ~~At least sixty days prior to the first turbine becoming operational, the applicant shall describe plans for maintaining turbine blades in a stationary or nearly stationary stance during low wind speed conditions at night during bird and bat migratory seasons.~~
- (6) If construction activities result in significant adverse impact to federal or state listed and protected species, the applicant will develop a mitigation plan or adaptive management strategy.

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(5) The Applicant shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas. Sensitive areas which would be impacted during construction shall be identified on a map provided to Staff, and shall include, but are not limited to, wetlands and streams, and locations of threatened or endangered species. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction. The environmental specialist shall have authority to stop construction to assure that unforeseen environmental impacts do not progress and recommend procedures to resolve the impact. A map shall be provided to Staff showing sensitive areas which would be impacted during construction with information on when the environmental specialist would be present.

(6) The Applicant shall, to the extent practicable, minimize the clearing of wooded areas, including scrub/shrub areas, which would lead to fragmentation and isolation of woodlots or reduce connecting corridors between one woodlot and another.

(E)

~~(F)~~ Noise.

(1) General construction activities shall be limited to the hours of seven a.m. to seven p.m., or until dusk when sunset occurs after seven p.m. Impact pile driving, hoe ram, and blasting operations, if required, shall be limited to the hours between ten a.m. to five p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. Sensitive receptor, for purposes of this rule, refers to any occupied building. The applicant shall notify property owners or affected tenants within the meaning of paragraph (B)(2) of rule 4906-3-03 of the Administrative Code of upcoming construction activities including potential for nighttime construction activities.

(2) The facility shall be operated so that the facility's daytime and nighttime noise contributions ~~does~~ not result in noise levels at any non-participating sensitive receptor within one mile of the project boundary that exceed 40 dBA or the project area ambient daytime and nighttime average sound level (LeqL50) by five A-weighted decibels (dBA). ~~During daytime operation only (seven a.m. to ten p.m.), the facility may operate at the greater of: the project area ambient nighttime Leq plus five dBA; or the validly measured ambient Leq plus five dBA at the location of the sensitive receptor. After measured ambient Leq plus five dBA at the location of the sensitive receptor. After commencement of commercial operation, the applicant shall conduct further review of the impact and possible mitigation of all project-~~



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~~related noise complaints through its complaint resolution process. Non-participating, as used in this context, refers to a property for which the owner has not signed a waiver or otherwise agreed to be subject to a higher noise level.~~

(3) After commencement of commercial operation, the applicant shall conduct further review of the impact and possible mitigation of all project-related noise complaints through its complaint resolution process. Non-participating, as used in this context, refers to a property for which the owner has not signed a waiver or otherwise agreed to be subject to a higher noise level.

(F) Decommissioning, remediation, restoration and removal.

- (1) The applicant shall provide the final decommissioning plan to the board and the applicable county engineer(s) at least thirty days prior to the preconstruction conference. The plan shall:
  - (a) Indicate the intended future use of the land following reclamation.
  - (b) Describe the engineering techniques and major equipment to be used in decommissioning and reclamation; a surface water drainage plan and any proposed impacts that would occur to surface and ground water resources and wetlands; and a plan for backfilling, soil stabilization, compacting, and grading.
  - (c) Provide a detailed timetable for the accomplishment of each major step in the decommissioning plan, including the steps to be taken to comply with applicable air, water, and solid waste laws and regulations and any applicable health and safety standards in effect as of the date of submittal.
- (2) The applicant shall file a revised decommissioning plan to the board and the applicable county engineer(s) every five years from the commencement of construction. The revised plan shall include advancements in engineering techniques and reclamation equipment and standards. The revised plan shall be applied to each five-year decommissioning cost estimate.
- (3) The applicant shall, at its expense, complete decommissioning of the facility, ~~or individual wind turbines,~~ within twelve months after the end of the useful life of the ~~facility or individual wind turbines~~. If no electricity is generated for a continuous period of twelve months, or if the board deems the facility ~~or turbine~~ to be in a state of disrepair warranting decommissioning, the ~~wind farm or individual wind turbines~~ facility will be presumed to have reached the end of its useful life. The board may extend the useful life period for the ~~wind farm or individual turbines~~ facility for good cause as shown by the applicant. The board may

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also require decommissioning of individual wind turbines components due to health, safety, wildlife impact, or other concerns that prevent the turbine facility or its components from operating within the terms of the certificate.

- (4) Decommissioning shall include the removal and transportation of the wind turbines and towers facility components off site. Decommissioning shall also include the removal of buildings, cabling, electrical components, access roads, and any other associated facilities, unless otherwise mutually agreed upon by the facility owner and/or facility operator and the landowner. All physical material pertaining to the facility and associated equipment shall be removed to a depth of at least thirty-six inches beneath the soil surface, or more for the maintenance and repair of field tile systems, and transported off site. The disturbed area shall be restored to the same physical condition that existed before construction of the facility. Damaged field tile systems shall be repaired to the satisfaction of the property owner.
- (5) During decommissioning, all recyclable materials, salvaged and non-salvaged, shall be recycled to the furthest extent practicable. All other non-recyclable waste materials shall be disposed of in accordance with state and federal law.
- (6) The facility owner and/or facility operator shall not remove any improvements made to the electrical infrastructure if doing so would disrupt the electric grid, unless otherwise approved by the applicable regional transmission organization and interconnection utility.
- (7) At least seven days prior to the preconstruction conference, the applicant shall retain an independent, registered professional engineer, licensed to practice engineering in the state of Ohio to estimate the total cost of decommissioning in current dollars, without regard to salvage value of the equipment. Said estimate will be converted to a per turbine basis calculated as the total cost of decommissioning of all facilities divided by the number of turbines in the most recent facility engineering drawings. This estimate shall be conducted every five years. Said estimate shall include:
  - (a) An identification and analysis of the activities necessary to implement the most recent approved decommissioning plan including, but not limited to, physical construction and demolition costs assuming good industry practice and based on publication or guidelines approved by staff;
  - (b) The cost to perform each of the activities; and
  - (c) An amount to cover contingency costs, not to exceed ten per cent of the above calculated reclamation cost.

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(d) For wind facilities, said estimate will be converted to a per turbine basis calculated as the total cost of decommissioning of all facilities divided by the number of turbines in the most recent facility engineering drawings.

- (8) The applicant, facility owner, and/or facility operator shall post and maintain ~~for decommissioning~~ a performance bond ~~in an amount equal to the per turbine for decommissioning~~. For wind facilities, the performance bond will be in an amount equal to the per turbine decommissioning costs multiplied by the sum of the number of turbines constructed and under construction. ~~For purposes of this condition, a turbine is considered to be under construction at the commencement of excavation for the turbine foundation.~~ The form of the performance bond shall be mutually agreed upon by the board and the applicant, the facility owner, and/or the facility operator. The performance bond shall ensure the faithful performance of all requirements and reclamation conditions of the most recently filed and approved decommissioning and reclamation plan. At least thirty days prior to the preconstruction conference, the applicant, the facility owner, and/or the facility operator shall provide an estimated timeline for the posting of decommissioning funds based on the construction schedule for each turbine. Prior to commencement of construction, the applicant, the facility owner, and/or the facility operator shall provide a statement from the holder of the performance bond demonstrating that adequate funds have been posted for the scheduled construction. Once the performance bond is provided, the applicant, facility owner and/or facility operator shall maintain such funds or assurance throughout the remainder of the applicable term. The applicant, facility owner, and/or facility operator shall obtain a new performance bond every five years with an updated decommissioning cost estimate from its engineer and revised decommissioning plan.
- (9) The facility owner and/or facility operator shall repair damage to government-maintained (public) roads and bridges caused by decommissioning activity. Any damaged public roads and bridges shall be repaired promptly to their pre-decommissioning state by the facility owner and/or facility operator under the guidance of the appropriate regulatory agency. The applicant shall provide financial assurance to the counties that it will restore the public roads and bridges it uses to their pre-decommissioning condition. These terms shall be defined in a road use agreement between the applicant and the county engineer(s) prior to construction. The road use agreement shall contain provisions for the following:
- (a) A pre-decommissioning survey of the condition of public roads and bridges conducted within a reasonable time prior to decommissioning activities.
  - (b) A post-decommissioning survey of the condition of public roads and bridges conducted

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within a reasonable time after decommissioning activities.

- (c) An objective standard of repair that obligates the facility owner and/or facility operator to restore the public roads and bridges to the same or better condition as they were prior to decommissioning.
  - (d) A timetable for posting of the decommissioning road and bridge bond prior to the use or transport of heavy equipment on public roads or bridges.
- (10) The performance bond shall be released by the holder of the bond when the facility owner and/or facility operator has demonstrated, and the board concurs, that decommissioning has been satisfactorily completed, or upon written approval of the board, in order to implement the decommissioning plan.

(G) The following are applicable to solar facility applications.

- (1) High wind velocities. Solar facility applicants will provide an analysis of high wind velocities for the area, including the probability of occurrences and likely consequences of various wind velocities, and describe plans to mitigate any likely adverse consequences. A tabulation of maximum and median wind speeds recorded daily at weather stations or airports near the facility would be very useful in satisfying this requirement.
- (2) Stormwater management. The applicant shall construct the facility in a manner that incorporates post construction stormwater management under OHC00005 (Part III.G.2.e, pp. 19-27) in accordance with the Ohio environmental protection agency's guidance on post-construction storm water controls for solar panel arrays. -The Applicant shall mitigate potential water quality impacts associated with aquatic discharges by obtaining an Ohio national pollutant discharge elimination system construction stormwater general permit from the Ohio environmental protection agency with submittal of a notice of intent for coverage under that permit. The applicant shall develop and implement a stormwater pollution prevention plan, a spill prevention control and counter measure plan, and a horizontal directional drilling inadvertent release of drilling fluid contingency plan to minimize and prevent potential discharges to surface waters in the project area and surrounding area.
- (3) Fencing. Solar panel perimeter fence type is to be both small-wildlife permeable and aesthetically fitting for a rural location. Such fencing requirement does not apply to substation fencing governed by the National Electric Safety Code or other similar safety code standards applicable to substations.

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(4) Setbacks. The facility design is to incorporate a minimum setback from the project's solar modules of (i) at least 150 feet from non-participating parcel boundaries, (ii) at least 300 feet from non-participating residences existing as of the application filing date, and (iii) at least 150 feet from the edge of pavement of any state, county, or township road within or adjacent to the project area.

(5) Landscape Plans. The application is to include a landscape plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic impacts of the facility on adjacent residential non-participating properties, the traveling public, nearby communities, and recreationalists through measures such as shrub plantings or enhanced pollinator plantings and be in harmony with the existing vegetation and viewshed in the area. Such vegetative screening is to be maintained for the life of the facility.

(H) The following are applicable to wind facility applications.

(1) (G) Blade shear. The applicant shall provide its plans to minimize potential impacts from blade shear. These plans shall include restricting public access to the facility with appropriately placed warning signs or other necessary measures, and instructing workers on the potential hazards.

(1a) To minimize the possibility of blade shear, all wind turbine generators must be equipped with:

(a) Two independent braking systems, which may include aerodynamic overspeed controls and mechanical brakes operated in a fail-safe mode, but shall not include stall regulation;

(b) A pitch control system;

(c) A lightning protection system; and

(d) Turbine shutoffs in the event of excessive wind speeds, uncontrolled rotation, excessive blade vibration, stress, or pressure on the tower structure, rotor blades, and turbine components.

(2b) Bypass or override of wind turbine safety features or equipment is prohibited.

(3c) At a minimum, the design of the wind turbine generators shall conform to industry standards, as effective at the time the applicant submits its application, including those of the American national standards institute, the international electrotechnical commission, or an equivalent

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industry standard. The applicant shall submit certificates of design compliance obtained by the equipment manufacturers from underwriters laboratories, det norske veritas, Germanischer Lloyd wind energies, or other similar certifying organizations.

(H2) Shadow flicker.

- (1a) The facility shall be designed to avoid unreasonable adverse shadow flicker effect at any non-participating sensitive receptor within one thousand meters of any turbine. At a minimum, the facility shall be operated so that shadow flicker levels do not exceed thirty hours per year at any such receptor. Non-participating, as used in this context, refers to a property for which the owner has not signed a waiver or otherwise agreed to be subject to a higher shadow flicker level.
- (2b) After commencement of commercial operation, the applicant shall conduct further review of the impact and possible mitigation of all project-related shadow flicker complaints through its complaint resolution process.

(3) Ice throw.

- (1a) The ice throw analysis shall, at a minimum, include the probability of ice throw impacts at the nearest property boundary and public road.
- (2b) The applicant's plans to minimize potential impacts shall include:
  - (ai) Restricting public access to the facility with appropriately placed warning signs or other necessary measures,
  - (bii) Instructing workers on the potential hazards of ice conditions on wind turbines, and
  - (eiii) Installing and utilizing an ice warning system to include an ice detector installed on the roof of the nacelle, ice detection software, warranted by the manufacturer to detect ice, for the wind turbine controller, or an ice sensor alarm that triggers an automatic shutdown.
- (3c) In addition to the use of the safety measures enumerated in paragraph (E)(2) of this rule, the potential impact from ice throw shall be presumptively deemed to satisfy safety considerations if the probability of one kilogram of ice landing beyond the statutory property line setback for each turbine location is less than one per cent per year.

(4) Communications.

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- (a) At least thirty days prior to the preconstruction conference, the applicant shall conduct a microwave path study that identifies all existing microwave paths that intersect the wind farm project, and a worst-case Fresnel zone analysis for each path. A copy of this study shall be provided to the path licensee(s), for review, and to staff for review and confirmation that the applicant is complying with this condition. The assessment shall conform to the following requirements:
- (i) An independent and registered surveyor, licensed to survey within the state of Ohio, shall determine the exact locations and worst-case Fresnel zone dimensions of all known microwave paths or communication systems operating within the project area, including all paths and systems identified by the electric service providers that operate within the project area. In addition, the surveyor shall determine the center point of all turbines within one thousand feet of the worst-case Fresnel zone of each system, using the same survey equipment.
  - (ii) Provide the distance in feet between the nearest rotor blade tip of each surveyed turbine identified under paragraph (J)(1)(a) of this rule and the surveyed worst-case Fresnel zone of each microwave system path.
  - (iii) Provide a map of the surveyed microwave paths, center points, and boundaries at a legible scale.
  - (iv) Describe the specific, expected impacts of the project on all paths and systems considered in the assessment.
- (b) All existing licensed microwave paths, and licensed communication systems shall be subject to avoidance or mitigation. The applicant shall complete avoidance or mitigation measures prior to commencement of construction for impacts that can be predicted in sufficient detail to implement appropriate and reasonable avoidance and mitigation measures. After construction, the applicant shall mitigate all observed impacts of the project to microwave paths and licensed communication systems within seven days or within a longer time period acceptable to staff. Avoidance and mitigation for any known point-to-point microwave paths and licensed communication systems shall consist of measures acceptable to staff, the applicant, and the affected path owner, operator, or licensee. If interference with an omni-directional or multi-point system is observed after construction, mitigation would be required only for affected receptors.
- (c) The applicant shall denote on the set of engineering drawings of the final project design to be provided under rule 4906-3-14 of the Administrative Code the microwave paths and



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procedures to avoid interference with those microwave paths by construction equipment within the 300-foot radius workspace around each turbine.

- (5) The applicant shall submit a post-construction avian and bat monitoring plan to the board. During operation of the facility, if significant mortality occurs to birds or bats, the applicant will develop a mitigation plan.
- (6) At least sixty days prior to the first turbine becoming operational, the applicant shall describe plans for maintaining turbine blades in a stationary or nearly stationary stance during low wind speed conditions at night during bird and bat migratory seasons.
- (7) The visible surfaces of wind farm structures shall be a non-reflective, matte finished, non-obtrusive, and neutral color such as white, off-white, gray, or beige. (8) Location. Wind farms shall be sited in locations that comply with paragraph (C)(2) of rule 4906-4-08 of the Administrative Code and applicable provisions of this rule.

**AMENDED**

**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.**



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- (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.

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- (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) of this rule 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) of this rule,
    - (ii) A representation by the wind farm operator that it is ready to restart the damaged property, and,
    - (iii) A notarized statement that a satisfactory repair or replacement of the damaged property has been completed from:
      - (a) A licensed professional engineer;
      - (b) A qualified representative from the manufacturer of the damaged equipment; or
      - (c) A person employed by or hired by the operator having appropriate qualifications under the circumstances to provide the required statement.
  - (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 information required in this rule.



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio (PUCO)

**Rule Contact Name and Contact Information:**

Angela Hawkins, Legal Director

Phone: 614-466-0122

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

Certificate Applications for Electric Generation Facilities, Electric Transmission Facilities, and Gas Pipelines

Rule Number(s): 4906-4-01 through 4906-4-10

Date of Submission for CSI Review: N/A

Public Comment Period End Date: August 12, 2022

**Rule Type/Number of Rules:**

X New/ 1 rules

☐ No Change/      rules (FYR?     )

X Amended/ 9 rules (FYR? Y)

X Rescinded/ 1 rules (FYR? Y)

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

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[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

**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 rules for CSI review.**

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

**The rule:**

- ☒ 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.**
- ☒ d. **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **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.***

The proposed revisions to the rules in Chapter 4906-4, Ohio Adm.Code (OAC), merge the procedures for applying for certification from the OPSB, which were previously contained in Chapters 4906-4 and 4906-5, OAC. The proposed combined chapter will address applications by electric generation facilities, electric transmission facilities, and gas

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pipelines. In addition, in accordance with the requirements in R.C. 4906.06 and 4906.10, proposed Chapter 4906-4 more specifically identifies information that the OPSB requires in order to evaluate certificate applications, including: plans for future electric generation additions on a site, more detail as to construction sequence expectations, more details as to the purpose of proposed projects, additional mapping requirements, additional public safety information regarding proposed projects, additional economic and public impact information, and additional information regarding decommissioning plans.

**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.**

The amendments to the rules in Chapter 4906-4, OAC, are proposed pursuant to Section 119.032, Revised Code, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The OPSB is authorized to adopt the proposed rules pursuant to Chapter 4906, Revised Code, which governs the rules and regulations promulgated by the OPSB. Further, on July 12, 2021, the governor of the state of Ohio signed into law Am. S.B. 52 (S.B. 52) amending provisions that govern OPSB certificates, including those contained in Chapter 4906, Revised Code. The OPSB intends to combine the review of its rules with its review of possible provisions to the rules resulting from the enactment of S.B. 52.

**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 rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to enforce a federal requirement.

**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)?**

Chapter 4906-4, OAC, is proposed in fulfillment of the OPSB's requirement to evaluate certification applications as described in R.C. 4906.06 and 4906.10.

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

The rules contained in this chapter are designed to provide certificate applicants and the general public a more complete understanding of the information the OPSB must consider in determining whether to certificate a major utility facility. As such, there will not be measurable outputs or outcomes as a result of the adoption of Chapter 4906-4, OAC.

**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.*

The OPSB conducted a three-part workshop on October 4 and October 8, 2021, using virtual hearing technology, to receive feedback from interested stakeholders and the general public in Case No. 21-902-GE-ORD. Additionally, the OPSB conducted three stakeholder engagement meetings on March 11, March 12, and May 12, 2020, to gather stakeholder information as to the rules.

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

The OPSB considered recommendations by stakeholders at the engagement meetings and workshop as follows:

- (1) Additional project information should be included in certificate applications.
- (2) Specific to electric transmission and gas pipeline projects, the types of information that should be required in relation to the public interest, convenience, and necessity of the project.
- (3) In regard to project siting, the types of information that a certificate applicant should submit in consideration of public involvement as to the site/route selections.

(4) The types of information that should be filed regarding public interaction and any complaint resolution issues concerning significant preconstruction and pre-operation project developments.

(5) The types of information that a wind or solar facility applicant should file regarding decommissioning plans.

(6) The types of information that an applicant should file regarding interactions with local governments in a project area.

(7) The types of information that an applicant should file regarding environmental, aviation, noxious weed management, irrigation and filed drainage system mitigation, storm water runoff management, and communication system mitigation.

(8) Additional considerations the OPSB should utilize as to solar project certifications.

(9) The types of additional enforcement measures the OPSB should consider, and how they are best funded.

**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 considered. In adopting Chapter 4906-4, OAC, the OPSB takes into account feedback from stakeholders and the general public regarding the rules in effect prior to the proposed changes. Stakeholder and public feedback can be made directly to the OPSB by filing comments from such entities as persons proposing, owning, or operating major utility facilities or economically significant wind farms, electric distribution utilities, gas and natural gas local distribution companies, the Ohio Gas Association, the Oil and Gas Association, applicants who have filed cases with the OPSB, members of the general public, or any other entity. The requirements in S.B. 52 were also taken into account.

**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?**

The rules were developed based on stakeholder input from industry and the general public, as well as in consideration of the requirements on the OPSB as described in Chapter 4906 of the Revised Code. As a result, regulatory alternatives were not available.

**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.*

No performance-based regulations were considered, as the rules in Chapter 4906-4, OAC, are required by Chapter 4906, Revised Code, and dictate process and do not define a required outcome. Thus, performance-based regulation is not appropriate.

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

The OPSB has reviewed other state regulations and found no duplication as to the adoption of these rules pursuant to Chapter 4906, Revised Code, and S.B. 52.

**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 notify interested stakeholders that have participated in Case No. 21-902-GE-BRO, as well as posting the regulations on its website.

**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**

Chapter 4906-4, OAC, provides guidance to entities seeking to site facilities within the state of Ohio. Only entities seeking certificates to build, own, or operate facilities will be affected by these rules. Effects to business include the continuing application fees and the time it takes for compliance with application and certificate monitoring requirements. OPSB modified the application fee provision in Rule 4906-3-12(D), OAC, to eliminate fee caps in order to better align application fees with the costs of certificate consideration and monitoring of the largest class of certificate applicants.

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

Costs of compliance vary greatly depending on the nature of the facility that is seeking or operating pursuant to a OPSB certificate. Costs include environmental studies, application preparation, service and distribution of the application, participation in the



public review process, and the OPSB's cost of reviewing applications and ongoing operations to ensure that they align with certificate conditions.

**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.*

Costs of compliance with the application requirements in the regulation are not expected to materially increase. The OPSB has been working with the regulated community on a longstanding basis, and the enhancements to the proposed regulation are intended to clarify the criteria the OPSB requires in order to consider certificate applications consistent with the public protection requirements in R.C. 4906.06 and 4906.10.

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

As described herein, the regulatory intent is consistent with the requirements in Chapter 4906, Revised Code. Therefore, the rules are required by law and were drafted to minimize adverse impacts on business while maintaining a strong focus on the rights and protections afforded the public.

**Regulatory Flexibility**

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

Not applicable, as the rule requirements apply to facility applicants, which are not entities that would be defined as small businesses.

**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?**

Not applicable, as the OPSB only assesses penalties for violations of certificates, which occur after an applicant begins construction of an approved facility.

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

The OPSB actively works with applicants, as well as parties who have been granted certificates, to assure compliance with the OPSB's rules and the terms and conditions of their certificates.

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## **RESCIND**

### **~~4906-5-01—Purpose and scope.~~**

- ~~(A) This chapter sets forth the requirements for the filing of standard certificate applications for electric transmission facilities and gas pipelines.~~
- ~~(B) The board may, upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.~~

## **RESCIND**

### **~~4906-5-02—Project summary and applicant information.~~**

- ~~(A) The applicant shall provide a summary of the proposed project. The summary should be suitable as a reference for state and local governments and for the public. The summary shall include the following:~~
- ~~(1) A statement explaining the general purpose of the facility.~~
  - ~~(2) A description of the general location, size, and operating characteristics of the proposed facility.~~
  - ~~(3) A discussion of the suitability of the preferred and alternate routes for the proposed facility.~~
  - ~~(4) An explanation of the project schedule (a Gantt chart is acceptable).~~
- ~~(B) The applicant shall provide a brief description of the applicant's history, affiliate relationships, and current operations, and a description of the company that will construct and operate the facility, if different from the applicant.~~

## **RESCIND**

### **~~4906-5-03—Review of need and schedule.~~**

- ~~(A) The applicant shall provide a statement explaining the need for the proposed facility, including a listing of the factors upon which it relied to reach that conclusion and references to the most recent long-term forecast report (if applicable).~~
- ~~(1) The applicant shall explain the purpose of the proposed facility.~~

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- ~~(2) The applicant shall provide specific projections of system conditions, local requirements, or any other pertinent factors that impacted the applicant's opinion on the need for the proposed facility.~~
- ~~(3) The applicant shall provide relevant load flow studies and contingency analyses, if appropriate, identifying the need for system improvement.~~
- ~~(4) For electric power transmission facilities, the applicant shall present load flow data in the form of transcription diagrams depicting system performance with and without the proposed facility.~~
- ~~(5) For gas pipeline projects, the applicant shall provide one copy in electronic format of the relevant base case system data on diskette, in a format acceptable to the board staff, with a description of the analysis program and the data format.~~

~~(B) The applicant shall explain how the facility fits into regional expansion plans.~~

- ~~(1) For electric power transmission lines and associated facilities, the applicant shall provide a brief statement of how the proposed facility and site/route alternatives fit into the applicant's most recent long-term electric forecast report and the regional plans for expansion, including, but not limited to, the following:~~
  - ~~(a) Reference to any description of the proposed facility and site/route alternatives in the most recent long-term electric forecast report of the applicant.~~
  - ~~(b) If no description was contained in the most recent long-term electric forecast report, an explanation as to why none was filed in the most recent long-term electric forecast report.~~
  - ~~(c) Reference to regional expansion plans, when applicable (if the transmission project will not affect regional plans, the applicant shall so state).~~
- ~~(2) For gas pipelines and associated facilities, the applicant shall provide a brief statement of how the proposed facility and site/route alternatives fit into the applicant's most recent long-term gas forecast report, including the following:~~
  - ~~(a) Reference to any description of the proposed facility and site/route alternatives in the most recent long-term gas forecast report of the applicant.~~
  - ~~(b) If no description was contained in the most recent long-term gas forecast report, an~~

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~~explanation as to why none was filed in the most recent long-term gas forecast report.~~

~~(C) For electric power transmission facilities, the applicant shall provide an analysis of the impact of the proposed facility on the electric power system economy and reliability. The impact of the proposed facility on all interconnected utility systems shall be evaluated, and all conclusions shall be supported by relevant load flow studies.~~

~~(D) For electric power transmission lines, the applicant shall provide an analysis and evaluation of the options considered which would eliminate the need for construction of an electric power transmission line, including electric power generation options and options involving changes to existing and planned electric power transmission substations.~~

~~(E) The applicant shall describe why the proposed facility was selected to meet the projected need. The applicant shall also describe how the facility will serve the public interest, convenience, and necessity.~~

~~(F) The applicant shall provide a detailed project schedule.~~

~~(1) The applicant shall provide a proposed schedule in Gantt chart format covering all major activities and milestones, including:~~

~~(a) Preparation of the application.~~

~~(b) Submittal of the application for certificate.~~

~~(c) Issuance of the certificate.~~

~~(d) Receipt of grid interconnection studies and other critical path milestones for project construction.~~

~~(e) Acquisition of rights-of-way and land rights for the certified facility.~~

~~(f) Preparation of the final design.~~

~~(g) Construction of the facility.~~

~~(h) Placement of the facility in service.~~

~~(2) The applicant shall describe the potential impact of critical delays on the in-service date.~~

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**RESCIND**

**~~4906-5-04 — Route alternatives analysis.~~**

- ~~(A) The applicant shall conduct a site and route selection study prior to submitting an application for an electric power transmission line or gas pipeline, and associated facilities. The study shall be designed to evaluate all practicable sites, routes, and route segments for the proposed facility within the study area.~~
- ~~(1) The applicant shall provide a description of the study area, or the geographic boundaries of the area considered for development of the project, including the rationale for the selection.~~
- ~~(2) The applicant shall provide a map of suitable scale that depicts the boundary of the study area and all siting constraints and/or suitability analysis utilized for the study.~~
- ~~(3) The applicant shall provide a map of suitable scale that depicts the boundary of the study area and the routes, route segments, and sites which were evaluated.~~
- ~~(4) The applicant shall provide a comprehensive list and description of all qualitative and quantitative siting criteria utilized by the applicant, including any weighting values assigned to each.~~
- ~~(5) The applicant shall provide a description of the process by which the applicant utilized the siting criteria to determine the preferred and alternate routes and sites.~~
- ~~(6) The applicant shall provide a description of the routes and sites selected for evaluation, and the factors and rationale used by the applicant for selecting the preferred and alternate routes and sites.~~
- ~~(B) The applicant shall provide a summary table comparing the routes, route segments, and sites, utilizing the technical, financial, environmental, socioeconomic, and other factors identified in the study. Design and equipment alternatives shall be included where the use of such alternatives influenced the siting decision.~~
- ~~(C) The applicant shall describe all public involvement that was undertaken in the site/route selection process. The applicant shall provide a description of how many and what types of comments were received.~~

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**RESCIND**

**~~4906-5-05 — Project description.~~**

- ~~(A) The applicant shall provide a description of the project area's geography, topography, population centers, major industries, and landmarks.~~
- ~~(1) The applicant shall provide a map of not less than at least 1:24,000 scale, including the area one thousand feet on each side of a transmission line or pipeline alignment, and the area within one thousand feet of a substation site or compressor station site, which shall include the following features:~~
- ~~(a) The proposed transmission line or pipeline alignments.~~
  - ~~(b) The proposed substation or compressor station site locations.~~
  - ~~(c) Roads and railroads.~~
  - ~~(d) Major institutions, parks, and recreational areas that are publicly identified and publicly owned.~~
  - ~~(e) Existing gas pipeline and electric transmission line corridors.~~
  - ~~(f) Named lakes, reservoirs, streams, canals, and rivers.~~
  - ~~(g) Population centers and legal boundaries of cities, villages, townships, and counties.~~
- ~~(2) The applicant shall provide the area, in acres, of the proposed right-of-way for the facility, the length of the transmission line or pipeline, in miles, and the number of properties crossed by the facility.~~
- ~~(B) The applicant shall provide information on the facility layout for each route/site alternative, and a description of the installation methods as detailed in this rule.~~
- ~~(1) The applicant shall describe the proposed site clearing, construction methods, and reclamation operations, including:~~
- ~~(a) Surveying and soil testing.~~
  - ~~(b) Grading and excavation.~~
  - ~~(c) Construction of temporary and permanent access roads and trenches.~~

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~~(d) Stringing of cable and/or laying of pipe.~~

~~(e) Installation of electric transmission line poles and structures, including foundations.~~

~~(f) Post-construction reclamation.~~

~~(2) The applicant shall provide the layout of facilities. The applicant shall:~~

~~(a) Provide a map of at least 1:12,000 scale of the transmission line or pipeline routes and associated facilities such as substations, compressor stations, and other stations, showing the following proposed features:~~

~~(i) Temporary and permanent access roads, staging areas, and laydown areas.~~

~~(ii) Proposed location of major structures, including transmission line poles and structures, and buildings.~~

~~(iii) Fenced-in or secured areas.~~

~~(b) Describe reasons for the proposed layout and any unusual features.~~

~~(c) Describe plans for any future modifications in the proposed layout, including the nature and approximate timing of contemplated changes.~~

~~(C) The applicant shall provide a description of the proposed transmission lines or pipelines, as well as switching, capacity, metering, safety, and other equipment pertinent to the operation of the proposed electric power transmission lines and gas pipelines and associated facilities. Include any provisions for future expansion.~~

~~(1) The applicant shall provide the following information for electric power transmission lines:~~

~~(a) Design voltage.~~

~~(b) Tower designs, pole structures, conductor size and number per phase, and insulator arrangement.~~

~~(c) Base and foundation design.~~

~~(d) Cable type and size, where underground.~~

~~(e) Other major equipment or special structures.~~



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~~(2) The applicant shall provide a single-line diagram of electric power transmission substations and a description of the proposed major equipment, such as:~~

- ~~(a) Breakers.~~
- ~~(b) Switchgear.~~
- ~~(c) Bus arrangement and structures.~~
- ~~(d) Transformers.~~
- ~~(e) Control buildings.~~
- ~~(f) Other major equipment.~~

~~(3) The applicant shall describe the following for gas pipelines:~~

- ~~(a) Maximum allowable operating pressure.~~
- ~~(b) Pipe material.~~
- ~~(c) Pipe dimensions and specifications.~~
- ~~(d) Control buildings.~~
- ~~(e) Heaters, odorizers, and above-ground facilities.~~
- ~~(f) Any other major equipment.~~

**RESCIND**

**~~4906-5-06 — Economic impact and public interaction.~~**

- ~~(A) The applicant shall state the current and proposed ownership status of the proposed facility, including leased and purchased land, rights-of-way, structures, and equipment.~~
- ~~(B) The applicant shall submit estimates of applicable capital and intangible costs for the various components of electric power transmission facility alternatives. The data submitted shall be classified according to the federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for the utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital costs~~

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~~classified in the accounting format ordinarily used by the applicant in its normal course of business). The estimates shall include:~~

- ~~(1) Land and land rights.~~
- ~~(2) Structures and improvements.~~
- ~~(3) Substation equipment.~~
- ~~(4) Poles and fixtures.~~
- ~~(5) Towers and fixtures.~~
- ~~(6) Overhead conductors.~~
- ~~(7) Underground conductors and insulation.~~
- ~~(8) Underground to overhead conversion equipment.~~
- ~~(9) Right-of-way clearing and roads, trails, or other access.~~

~~(C) The applicant shall submit estimates of applicable capital and intangible costs for the various components of gas pipeline facility alternatives. The data submitted shall be classified according to the federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company or a natural gas company as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital costs classified in the accounting format ordinarily used by the applicant in its normal course of business). The estimates shall include:~~

- ~~(1) Land and land rights.~~
- ~~(2) Structures and improvements.~~
- ~~(3) Pipes.~~
- ~~(4) Valves, meters, boosters, regulators, tanks, and other equipment.~~
- ~~(5) Roads, trails, or other access.~~

~~(D) The applicant shall provide information regarding public interaction and the economic impact for each of the site/route alternatives.~~

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- ~~(1) The applicant shall provide a list of counties, townships, villages, and cities within one thousand feet on each side of the centerline or facility perimeter.~~
- ~~(2) The applicant shall provide a list of the public officials contacted regarding the application, their office addresses, and office telephone numbers.~~
- ~~(3) The applicant shall provide a description of the public interaction planned for during the siting, construction, and operation of the proposed facility. This description shall include detailed information regarding the applicant's public information and complaint resolution programs as well as how the applicant will notify affected property owners and tenants about these programs at least seven days prior to the start of construction.~~
- ~~(4) The applicant shall describe any insurance or other corporate program for providing liability compensation for damages, if such should occur, to the public resulting from construction or operation of the proposed facility.~~
- ~~(5) The applicant shall provide an estimate of the increase in tax revenues as a result of facility placement.~~

**RESCIND**

~~**4906-5-07 — Health and safety, land use, and regional development.**~~

- ~~(A) The applicant shall provide health and safety information for each site/route alternative.~~
- ~~(1) The applicant shall provide a description of how the facility will be constructed, operated, and maintained to comply with the requirements of applicable state and federal statutes and regulations, including the national electrical safety code, applicable occupational safety and health administration regulations, U.S. department of transportation gas pipeline safety standards, and Chapter 4901:1-16 of the Administrative Code.~~
  - ~~(2) For electric power transmission facilities where the centerline of the facility is within one hundred feet of an occupied residence or institution, and for electric substations where the boundary of the footprint is within one hundred feet of an occupied residence or institution, the applicant shall discuss the production of electric and magnetic fields during operation of the preferred and alternate site/route. If more than one conductor configuration is to be used on the proposed facility, information shall be provided for each configuration that constitutes more than ten per cent of the total line length, or more than one mile of the total line length being certificated. Where an alternate structure design is submitted, information shall also be provided on the alternate structure. The discussion-~~

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~~shall include:~~

- ~~(a) Calculated electric and magnetic field strength levels at one meter above ground, under the conductors and at the edge of the right-of-way for:
    - ~~(i) Winter normal conductor rating.~~
    - ~~(ii) Emergency line loading.~~
    - ~~(iii) Normal maximum loading. Provide corresponding current flows, conductor ground clearance for normal maximum loading and distance from the centerline to the edge of the right-of-way. Estimates shall be made for minimum conductor height. The applicant shall also provide typical cross-section profiles of the calculated electric and magnetic field strength levels at the normal maximum loading conditions.~~
    - ~~(iv) Where there is only one occupied residence or institution within one hundred feet of the centerline, only one set of field strength values are to be provided. Where there are two or more occupied residences or institutions within one hundred feet of the centerline, field strength values shall be provided for each configuration that includes these occupied residences and institutions, and constitutes more than ten percent of the total line length, or more than one mile of the total line length being certificated.~~~~
  - ~~(b) References to the current state of knowledge concerning possible health effects of exposure to electric and magnetic field strength levels.~~
  - ~~(c) Description of the company's consideration of electric and magnetic field strength levels, both as a general company policy and specifically in the design and siting of the transmission line project including: alternate conductor configurations and phasing, tower height, corridor location, and right-of-way width.~~
  - ~~(d) Description of the company's current procedures for addressing public inquiries regarding electric and magnetic field strength levels, including copies of informational materials and company procedures for customer electric and magnetic field strength level readings.~~
- ~~(3) For electric power transmission facilities, the applicant shall provide an estimate of the level of radio, television, and other communication system interference from operation of the proposed facility, identify the most severely impacted areas, if any, and discuss methods~~

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~~of mitigation.~~

~~(4) The applicant shall provide an estimate of the effect of noise generation due to the construction, operation, and maintenance of the transmission line or pipeline and associated facilities. The applicant shall describe any equipment and procedures designed to mitigate noise emissions during site clearing, construction, operation, and maintenance of the facility to minimize noise impact, including limits on the time of day at which construction activities may occur. The applicant shall estimate the nature of any intermittent, recurring, or particularly annoying sounds from the following sources:~~

~~(a) Blasting activities.~~

~~(b) Operation of earth moving and excavating equipment.~~

~~(c) Driving of piles, rock breaking or hammering, and horizontal directional drilling.~~

~~(d) Erection of structures.~~

~~(e) Truck traffic.~~

~~(f) Installation of equipment.~~

~~(B) The applicant shall provide information on land use.~~

~~(1) The applicant shall provide, for each of the site/route alternatives, a map of at least 1:24,000 scale, including the area one thousand feet on each side of a transmission line or pipeline alignment, and the area within one thousand feet of a substation site, which map shall include the following features:~~

~~(a) Centerline and right of way for each transmission line or pipeline alternative being pro-posed.~~

~~(b) Proposed substation or compressor station locations.~~

~~(c) Land use, depicted as areas on the map. Land use, for the purposes of this rule, refers to the current economic use of each parcel. Categories should include residential, commercial, industrial, institutional, recreational, agricultural, and vacant, or as classified by the local land use authority.~~

~~(d) Road names.~~

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~~(e) Structures, depicted as points on the map. Identified structures should include residences, commercial centers or buildings, industrial buildings and installations, schools, hospitals, churches, civic buildings, and other occupied places.~~

~~(f) Incorporated areas and population centers.~~

~~(2) The applicant shall provide, for each of the site/route alternatives, a description of the impact of the proposed facility on each land use identified in paragraph (B)(1) of this rule. Include, for each land use type, the potential disturbance area during construction and the permanent impact area in acres, in total and for each project component (e.g., transmission line or pipeline right-of-way, substation site), and the explanation of how such estimate was calculated.~~

~~(3) The applicant shall provide, for the types of structures identified in paragraph (B)(1) of this rule, the following:~~

~~(a) For all structures within two hundred feet of the proposed facility right-of-way, the distance between the nearest edge of the structure and the proposed facility right-of-way.~~

~~(b) Any buildings that will be destroyed, acquired, or removed as the result of the planned facility and criteria for owner compensation.~~

~~(c) A description of the mitigation procedures to be used during the construction, operation, and maintenance of the proposed facility to minimize impact to structures near the facility.~~

~~(C) The applicant shall provide information regarding agricultural districts and potential impacts to agricultural land.~~

~~(1) The applicant shall provide, for each of the site/route alternatives, a map of at least 1:24,000 scale, including the potential disturbance area for the transmission or pipeline alignment, and the substation site, which map shall include the following features:~~

~~(a) Agricultural land use. Where visible and distinguishable, distinguish between agricultural uses such as cultivated land, permanent pasture land, managed woodlots, orchards, nurseries, livestock and poultry confinement areas, and agricultural related structures.~~

~~(b) Agricultural district land existing at least sixty days prior to submission of the~~

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~~application located within each transmission line or pipeline right of way or within each site boundary.~~

~~(2) The applicant shall provide, for all agricultural land, and separately for agricultural uses and agricultural districts identified under paragraph (C)(1) of this rule, the following:~~

~~(a) A quantification of the acreage impacted.~~

~~(b) An evaluation of the impact of the construction, operation, and maintenance of the pro-posed facility on the land and the following agricultural facilities and practices within the project area:~~

~~(i) Field operations such as plowing, planting, cultivating, spraying, harvesting.~~

~~(ii) Irrigation.~~

~~(iii) Field drainage systems.~~

~~(iv) Structures used for agricultural operations.~~

~~(v) The viability as agricultural land of any land identified as an agricultural district.~~

~~(c) A description of mitigation procedures to be utilized by the applicant during construction, operation, and maintenance to reduce impacts to agricultural land, structures, and practices. The description shall illustrate how avoidance and mitigation procedures will achieve the following:~~

~~(i) Avoidance or minimization to the maximum extent practicable of any damage to field tile drainage systems and soils in agricultural areas.~~

~~(ii) Timely repair of damaged field tile systems to at least original conditions, at the applicant's expense.~~

~~(iii) Segregation of excavated topsoil, and decompaction and restoration of all topsoil to original conditions unless otherwise agreed to by the landowner.~~

~~(D) The applicant shall provide information regarding land use plans and regional development.~~

~~(1) The applicant shall provide a description of the impact of the facility on regional development, referring to pertinent formally adopted regional development plans.~~

~~(2) The applicant shall provide an assessment of the compatibility of the proposed facility and~~

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~~the anticipated resultant regional development with current regional land use plans.~~

~~(E) The applicant shall provide information on cultural and archaeological resources.~~

- ~~(1) The applicant shall indicate on a map of at least 1:24,000 scale, within one thousand feet of each of the site/route alternatives, any formally adopted recreational areas, recreational trails, scenic rivers, scenic routes or byways, and registered landmarks of historic, religious, archaeological, scenic, natural, or other cultural significance. Landmarks to be considered for purposes of paragraph (E) of this rule are those districts, sites, buildings, structures, and objects that are recognized by, registered with, or identified as eligible for registration by the national registry of natural landmarks, the Ohio historical society, or the Ohio department of natural resources.~~
- ~~(2) The applicant shall describe studies used to determine the location of cultural resources within the study corridor. Correspondence with the Ohio historical preservation office shall be included.~~
- ~~(3) The applicant shall provide an evaluation of the probable impact of the construction, operation, and maintenance of the proposed facility on the preservation and continued meaningfulness of cultural resources.~~
- ~~(4) The applicant shall describe the plans to avoid or mitigate any adverse impacts to cultural resources. Mitigation procedures to be used during the operation and maintenance of the proposed facility shall be developed in consultation with the Ohio historical society. The plans shall detail procedures for flagging and avoiding all landmarks in the project area. The plans shall also contain measures to be taken should previously unidentified landmarks be discovered during construction of the project.~~
- ~~(5) The applicant shall evaluate the aesthetic impact of the proposed facility, including the following:
  - ~~(a) The visibility of the proposed facility from such sensitive vantage points as residential areas, lookout points, scenic highways, waterways, and landmarks identified in paragraph (E)(1) of this rule.~~
  - ~~(b) How the proposed facility will likely affect the aesthetic quality of the site and surrounding area.~~
  - ~~(c) Measures that will be taken to minimize any visual impacts created by the proposed facility, including, but not limited to, facility location, lighting, structure design, visual~~~~



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~~screening, and facility coloration. In no event shall these measures conflict with relevant safety requirements.~~

**RESCIND**

**~~4906-5-08 — Ecological information and compliance with permitting requirements.~~**

- ~~(A) The applicant shall provide for each of the site/route alternatives a map of at least 1:24,000 scale, including the area one thousand feet on each side of the transmission line or pipeline alignment and the area within one thousand feet of a substation site or compressor station site. The map shall include the following:~~
- ~~(1) Proposed transmission line or pipeline alignments.~~
  - ~~(2) Proposed substation or compressor station locations.~~
  - ~~(3) All undeveloped or abandoned land, including:~~
    - ~~(a) Streams and drainage channels.~~
    - ~~(b) Lakes, ponds, and reservoirs.~~
    - ~~(c) Wetlands, including the entire area of the wetland if it extends outside of the study corridor.~~
    - ~~(d) Woody and herbaceous vegetation land.~~
  - ~~(4) Highly erodible soils and slopes of twelve per cent or greater.~~
  - ~~(5) Wildlife areas, nature preserves, and publicly identified conservation areas that are managed by a public body or a recognized nonprofit organization.~~
- ~~(B) The applicant shall provide for each of the site/route alternatives the results of a field survey of the vegetation and surface waters within one hundred feet of the potential disturbance area of the facility. The field survey report shall include the following:~~
- ~~(1) The applicant shall provide a description of the vegetative communities present within the study area, and delineations of wetlands and streams.~~
  - ~~(2) The applicant shall provide a map of at least 1:12,000 scale showing the facility, the right-of-way, and all delineated resources.~~

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- ~~(3) The applicant shall provide a description of the probable impact of the construction of the proposed facility on vegetation and surface waters. This shall include the impacts from route/site clearing and grading, and disposal of vegetation. Include the linear feet and acreage impacted, and the proposed crossing methodology of each stream and wetland that would be crossed by any part of the facility or construction equipment. Specify the extent of vegetation clearing, and describe how such clearing work will be done so as to minimize removal of woody vegetation.~~
- ~~(4) The applicant shall provide a description of the probable impact of the operation and maintenance of the proposed facility on vegetation and surface waters. This shall include the permanent impacts from route clearing.~~
- ~~(5) The applicant shall provide a description of the mitigation procedures to be used during construction, operation, and maintenance of the proposed facility to minimize the impact on vegetation and surface waters. Include the following:~~
  - ~~(a) Plans for post-construction site restoration and stabilization of disturbed soils, especially in riparian areas and near wetlands. Restoration plans should include details on the removal and disposal of materials used for temporary access roads and construction staging areas, including gravel.~~
  - ~~(b) A detailed frac out contingency plan for stream and wetland crossings that are expected to be completed via horizontal directional drilling.~~
  - ~~(c) Methods to demarcate surface waters and wetlands and to protect them from entry of construction equipment and material storage or disposal.~~
  - ~~(d) Procedures for inspection and repair of erosion control measures, especially after rainfall events.~~
  - ~~(e) Measures to divert storm water runoff away from fill slopes and other exposed surfaces.~~
  - ~~(f) Methods to protect vegetation in proximity to any project facilities from damage, particularly mature trees, wetland vegetation, and woody vegetation in riparian areas.~~
  - ~~(g) Options for disposing of downed trees, brush, and other vegetation during initial clearing for the project, and clearing methods that minimize the movement of heavy equipment and other vehicles within the project area that would otherwise be required for removing all trees and other woody debris off site.~~

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~~(h) A description of any expected use of herbicides for maintenance.~~

~~(C) The applicant shall provide for each of the site/route alternatives the results of a literature survey of the plant and animal life that may be affected by the facility. The literature survey shall include aquatic and terrestrial plant and animal species of commercial or recreational value, or species designated as endangered or threatened. The applicant shall provide the results of field surveys of the plant and animal species identified in the literature survey. The survey report shall include the following:~~

- ~~(1) The applicant shall provide a list of the species identified in the surveys, including their federal and state protection status.~~
- ~~(2) The applicant shall provide a description of the probable impact of the construction of the proposed facility on the identified species and their habitat. This would include the impacts from route clearing and any impact to natural nesting areas.~~
- ~~(3) The applicant shall provide a description of the probable impact of the operation and maintenance of the proposed facility on the species described above. This would include the permanent impact from route clearing and any impact to natural nesting areas.~~
- ~~(4) The applicant shall provide a description of the mitigation procedures to be used during construction, operation, and maintenance of the proposed facility to minimize the impact on species described in this rule.~~

~~(D) The applicant shall provide for each of the site/route alternatives a description of the site geology, suitability of the soils for foundation construction, and areas with slopes that exceed twelve per cent and/or highly erodible soils (according to the natural resource conservation service and county soil surveys) that may be affected by the proposed facility. The applicant shall describe the probable impact to these areas. The applicant shall include any plans for test borings, including a timeline for providing the test boring logs and the following information to the board:~~

- ~~(1) Subsurface soil properties.~~
- ~~(2) Static water level.~~
- ~~(3) Rock quality description.~~
- ~~(4) Percent recovery.~~

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~~(5) Depth and description of bedrock contact.~~

~~(E) The applicant shall provide information regarding compliance with environmental and aviation regulations.~~

~~(1) The applicant shall provide a list and brief discussion of all licenses, permits, and authorizations that will be required for construction of the facility.~~

~~(2) The applicant shall provide a description, quantification and characterization of debris that will result from construction of the facility, and the plans for disposal of the debris.~~

~~(3) The applicant shall provide a discussion of the process that will be used to control storm-water and minimize erosion during construction and restoration of soils, wetlands, and streams disturbed as a result of construction of the facility.~~

~~(4) The applicant shall provide a discussion of plans for disposition of contaminated soil and hazardous materials generated from clearing of land, excavation or any other action that would adversely affect the natural environment of the project site during construction. Responsibility for removal of contaminated soil shall be limited solely to soil and material from clearing of land, excavation or any other action that would adversely affect the natural environment of the project site for the project, and shall not include additional remediation of measures beyond the scope of the project.~~

~~(5) The applicant shall provide the height of tallest anticipated above-ground structures. For construction activities within five miles of public use airports or landing strips, the applicant shall provide the maximum possible height of construction equipment, as well as all installed above-ground structures, and include a list of air transportation facilities, existing or proposed, and copies of any coordination with the federal aviation administration and the Ohio office of aviation.~~

~~(6) The applicant shall provide a description of the plans for construction during excessively-dusty or excessively muddy soil conditions.~~



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

**Agency, Board, or Commission Name:** Public Utilities Commission of Ohio (PUCO)

**Rule Contact Name and Contact Information:**

Angela Hawkins, Legal Director

Phone: 614-466-0122

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

General Provisions for Filing and Proceedings before the Ohio Power Siting Board (OPSB)

**Rule Number(s):** 4906-5-01 through 4906-5-08

**Date of Submission for CSI Review:** N/A

**Public Comment Period End Date:** August 12, 2022

**Rule Type/Number of Rules:**

☐ New/\_\_\_ rules

☐ Amended/\_\_\_ rules (FYR? \_\_)

☐ No Change/\_\_\_ rules (FYR? \_\_)

☒ Rescinded/ 8 rules (FYR? Y)

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

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**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 rules for CSI review.**

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

**The rule:**

- ☒ 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.
- ☒ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

**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.***

The proposed rescission of the rules in Chapter 4906-5, Ohio Adm.Code (OAC), reflect the proposed consolidation of the rules into Chapter 4906-4 OAC.

**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.**

The rescission of the rules in Chapter 4906-5, OAC, are proposed pursuant to Section 119.032, Revised Code, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The OPSB is authorized to adopt the proposed rules pursuant to Chapter 4906, Revised Code, which governs the rules and regulations promulgated by the OPSB. Further, on July 12, 2021, the governor of the state of Ohio signed into law Am. S.B. 52 (S.B. 52) amending provisions that govern OPSB certificates, including those contained in Chapter 4906, Revised Code. The OPSB intends to combine the review of its rules with its review of possible provisions to the rules resulting from the enactment of S.B. 52.

**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 rule in this chapter implements any federal requirement of is being adopted or amended to enable Ohio to obtain or maintain approval to enforce a federal requirement.

**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)?**

Chapter 4906-5, OAC, is recommended for rescission, as the criteria for the OPSB's consideration of certificate applications that it considers are recommended for consolidation in Chapter 4906-5, OAC.

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

The rules contained in this chapter are general provisions that govern matters before the OPSB pursuant to Chapter 4906 of the Revised Code. As such, there will not be measurable outputs or outcomes as a result of the rescission of Chapter 4906-5, OAC.

- 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.*

The OPSB conducted a three-part workshop on October 4 and October 8, 2021, using virtual hearing technology, to receive feedback from interested stakeholders and the general public in Case No. 21-902-GE-ORD. Additionally, the OPSB conducted three stakeholder engagement meetings on March 11, March 12, and May 12, 2020, to gather stakeholder information as to the rules.

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

The OPSB considered recommendations by stakeholders at the engagement meetings and workshop as follows:

- (1) Additional project information should be included in certificate applications.
- (2) Specific to electric transmission and gas pipeline projects, the types of information that should be required in relation to the public interest, convenience, and necessity of the project.
- (3) In regard to project siting, the types of information that a certificate applicant should submit in consideration of public involvement as to the site/route selections.
- (4) The types of information that should be filed regarding public interaction and any complaint resolution issues concerning significant preconstruction and pre-operation project developments.
- (5) The types of information that a wind or solar facility applicant should file regarding decommissioning plans.
- (6) The types of information that an applicant should file regarding interactions with local governments in a project area.



(7) The types of information that an applicant should file regarding environmental, aviation, noxious weed management, irrigation and filed drainage system mitigation, storm water runoff management, and communication system mitigation.

(8) Additional considerations the OPSB should utilize as to solar project certifications.

(9) The types of additional enforcement measures the OPSB should consider, and how they are best funded.

**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 considered. In rescinding Chapter 4906-5, OAC, the OPSB takes into account feedback from stakeholders and the general public regarding the rules in effect prior to the proposed changes. Stakeholder and public feedback can be made directly to the OPSB by filing comments from such entities as persons proposing, owning or operating major utility facilities or economically significant wind farms, electric distribution utilities, gas and natural gas local distribution companies, the Ohio Gas Association, the Oil and Gas Association, applicants who have filed cases with the OPSB, members of the general public, or any other entity. The requirements in S.B. 52 were also taken into account.

**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?**

The operation of the OPSB is specifically provided for in Chapter 4906 of the Revised Code, and the promulgation of rules governing the siting process is specifically provided for in Section 4906.03. As a result, regulatory alternatives were not available.

**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.***

No performance-based regulations were considered, as the rules in Chapter 4906-5, OAC, are supported by Chapter 4906, Revised Code, and dictate process and do not define a required outcome. Thus, performance-based regulation is not appropriate.

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

The OPSB has reviewed other state regulations and found no duplication as to the adoption of these rules pursuant to Chapter 4906, Revised Code, and S.B. 52.

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**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.**

Chapter 4906-5, OAC, has been in effect without complaints about inconsistent application of the Chapter. The proposed rescission and merger of provisions under Chapter 4906-4, OAC, that result of the proposed rescission of this chapter will be communicated via distribution of the final rules in Case No. 21-902-GE-BRO, as well as through updates to the OPSB website.

**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**

Chapter 4906-5, OAC, provides guidance to entities seeking to site facilities within the state of Ohio. Only entities seeking certificates to build, own, or operate facilities will be affected by these rules. Effects to business include the continuing application fees and the time it takes for compliance with application and certificate monitoring requirements.

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

As Chapter 4906-5, OAC, is being rescinded, there are no expected adverse impacts from the proposed rescission.

**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.*

As Chapter 4906-5, OAC, is being rescinded, there are no expected adverse impacts from the proposed rescission.

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

As described in Chapter 4906, Revised Code, these rules are required by law and were drafted to minimize adverse impacts on business while maintaining a strong focus on the rights and protections afforded the public.

**Regulatory Flexibility**

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

Chapter 4906-5, OAC, addressed the certification of new facilities in Ohio. This is not an activity typically undertaken by an entity that would be defined as a small business.

**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 OPSB only assesses penalties for violations of certificates, which occur after an applicant has begun construction of an approved facility.

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

The OPSB actively works with applicants, as well as parties who have been granted certificates, to assure compliance with the OPSB's rules and the terms and conditions of their certificates.

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**AMENDED**

**4906-6-01 Purpose and scope.**

- (A) This chapter sets forth the requirements for the filing of an accelerated certificate application.
- (B) The board may, upon its own motion, or upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

**NO CHANGE**

**4906-6-02 Types of accelerated applications.**

- (A) An accelerated certificate application shall be submitted as either a letter of notification application or a construction notice application, as outlined in the appendix to rule 4906-1-01 of the Administrative Code.
- (B) If a project meets the requirements of both a letter of notification application and construction notice application, a letter of notification application shall be filed.
- (C) If a project that qualifies for accelerated review is an associated facility of another project or projects subject to accelerated review before the board, the projects may be combined into one accelerated certificate application. These applications should be in the same form, meaning that if any of the associated projects require a letter of notification application, the combined application shall follow the requirements for letter of notification applications outlined in this chapter.

**AMENDED**

**4906-6-03 Filing of an accelerated application.**

- ~~(A) At least five days prior to submitting an accelerated certificate application, the applicant shall request a case number and file a preapplication notification letter with the board. The preapplication notification letter shall include a general description of the project, an anticipated project schedule, and any requests for expedited processing. If an applicant fails to file a preapplication notification letter, and instead files its request for expedited processing along with its application, the expedited processing of its application will not begin until five days after its application is filed.~~

- ~~(B)~~ (A) A letter of notification application shall be filed not less than ninety days before the planned

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commencement of construction. A letter of notification for which the applicant requests expedited processing shall be filed not less than twenty-eight days before planned commencement of construction. For good cause shown, the applicant may request a shorter automatic approval date than the ninety or twenty-eight day requirement.

- (~~C~~B) A construction notice shall be filed not less than ninety days before planned commencement of construction. A construction notice for which the applicant requests expedited processing shall be filed not less than twenty-one days before planned commencement of construction. For good cause shown, the applicant may request a shorter automatic approval date than the ninety or twenty-one day requirement.

**AMENDED**

**4906-6-04 Requests for expedited treatment and fees.**

- (A) At least five business days prior to submitting an expedited application, the applicant shall request a case number and file a preapplication notification letter with the board. The preapplication notification letter shall include: a description of the project; the location of the project or locations of the project termini if the project is an electric power transmission line or gas pipeline; contact information for the subject matter expert responsible for the application that staff could contact for answers to questions; an anticipated project schedule; and any requests for expedited processing. If an applicant fails to file a preapplication notification letter, the expedited processing of its application will not begin until five business days after its application is filed.
- (B) If an applicant requests expedited processing of an accelerated certificate application, in addition to filing the preapplication notification letter, and application with the docketing division, the applicant shall:
- (1) Serve a copy of the application on the board's executive director or the executive director's designee at or before the filing of the expedited application by hand delivery or overnight courier service.
  - (2) Pay a fee of two thousand dollars due at the time of the filing. This payment is in addition to the payment due pursuant to paragraph (C) of this rule.
- (~~B~~C) Unless otherwise notified by the board, its executive director, or the administrative law judge, a request for expedited processing is considered to be accepted. The request for expedited processing may be rejected at any time prior to the expedited process automatic approval date. If a request for expedited processing is rejected, the two thousand dollar up front payment will

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be retained and credited against an applicant's final invoice to be issued pursuant to paragraph (D) of this rule.

- (~~ED~~) Board expenses for the processing of accelerated certificate applications, resolution of jurisdictional issues, and all other incidental services will be invoiced at cost. Payment shall be due upon receipt of an invoice.

**AMENDED**

**4906-6-05 Accelerated application requirements.**

- (A) Accelerated certificate applications shall comply with the form and content requirements outlined in Chapter 4906-2 of the Administrative Code.
- (B) Letter of notification and construction notice applications shall contain all data and information necessary to meet the following requirements ~~of this rule, which, in the case of amendments to certificated facilities, refers to the change between the certificated facility and the facility as it would be amended-:~~
- (1) The applicant shall provide the name of the project and applicant's reference number, names and reference number(s) of resulting circuits, a brief description of the project, and why the project meets the requirements for a letter of notification or construction notice application.
  - (2) If the proposed project is an electric power transmission line or gas pipeline, the applicant shall provide a statement explaining the need for the proposed facility.
  - (3) The applicant shall provide the location of the project in relation to existing or proposed lines and substations shown on an area system map of sufficient scale and size to show existing and proposed transmission facilities in the project area.
  - (4) The applicant shall describe the alternatives considered and reasons why the proposed location or route is best suited for the proposed facility. The discussion shall include, but not be limited to, impacts associated with socioeconomic, ecological, construction, or engineering aspects of the project.
  - (5) The applicant shall describe its public information program to inform affected property owners and tenants-residents of the nature of the project and the proposed timeframe for project construction and restoration activities.

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- (6) The applicant shall provide an anticipated construction schedule and proposed in-service date of the project.
- (7) The applicant shall provide a map of at least 1:24,000 scale clearly depicting the facility and proposed limits of disturbance with clearly marked streets, roads, and highways, and an aerial image.
- (8) The applicant shall provide a list of properties for which the applicant has obtained easements, options, and/or land use agreements necessary to construct and operate the facility and a list of the additional properties for which such agreements have not been obtained.
- (9) The applicant shall describe the following information regarding the technical features of the project:
- (a) Operating characteristics, estimated number and types of structures required, and right-of-way and/or land requirements.
  - (b) For electric power transmission lines that are within one hundred feet of an occupied residence or institution, the production of electric and magnetic fields during the operation of the proposed electric power transmission line. The discussion shall include:
    - (i) Calculated electric and magnetic field strength levels at one meter above ground under the lowest conductors and at the edge of the right-of-way for:
      - (a) Normal maximum loading.
      - (b) Emergency line loading.
      - (c) Winter normal conductor rating.
    - (ii) A discussion of the applicant's consideration of design alternatives with respect to electric and magnetic fields and their strength levels, including alternate conductor configuration and phasing, tower height, corridor location, and right-of-way width.
  - (c) The estimated capital cost of the project.
- (10) The applicant shall describe the social and ecological impacts of the project.

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- (a) Provide a brief, general description of land use within the vicinity of the proposed project, including a list of municipalities, townships, and counties affected.
- (b) Provide the acreage and a general description of all agricultural land, and separately all agricultural district land, existing at least sixty days prior to submission of the application within the potential disturbance area of the project.
- (c) Provide a description of the applicant's investigation concerning the presence or absence of significant archeological or cultural resources that may be located within the potential disturbance area of the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.
- (d) Provide a list of the local, state, and federal governmental agencies known to have requirements that must be met in connection with the construction of the project, and a list of documents that have been or are being filed with those agencies in connection with siting and constructing the project.
- (e) Provide a description of the applicant's investigation concerning the presence or absence of federal and state designated species (including endangered species, threatened species, rare species, species proposed for listing, species under review for listing, and species of special interest) that may be located within the potential disturbance area of the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.
- (f) Provide a description of the applicant's investigation concerning the presence or absence of areas of ecological concern (including national and state forests and parks, floodplains, wetlands, designated or proposed wilderness areas, national and state wild and scenic rivers, wildlife areas, wildlife refuges, wildlife management areas, and wildlife sanctuaries) that may be located within the potential disturbance area of the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.
- (g) Provide any known additional information that will describe any unusual conditions resulting in significant environmental, social, health, or safety impacts.



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**NO CHANGE**

**4906-6-06      Completeness of accelerated certificate applications, staff investigation, and staff report.**

- (A) The board, its executive director, or the administrative law judge shall notify the applicant of any deficiencies in an accelerated application. Absent such notification, the application is considered to be complete and filed on the date on which it was submitted to the board. If the application is found to be deficient, the application is not deemed to be filed until the board, its executive director, or the administrative law judge determines that all deficiencies have been corrected.
- (B) Staff shall conduct an investigation of each accelerated certificate application and submit a written report no less than seven calendar days prior to the automatic approval date.
- (1) The report shall set forth the nature of the investigation and shall contain recommended findings with regard to section 4906.10 of the Revised Code.
- (2) The report shall become part of the record and shall be provided to board members, the administrative law judge assigned to the case, the applicant, and all persons who have become parties to the proceedings. Copies shall be made available to any person upon request.

**AMENDED**

**4906-6-07      Service and public distribution of accelerated certificate applications.**

- (A) Upon filing of accelerated applications, the applicant shall:
- (1) Serve a copy of the application, either electronically or by portable solid-state drive, on the chief executive officer of each municipal corporation, county, township, and the head of each public agency charged with the duty of protecting the environment or of planning land use in the area in which any portion of such facility is to be located. Hard copies shall be made available upon request.
- (2) Place a copy of the application or place a notice of the availability of such application in the main public library of each political subdivision as referenced in division (B) of section 4906.06 of the Revised Code. If a notice is provided, that notice shall state that an electronic or paper copy of the application is available from the applicant (with instructions as to how to obtain an electronic or paper copy), available for inspection at the

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applicant's main office, available for inspection at the board's main office, and available at any other sites at which the applicant will maintain a copy of the application.

- (3) Maintain on its website information as to how to request an electronic or paper copy of the application. Upon request for a paper copy of the application, the applicant shall supply the copy within five business days and at no more than cost.

- (B) Proof of compliance with this rule shall be filed with the board within seven days of filing the accelerated application.

**AMENDED**

**4906-6-08 Public notice for letter of notification applications.**

- (A) Within seven days of the filing of a letter of notification application, the applicant shall give public notice in newspapers of general circulation in the project area and shall supply the board with proof of such publication no later than thirty days from the date of publication. The applicant is permitted to correct any inadvertent failure of service or publication, provided substantial compliance with these requirements is met. The notice shall occupy not less than one-fourth of ~~a~~ each newspaper's standard page, with letters not less than ten-point type, and shall bear the heading "Notice of Proposed Major Utility Facility" in bold letters not less than one-fourth inch high or thirty-point type. The notice shall contain the following information:

- (1) The name and a brief description of the proposed facility, including type and capacity.
- (2) A map showing the location and general layout of the proposed facility.
- (3) A list of officials served with copies of the application.
- (4) A list of public libraries that were sent paper copies or notices of availability of the application, and other readily accessible locations (including the applicant's website and the website, mailing address, email address, and telephone number of the board) where copies of the application are available for public inspection.
- (5) A statement, including the assigned docket number, that a letter of notification to construct, operate, and maintain said facility is now pending before the board.
- (6) A statement explaining that interested persons may file motions to intervene and/or file comments within ten days of the date of publication, in accordance with rule 4906-2-12 of the Administrative Code.

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- (B) Within seven days of the filing of a letter of notification, the applicant shall send a letter describing the proposed facility to each property owner and affected ~~tenant~~resident. The letter shall provide a description of the facility, a map showing the location and layout of the facility, a list of readily accessible locations where copies of the letter of notification are available for public inspection, and a statement, including the assigned docket number, that a letter of notification to construct, operate, and maintain said facility is now pending before the board. The letter shall also explain how to participate and comment in the board's proceedings. The letter shall be sent by first class mail. Proof of compliance with this requirement shall be provided to the board staff. The letter shall be sent to each property owner and affected ~~tenant~~resident:
- (1) Within the planned site or along the preferred or alternate route(s) of the proposed facility.
  - (2) Contiguous to the planned site or along the preferred or alternate route(s) of the proposed facility.
  - (3) Who may be approached by the applicant for any additional easement or land access necessary for the construction, operation, or maintenance of the facility.
  - (4) If the property owner's address is not the same as the address affected by the proposed facility, then the applicant shall also send a letter to the affected property.

**NO CHANGE**

**4906-6-09      Suspension of accelerated certificate applications.**

- (A) Upon good cause, the board, its executive director, or the administrative law judge may suspend consideration of an accelerated certificate application for up to ninety days.
- (B) If the board, its executive director, or the administrative law judge assigned by the board acts to suspend an accelerated certificate application, the board, its executive director, or the administrative law judge will docket its decision and notify the applicant of the reasons for such suspension and may direct the applicant to furnish any additional information as the board, its executive director, or the administrative law judge deems necessary to evaluate the accelerated certificate application.
- (C) Once an accelerated certificate application has been suspended, the board will act to approve, modify, or deny the accelerated certificate application within ninety days from the date that the application was suspended. The board or administrative law judge may, at its discretion, set the matter for hearing.

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**NO CHANGE**

**4906-6-10 Automatic approval of accelerated applications.**

- (A) Staff shall recommend an automatic approval date for an accelerated application in its written report of investigation to the board, unless staff is recommending suspension of the automatic approval date. The recommended automatic approval date shall be no sooner than seven calendar days after the filing of the written report of investigation and no later than ninety days after the filing date of the application.
- (B) If the board does not act upon a letter of notification or construction notice and/or waiver request on or prior to the automatic approval date set forth in the staff report, the letter of notification or construction notice and/or waiver request shall be deemed automatically approved, subject to any conditions contained in the staff report, on the day after the date set forth in the staff report.
- (C) Any conditions included in a staff report that are not objected to by an applicant prior to the automatic approval date established in paragraphs (A) and (B) of this rule, shall be deemed automatically adopted by the board, administrative law judge, or executive director as conditions on the certificate of environmental compatibility and public need. If an applicant files a written objection or proposes an alternative condition to any condition proposed in a staff report with the board at least three days prior to the automatic approval date, such condition shall only be effective if specifically recommended by the staff in an amended staff report and adopted by the board within the time permitted for consideration of the application provided in division (F) of section 4906.03 of the Revised Code. No condition proposed in the staff report that is timely objected to by an applicant shall become effective unless the board specifically adopts such condition.

**AMENDED**

**4906-6-11 Construction of approved projects and notification of construction.**

- (A) Applicants who file accelerated certificate applications with the board may begin construction of projects reported in the applications after the date that automatic approval occurs or upon the approval by the board.
- (B) Applicants shall file a notice with the board at least seven days in advance of beginning construction of the involved project ~~if construction will begin on a different date from that contained in the application.~~

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

- (C) Prior to commencement of construction, the applicant shall inform affected property owners and tenants-residents of the nature of the project, specific contact information of applicant personnel who are familiar with the project, the proposed schedule for project construction and restoration activities, and a complaint resolution process. Notification to affected property owners and tenants-residents shall be given at least seven days prior to work on the affected property.
- (D) Applicants shall file a notice with the board within seven days following completion of the involved project.

**NO CHANGE**

**4906-6-12 Amendments and expiration of certificates.**

- (A) Unless otherwise ordered by the board, its executive director, or the administrative law judge, the filing, notifications, informational requirements, and processing timelines for an accelerated application for an amendment to a certificate issued under a letter of notification or construction notice application shall be determined by referring to the appropriate appendix to rule 4906-1-01 of the Administrative Code. Such amendment application shall use the letter of notification or construction notice docketing code. In such application, the applicant shall reference the case docket in which the certificate was granted.
- (B) If a continuous course of construction has not commenced within three years of the accelerated application approval date, the board's approval of the project shall automatically expire. After the expiration of the board's approval, the applicant must submit the project for approval under the board's rules that exist at that time to commence construction.



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

**Agency, Board, or Commission Name:** Public Utilities Commission of Ohio (PUCO)

**Rule Contact Name and Contact Information:**

Angela Hawkins, Legal Director

Phone: 614-466-0122

Email: [Angela.Hawkins@puco.ohio.gov](mailto:Angela.Hawkins@puco.ohio.gov)

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

Ohio Power Siting Board (OPSB) Procedural Provisions for Accelerated Certificate Applications

**Rule Number(s):** 4906-6-01 through 4906-6-12

**Date of Submission for CSI Review:** N/A

**Public Comment Period End Date:** August 12, 2022

**Rule Type/Number of Rules:**

☐ New/\_\_\_ rules

☒ No Change/ 5 rules (FYR? Y)

☒ Amended/ 7 rules (FYR? Y)

☐ 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

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**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 rules for CSI review.**

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

**The rule:**

- ☒ 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.
- ☒ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

**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.***

The proposed revisions to the rules in Chapter 4906-6, Ohio Adm.Code (OAC), make general revisions to the procedural requirements for filing accelerated certificate applications.

**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.**

The amendments to the rules in Chapter 4901-6, OAC, are proposed pursuant to Section 119.032, Revised Code, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The OPSB is authorized to adopt the proposed rules pursuant to Chapter 4906, Revised Code, which governs the rules and regulations promulgated by the OPSB. Further, on July 12, 2021, the governor of the state of Ohio signed into law Am. S.B. 52 (S.B. 52) amending provisions that govern OPSB certificates, including those contained in Chapter 4906, Revised Code. The OPSB intends to combine the review of its rules with its review of possible provisions to the rules resulting from the enactment of S.B. 52

**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 rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to enforce a federal requirement.

**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)?**

Chapter 4906-6, OAC, describes the OPSB's procedural requirements for the filing and determination of accelerated certificate applications.

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

The rules contained in this chapter are general provisions that govern matters before the OPSB pursuant to Chapter 4906 of the Revised Code. As such, there will not be measurable outputs or outcomes as a result of the adoption of Chapter 4906-6, OAC.



- 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.*

The OPSB conducted a three-part workshop on October 4 and October 8, 2021, using virtual hearing technology, to receive feedback from interested stakeholders and the general public in Case No. 21-902-GE-ORD. Additionally, the OPSB conducted three stakeholder engagement meetings on March 11, March 12, and May 12, 2020, to gather stakeholder information as to the rules.

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

The OPSB considered recommendations by stakeholders at the engagement meetings and workshop as follows:

- (1) Additional project information should be included in certificate applications.
- (2) Specific to electric transmission and gas pipeline projects, the types of information that should be required in relation to the public interest, convenience, and necessity of the project.
- (3) In regard to project siting, the types of information that a certificate applicant should submit in consideration of public involvement as to the site/route selections.
- (4) The types of information that should be filed regarding public interaction and any complaint resolution issues concerning significant preconstruction and pre-operation project developments.
- (5) The types of information that a wind or solar facility applicant should file regarding decommissioning plans.
- (6) The types of information that an applicant should file regarding interactions with local governments in a project area.

(7) The types of information that an applicant should file regarding environmental, aviation, noxious weed management, irrigation and filed drainage system mitigation, storm water runoff management, and communication system mitigation.

(8) Additional considerations the OPSB should utilize as to solar project certifications.

(9) The types of additional enforcement measures the OPSB should consider, and how they are best funded.

**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 considered. In adopting changes to Chapter 4906-6, OAC, the OPSB takes into account feedback from stakeholders and the general public regarding the rules in effect prior to the proposed changes. Stakeholder and public feedback can be made directly to the OPSB by filing comments from such entities as persons proposing, owning or operating major utility facilities or economically significant wind farms, electric distribution utilities, gas and natural gas local distribution companies, the Ohio Gas Association, the Oil and Gas Association, applicants who have filed cases with the OPSB, members of the general public, or any other entity. The requirements in S.B. 52 were also taken into account.

**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?**

The operation of the OPSB is specifically provided for in Chapter 4906 of the Revised Code, and the promulgation of rules governing the accelerated application review process is specifically provided for in Section 4906.03(F). As a result, regulatory alternatives were not available.

**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.***

No performance-based regulations were considered, as the rules in Chapter 4906-6, OAC, are specifically mandated by Section 4906.03(F), Revised Code, and dictate process and do not define a required outcome. Thus, performance-based regulation is not appropriate.

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

The OPSB has reviewed other state regulations and found no duplication as to the adoption of these rules pursuant to Chapter 4906, Revised Code, and S.B. 52.

**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.**

Chapter 4906-6, OAC, has been in effect without complaints about inconsistent application of the Chapter. The proposed changes that result of the proposed amendments to this chapter will be communicated via distribution of the final rules in Case No. 21-902-GE-BRO, as well as through updates to the OPSB website.

**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**

Chapter 4906-6, OAC, provides guidance to entities seeking to site facilities within the state of Ohio. Only entities seeking certificates to build, own, or operate facilities will be affected by these rules. Effects to business include the continuing application fees and the time it takes for compliance with application and certificate monitoring requirements.

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

Proposed changes to Chapter 4906-6 are not expected to adversely impact OPSB certificate applicants. Changes are intended to clarify the content of applications and the requirement to notice applications upon all impacted residents, as opposed to only property owners and tenants.

**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.*

There is no representative business for purpose of quantifying any adverse business impact from the regulation. Cost estimates are billed according to the estimated cost of construction of the project that is being considered for OPSB certification.

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

Chapter 4906-6, OAC, is required by Section 4906.03(F), Revised Code. Therefore, these rules are required by law and were drafted to minimize adverse impacts on business while maintaining a strong focus on the rights and protections afforded the public.

**Regulatory Flexibility**

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

Chapter 4906-6, OAC, reflects the legislative intent of Section 4906.03, Revised Code, and provides for the accelerated certification of facilities in Ohio. This is not an activity typically undertaken by an entity that would be defined as a small business,

**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 OPSB only assesses penalties for violations of certificates, which occur after an applicant has begun construction of an approved facility.

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

The OPSB actively works with applicants, as well as parties who have been granted certificates, to assure compliance with the OPSB's rules and the terms and conditions of their certificates.

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**AMENDED**

**4906-7-01 Purpose and scope.**

- (A) This chapter sets forth the rules for compliance monitoring~~enforcement investigations,~~  
including and payment of forfeitures.
- (B) The board may, upon its own motion, or upon an application or motion filed by a party, waive any requirement of this chapter other than a requirement mandated by statute.

**AMENDED**

**4906-7-02 Enforcement~~Compliance monitoring investigations~~ by the board.**

- (A) Upon finding reasonable grounds, the board shall initiate a proceeding to investigate an alleged violation of section 4906.98 of the Revised Code.
- (B) The board shall conduct a violation proceeding under sections 4906.97 and 4906.98 of the Revised Code, and in accordance with Chapter 4906-2 of the Administrative Code, to the extent not inconsistent with section 4906.97 of the Revised Code.
- (C) While an alleged violation of section 4906.98 of the Revised Code is under board investigation, the board or its chairperson or designee may order the suspension of the involved activity. A suspension order may be terminated by the board or its chairperson or designee at any time during the board's investigation of the alleged violation.
- (D) Unless otherwise ordered by the board or an administrative law judge, the staff of the board shall file with the board, and serve upon the person alleged to have violated section 4906.98 of the Revised Code and all other parties, a written report of investigation within twenty-one days after initiation of the involved proceeding. The report shall include the staff's findings on the alleged violation and staff's recommendations for board action.
- (E) ~~The board may require an~~Any evidentiary hearing on the alleged violation.~~The hearing~~ may include evidence on corrective action, forfeitures, and other remedies.
- (F) The complaining party (which may include staff) shall have the burden to prove the occurrence of the violation, by a preponderance of the evidence.
- (G) If, after a hearing, the board finds that a violation of section 4906.98 of the Revised Code occurred, the board may order appropriate remedies, which may include one or more of the following:

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- (1) Direct the person to cease the violation.
  - (2) Direct the person to comply with the certificate and/or a board order or suspension.
  - (3) Direct the person to take corrective action and include a date by which such corrective action must be taken or completed.
  - (4) Assess forfeitures in accordance with sections 4906.97 and 4906.99 of the Revised Code.
  - (5) Direct the attorney general to seek enforcement of board orders, including orders assessing forfeitures and appropriate remedies, in state or federal court.
  - (6) Approve other appropriate remedies.
- (H) The board may request that the attorney general seek enforcement and other appropriate relief in common pleas court, if necessary to enforce its order.

**AMENDED**

**4906-7-03      Payment of forfeitures, compromise forfeitures and payments made pursuant to stipulations in-regarding enforcement investigations compliance monitoring.**

- (A) All forfeitures, compromise forfeitures and payments made pursuant to stipulations shall be paid by certified check or money order made payable to "Treasurer of the state of Ohio, general revenue fund," and shall be designated by case number.
- (B) All forfeitures, compromise forfeitures and payments made pursuant to stipulations shall be mailed or delivered to: Ohio Power Siting Board, Fiscal Division, 180 East Broad Street, Columbus, Ohio 43215-3793."

**NEW**

**4906-7-04      Annual Reporting Requirement.**

- (A) By April 30 for the first three years after a generation facility certified by the board begins commercial operation, the certificate holder will docket, in its certificate case, an annual report addressing the following information for the calendar year preceding the date of the report:
- (1) Facility status: an overview of site conditions, ongoing site restoration, the status of facilities still under construction, and a summary of the operating experience of facilities that are in

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operation. The certificate holder will describe any events that occurred during the year that had a significant adverse impact on the facility.

- (2) Monitoring report: a list and description of all significant monitoring and mitigation activities performed during the reporting period in accordance with site certificate terms and conditions, a summary of the results of those activities, and a discussion of any significant changes to any monitoring or mitigation program, including the reason for any such changes.
- (3) Compliance report: a report describing the certificate holder's compliance with all certificate conditions that are applicable during the reporting period.
- (4) Facility modification report: a summary of changes to the facility that the certificate holder has made during the reporting period without an amendment of the certificate.
- (5) Status of surety information: documentation demonstrating that bonds or letters of credit as described in the certificate are in full force and effect and will remain in full force and effect for the term of the next reporting period.
- (6) Incident report: a summary of all incidents, as defined in rule 4906-4-10 and 4906-7-06 of the Administrative Code, that occurred at the facility during the reporting period.
- (B) For each subsequent year after the years in which a report is made under paragraph (A) of this rule, the certificate holder may either file a letter stating that the most recently filed report reflects the current conditions or file a new report in accordance with paragraph (A) of this rule.

**NEW**

**4906-7-05 Reporting Violations.**

- (A) Except as provided in rule 4906-7-04 of the Administrative Code, a certificate holder will docket, within thirty days of its discovery, a written report of any violation of section 4906.98 of the Revised Code in its certificate case. Each written report will include:
  - (1) A description of the violation.
  - (2) The date and time the violation occurred.
  - (3) The date and time the violation was discovered.

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(4) All actions taken to address the violation, including a timeline of those actions and other relevant events.

(5) All potential future actions that can be taken by the certificate holder to address the violation.

(6) Any other information relevant to the cause and prevention of any recurrence of the violation.

(B) Staff will investigate every report submitted under paragraph (A) of this rule.

**NEW**

**4906-7-06 Self-Reporting of Incidents.**

(A) This rule does not apply to a facility subject to rule 4906-4-10 of the Administrative Code where those rules would necessitate reporting of an incident as defined in this rule.

(B) For purposes of this rule, "incident" includes but is not limited to an event occurring at the site of any certificated facility where:

(1) There is injury to any person.

(2) There is damage to property other than the property of the facility operator.

(3) There is damage to the facility 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.

(C) Telephone Notice. Facility operators are obligated to notify the board's executive director by calling 1-844-OHCALL1 (1-844-642-2551) as well as local law enforcement and first responders of all incidents involving a certificated facility, within thirty minutes after discovery unless notification within that time is impracticable under the circumstances.

(D) Written reports regarding incidents.

(1) Within thirty days after an incident is discovered, a facility operator is obligated to submit a written report to the executive director describing the cause of the incident, where ascertainable, and any damage to the facility or to neighboring properties or persons, on a form provided by the board.



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(2) Each facility operator will also docket, in the facility's certificate case, a final written report on a form provided by the board within sixty days after discovery of the incident, unless both of the following apply:

(a) The facility operator, for good cause shown, demonstrates more time is needed;

(b) The facility operator submits interim reports to the executive director at intervals of not more than sixty days until a final report is docketed.

(3) Each written report submitted pursuant to this rule will address:

(a) The cause of the incident.

(b) The date and time the incident occurred and date and time it was discovered.

(c) A narrative description of the incident and actions taken by the facility operator, including a timeline of those actions and other relevant events.

(d) What, if any, damage occurred to the property within the facility.

(e) What steps were necessary to repair, rebuild, or replace damage to any property of the facility.

(f) What, if any, personal injury was caused by, or related to, the incident.

(g) What, if any, damage to properties within or adjacent to the project area was caused by, or related to, the incident.

(h) What, if any, steps were, or will be taken to prevent future incidents.

(E) Staff will investigate every incident that results in a report being submitted under paragraph (D)(1) this rule. Except as necessary for public safety, no facility operator may disturb any damaged property within the facility or the site of a reportable incident until the staff approves action to move the damaged property.

(F) A facility involved in a reportable incident under paragraph (D) of this rule cannot restart or resume construction until such action is approved by the board's executive director or the executive director's designee.

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## **NEW**

### **4906-7-07 Compliance Site Review.**

- (A) Each certificate holder will allow properly identified representatives of the board, including, but not limited to, compliance staff or its contractors, to inspect the operations of a certificated facility at any time. Inspections may include, but are not limited to, all materials, activities, related or supporting facilities, premises, and records pertaining to construction, operation, and maintenance of the facility.
- (B) The certificate holder's representative may accompany compliance staff during any inspection conducted under this rule.
- (C) The board will maintain written records of all inspections conducted under this rule.
- (D) If compliance staff finds, pursuant to any inspection conducted under this rule, any actual or potential violations of section 4906.98 of the Revised Code or evidence of an incident that was not reported in accordance with this rule, compliance staff will docket a written report of compliance staff's findings in the facility's certificate proceeding and notify the certificate holder.



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

**Agency, Board, or Commission Name:** Public Utilities Commission of Ohio (PUCO)

**Rule Contact Name and Contact Information:**

Angela Hawkins, Legal Director

Phone: 614-466-0122

Email: [Angela.Hawkins@puco.ohio.gov](mailto:Angela.Hawkins@puco.ohio.gov)

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

Ohio Power Siting Board (OPSB) Procedures for Compliance, Monitoring, Enforcement and Payment of Forfeitures

**Rule Number(s):** 4906-7-01 through 4906-7-07

**Date of Submission for CSI Review:** N/A

**Public Comment Period End Date:** August 12, 2022

**Rule Type/Number of Rules:**

X New/ 4 rules

X Amended/ 3 rules (FYR? Y)

☐ No Change/      rules (FYR?     )

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- ☒ 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.
- ☒ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **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.***

The proposed revisions to the rules in Chapter 4906-7, Ohio Adm.Code (OAC), clarify the procedures for OPSB's monitoring and enforcement of certificate conditions, including requiring operators to file annual operational status reports and to self-report significant safety incidents.

**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.**

The amendments to the rules in Chapter 4906-7, OAC, are proposed pursuant to Section 119.032, Revised Code, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The OPSB is authorized to adopt the proposed rules pursuant to Chapter 4906, Revised Code, which governs the rules and regulations promulgated by the OPSB. Further, on July 12, 2021, the governor of the state of Ohio signed into law Am. S.B. 52 (S.B. 52) amending provisions that govern OPSB certificates, including those contained in Chapter 4906, Revised Code. The OPSB intends to combine the review of its rules with its review of possible provisions to the rules resulting from the enactment of S.B. 52.

**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 rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to enforce a federal requirement.

**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)?**

Chapter 4906-7, OAC, describes the OPSB's procedures for monitoring and enforcement of certificate conditions that are intended to enhance public awareness of certificate compliance and protect public safety.

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

The rules contained in this chapter are general provisions that govern matters before the OPSB pursuant to Chapter 4906 of the Revised Code. As such, there will not be measurable outputs or outcomes as a result of the adoption of Chapter 4906-7, OAC.

- 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.*

The OPSB conducted a three-part workshop on October 4 and October 8, 2021, using virtual hearing technology, to receive feedback from interested stakeholders and the general public in Case No. 21-902-GE-ORD. Additionally, the OPSB conducted three stakeholder engagement meetings on March 11, March 12, and May 12, 2020, to gather stakeholder information as to the rules.

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

The OPSB considered recommendations by stakeholders at the engagement meetings and workshop as follows:

- (1) Additional project information should be included in certificate applications.
- (2) Specific to electric transmission and gas pipeline projects, the types of information that should be required in relation to the public interest, convenience, and necessity of the project.
- (3) In regard to project siting, the types of information that a certificate applicant should submit in consideration of public involvement as to the site/route selections.
- (4) The types of information that should be filed regarding public interaction and any complaint resolution issues concerning significant preconstruction and pre-operation project developments.
- (5) The types of information that a wind or solar facility applicant should file regarding decommissioning plans.
- (6) The types of information that an applicant should file regarding interactions with local governments in a project area.

(7) The types of information that an applicant should file regarding environmental, aviation, noxious weed management, irrigation and filed drainage system mitigation, storm water runoff management, and communication system mitigation.

(8) Additional considerations the OPSB should utilize as to solar project certifications.

(9) The types of additional enforcement measures the OPSB should consider, and how they are best funded.

**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 considered. In adopting changes to Chapter 4906-7, OAC, the OPSB takes into account feedback from stakeholders and the general public regarding the rules in effect prior to the proposed changes. Stakeholder and public feedback can be made directly to the OPSB by filing comments from such entities as persons proposing, owning or operating major utility facilities or economically significant wind farms, electric distribution utilities, gas and natural gas local distribution companies, the Ohio Gas Association, the Oil and Gas Association, applicants who have filed cases with the OPSB, members of the general public, or any other entity. The requirements in S.B. 52 were also taken into account.

**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?**

The operation of the OPSB is specifically provided for in Chapter 4906 of the Revised Code, and the promulgation of rules governing the OPSB's authority and obligation to enforce the terms of certificates that it issues are described in Sections 4906.03 and 4906.97 - 4906.99 of the Revised Code. As a result, regulatory alternatives were not available.

**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.*

No performance-based regulations were considered, as the rules in Chapter 4906-7, OAC, are in accordance with Section 4906.03(F), Revised Code, and dictate process and do not define a required outcome. Thus, performance-based regulation is not appropriate.

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

The OPSB has reviewed other state regulations and found no duplication as to the adoption of these rules pursuant to Chapter 4906, Revised Code, and S.B. 52.

**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.**

Chapter 4906-7, OAC, has been in effect without complaints about inconsistent application of the Chapter. The annual reporting requirements and self-reporting of certificate violations and safety incidents that result from the proposed amendments to this chapter will be communicated via distribution of the final rules in Case No. 21-902-GE-BRO, as well as through updates to the OPSB website.

**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**

Aside from requiring a summary annual operations report, the proposed changes to Chapter 4906-7, OAC, will only effect facilities where certificate violations or safety incidents occur within the state of Ohio. Where a facility is impacted, effects to business include the costs of OPSB inspections, investigations, and the obligation to pay any forfeitures that the OPSB assesses.

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

As the vast majority of certificate holders do not incur certificate violations or safety incidents, proposed changes to Chapter 4906-7 are not expected to adversely impact OPSB certificate applicants. Changes are intended to clarify the OPSB's response to certificate violations and safety incidents, and will apply consistently to only those facilities that experience those events.

**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.*



There is no representative business for purpose of quantifying any adverse business impact from the regulation. Cost estimates are billed according to the estimated cost of construction of the project that is being considered for OPSB certification.

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

Chapter 4906-7, OAC, was developed in accordance with Sections 4906.03 and 4906.97 – 4906.99, Revised Code. Therefore, these rules are required by law and were drafted to minimize adverse impacts on business while maintaining a strong focus on the rights and protections afforded the public.

**Regulatory Flexibility**

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

Chapter 4906-7, OAC, describes operational requirements upon certificated facilities in Ohio. This is not an activity typically undertaken by an entity that would be defined as a small business.

**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 OPSB only assesses penalties for violations of certificates, which occur after an applicant has begun construction of an approved facility.

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

The OPSB actively works with applicants, as well as parties who have been granted certificates, to assure compliance with the OPSB's rules and the terms and conditions of their certificates.

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**Case No(s). 21-0902-GE-BRO**

Summary: Entry inviting all interested persons to file initial and reply comments regarding the proposed revision of Ohio Adm. Code Chapters 4906 by July 22, and August 12, 2022, respectively. electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board