



*Working together for Ohio farmers to advance
agriculture and strengthen our communities.*

August 4, 2022

Case No. 21-902-GE-BRO

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, 4906-7, 4906-7

Initial Comments of the Ohio Farm Bureau Federation

Introduction

On June 16, 2022 the OPSB issued proposed rules to amend OAC 4906-1 through 4906-7 and invited interested parties to submit comments. The Ohio Farm Bureau Federation ("OFBF" or "Farm Bureau") welcomes the opportunity to share and examine suggestions submitted by other stakeholders and provide initial comments.

OFBF is a grassroots membership organization that works to support Ohio agriculture and the state's food and farm community. Energy is one of the largest single costs for many farms and agribusiness operations. OFBF policy supports energy development efforts that involve the project developer, utilities, regulatory agencies, government at the local, state and federal levels, economic development authorities and community groups. These efforts should focus on creation of projects that address environmental concerns, consider aesthetic needs and provide economic benefits for landowners and the community.

Ohioans are witnessing the largest refit of energy generation, transmission and distribution infrastructure since these networks were first installed almost a century ago. New and

refitted transmission and generation infrastructure are being installed in open rural areas where farmers and energy service companies need to establish close working relationships to ensure these assets are available to local communities and utilities, as well as provide long-term repair, remediation and resource protection to ground where transmission and generation infrastructure are located.

OFBF encourages PUCO, OPSB and FERC monitoring and enforcement of rules establishing, maintaining, inspecting and enforcing safe operation of energy generation, transmission and distribution infrastructure. As such, OFBF provides the following initial comments:

Initial Comments

1. Amend the definition of “Agricultural District” to be better representative and protective of Ohio’s farmland resources

OFBF would strongly recommend the amendment of the definition of “agricultural district” in proposed rule 4906-1-01 to include lands enrolled in the Current Agricultural Use Valuation program under R.C. 5713.30 and ensuing statutes. This definition controls the farmland impact review that is conducted within the confines of the certificate application process. However, from our experience, the limited benefits of the agricultural district program results in under-enrollment of Ohio’s farmland. In contrast, the Current Agricultural Use Valuation (CAUV) program provides a significant tax benefit to landowners, and nearly all farmers that qualify for the program choose to enroll into CAUV. Many are mistakenly under the impression that “agricultural district” and “CAUV” are one program in the same, but they are two separate and distinct programs enrolled

individually with the local county auditor. While there can be some overlap between the two programs, the CAUV enrollment within a county is a more accurate picture of the farmland that is present and potentially impacted by new projects. In order to ensure the Board accurately reviews and considers the impacts on farmland to effectuate the state's policy of preserving valuable farmland, the CAUV acreage would be a more appropriate metric. This simple change in the definition would ensure that the ensuing required information on agricultural land, for example in OAC 4906-4-08(E), will most accurately reflect the farmland resources impacted by a proposed project.

2. Inclusion of Information on Noxious Weeds Abatement within Health and Safety, Land Use and Ecological Information

OFBF strongly supports and appreciates the inclusion of the requirement via draft changes to OAC 4906-4-08(B)(5) that an applicant takes steps to prevent establishment and/or further propagation of noxious weeds and invasive species. One point of clarity here: the draft rule refers to noxious weeds identified in *rule 901:5-37* of the Administrative Code. However, this should be edited in either one of two ways - either refer to *chapter 901:5-37* or *rule 901:5-37-01*.

This draft provision could be further strengthened by adding *as well as during construction, operation, and decommissioning* at the end of the first sentence of draft OAC 4906-4-08(B)(5) to read: "The applicant shall take steps to prevent establishment and/or further propagation of noxious weeds identified in rule 901:5-37-01 of the Administrative Code and invasive species identified in rule 901:5-30-01 of the Administrative Code during implementation of any pollinator-friendly plantings, as well as during construction, operation, and decommissioning." While it is important to be particularly conscientious about noxious weeds prevention during the initial implementation

of pollinator-friendly plantings, the prevention and abatement of noxious weeds is an ongoing concern for the life of the project.

3. Inclusion of Additional Information on Field Drainage Systems and Additional Drain Tile Considerations within Health and Safety, Land Use and Ecological Information.

OFBF appreciates the draft changes to OAC 4906-4-08(E) which require the applicant to provide additional agricultural information, including more robust information on irrigation systems, field drainage systems, soils, structures used for agricultural operations.

As to draft OAC 4906-4-08(E)(2)(vi), OFBF recommends the following edits to read: “(vi) The viability as agricultural district land of any land so identified. The applicant shall identify all agricultural district properties and properties enrolled in the Current Agricultural Use Valuation (CAUV) program, 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.” This is consistent with our above recommendation to better account for the impacts to farmland by utilizing CAUV enrollment.

Not every working farm is enrolled in the agricultural district program, which provides benefits such as a potential affirmative defense to certain civil nuisance claims, the deferral of certain sewer, water, or electrical assessments, and a potential additional layer of review in eminent domain proceedings. As previously described, however, most eligible commercial farms are enrolled in the CAUV program due to the significant tax savings that the program provides. Therefore, identifying CAUV land in addition to Agricultural District land and discussing the specific impacts on those properties will give the applicant and the Board a more

informed evaluation of how the project's impacts will affect the viability of the relevant properties as agricultural land. (Note that if a definitional change is made, as suggested in (1), *supra*, this may be unnecessary).

OFBF also strongly supports and appreciates the enhanced drain tile considerations outlined in draft OAC 4906-4-08(E)(3). Such strengthened considerations will better protect the drainage systems of adjacent parcels as well as provide a better chance for participating parcels to be able to return to agricultural use upon the decommissioning of the project.

OFBF would recommend one addition to this rule, in order to address diverse landscapes that may require specific considerations beyond what is in the proposed rule. In OFBF's experience, particularly in the case of land that may be reclaimed from previous strip-mining activities, additional considerations should be given to the impacts that could occur to land forming or other installations used to prevent subsidence, maintain drainage, and preserve soils. This addition can specify that these specific considerations are only necessary where applicable, such as in the case of land reclaimed from strip mining.

OFBF would recommend the following language be added to OAC 4906-4-08(E) as a new subsection (4):

(4) Other land forming considerations, when applicable. The applicant shall

(a) Avoid, where possible, or minimize to the extent practicable, any damage to installations or land forming used to prevent subsidence, maintain drainage, and preserve soils.

(b) Promptly repair, at applicant's expense, any damaged installations or land forming to ensure proper soil preservation, drainage, subsidence, and erosion control. The affected adjacent landowner(s) may agree to not having the damaged installations and/or land forming repaired only if parcels of adjacent landowners remain unaffected by the non-repair.

4. Developed Site or Route Information

Draft changes to OAC 4906-3-05 explain that *all standard certificate applications 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 alternative site/route.* (emphasis added)

OFBF is concerned these two sentences could create confusion about when two routes/sites are required to be proposed. It is of utmost importance to Farm Bureau members that at least two routes/sites be required in the case of transmission and pipeline certificates. While it appears this is the intention of the proposed rule, the deletion of language specifying the requirement for transmission and pipeline certificates, and the remaining optional language in the second sentence could create confusion around this requirement for all types of certificates.

5. Site Inspections and Compliance Site Review

Draft changes to OAC 4906-3-12(A) permit payment of *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.* Draft

changes to OAC 4906-3-12(K) say *Board Expenses for the resolution of jurisdictional issues, and other incidental services will be invoiced at cost. Payment is due upon receipt of an invoice.*

Moreover, drafts of OAC 4906-4-08(A)(5), (B)(1)(a-c), (B)(2)(a-b), (B)(5), (E)(1-3) all detail practices and resources that need to be inspected to ensure that farmland, drainage infrastructure, and soil and water resources are protected and preserved. Drafts of compliance site review procedures in OAC 4906-7-07(A-D) allow inspections at all times, company representatives being able to accompany inspectors, as well as the production of written staff reports for posting as a matter of public record.

Given the number of projects of larger, utility scale facilities that could be under construction and begin operation over the next decade, work needs to be done to ensure OPSB staff have access to qualified inspectors that can address local concerns on a continual basis. OFBF supports the contracting of county Soil and Water Conservation District (“SWCD”) personnel to fulfill these requirements. The Chief or his/her designate of the Ohio Department of Agriculture is a voting member of the OPSB; accordingly, additional support could be provided by the Ohio Department of Agriculture – Division of Soil and Water Conservation with these efforts. Local division staff will have developed expertise and familiarity with the project area, particularly related to agricultural and drainage use, and can serve as a valuable resource to the Board.

6. Additional issues: Definition of an Electric Power Transmission Line and OPSB Jurisdiction

Draft changes to OAC 4906-1-01(F)(2)(c) and (U) define *an Electric Power Transmission Line (“transmission line”)* as *an electric power line that has a design value of 100 kilovolts (“kv”)*

or more. We understand that this change is likely driven by a legislative change of the OPSB jurisdictional threshold.

Farm Bureau members appreciate the OPSB certification process for transmission facilities. OPSB proceedings are in a public docket, public hearings are provided, a dispute resolution process is established and stipulated provisions address transmission line placement, maintenance and resource protection on farm property. The OPSB process ensures landowners have public engagement and an effective complaint resolution process to help them address their concerns.

While OPSB's authority over major utility facilities is statutorily limited to transmission lines of 100kv or more, OFBF would continue to advocate for a further expansion of OPSB jurisdiction, as was considered in Case Number 21-769-EL-UNC. This report investigated the expansion of jurisdiction to include 69kv lines, as these have become much more common today. Projects vary in size from two to 25 miles in length and collectively encompass nearly 320 miles of right-of-way access in rural neighborhoods statewide¹.

OFBF understands such a change may not be feasible in this rule-making, however, we would be remiss if we did not raise this concern at this time. Current rules do not address the myriad of issues landowners are facing, relating to erosion, compaction, crop damage and/or

¹ Analysis of projects posted at: AEP Transmission, Ohio Projects, <https://www.aeptransmission.com/ohio/>; AES Transmission, Ohio Projects, <https://www.aes-ohio.com/transmission-improvements>; South Central Power, <https://www.southcentralpower.com/news/south-central-power-upgrading-transmission-lines-to-improve-service-and-reliability/> and New River Electrical Corporation, <https://www.newriverelectrical.com/new-river-electrical-partners-with-energy-co-op-on-69kv-transmission-line-in-licking-county-ohio/>.

placement of infrastructure barring farm machinery from entering a field, that arise with the construction of these 69kv lines. Many of our members accommodating 69 kV lines across their property have limited protections and no readily available dispute resolution process. As compared to neighbors accommodating other types of transmission infrastructure under OPSB jurisdiction, they are in legal limbo.

Farm Bureau members understand that transmission line development is a technically complex and expensive process. No one wants to add unnecessary time and expense to energy infrastructure development. However, there is a growing need for better transparency, community outreach, regulatory protection and oversight.

Conclusion

For the foregoing reasons, the Ohio Farm Bureau Federation recommends that the above comments be considered by the Ohio Power Siting Board as it finalizes rules in OAC 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6 and 4906-7. We are happy to discuss these comments or answer any questions as needed to assist you in this rulemaking procedure.

Respectfully submitted,

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Summary: Comments Initial Comments of the Ohio Farm Bureau Federation
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