



September 2, 2022

The Ohio Independent Power Producers (OIPP), thank you for the opportunity to comment on the Ohio Power Siting Board's (OPSB) proposed rulemaking pertaining to Ohio Administrative Code Rules (OAC) 4906-1 through 4906-7. OIPP members develop, construct, and operate new natural gas-fired power plants, representing billions of dollars of new private investment in Ohio and thousands of megawatts of new, efficient, and reliable energy, powered by Ohio natural gas. The OIPP members include Oregon Clean Energy Center (900MW), Middletown Energy Center (475 MW), South Field Energy (1,100MW), Carroll County Energy (742 MW), and the Guernsey Power Station (under construction, proposed 1650 MW).

During the first comment period, multiple stakeholders expressed concern with proposed Rule 4906-7-06 (Self-Reporting Incidents). Stakeholders who commented with concerns about the Self-Reporting Incidents proposed rule included American Clean Power, National Grid Renewables, Columbia Gas, Generation Pipeline, International Brotherhood of Electrical Workers (IBEW), and American Electric Power (AEP). OIPP's members share those concerns and support the associated comments. OIPP member facilities are either under construction or currently in commercial operation, but both types of facilities face significant risk and undue burden from the proposed rule.

The rule, as drafted, is overly broad, seemingly including even minor incidents or injuries. Moreover, with undefined timelines for review by the OPSB, forced work stoppages or outages for reportable incidents could impact construction schedules and grid reliability. OIPP members agree with the stakeholder comments that raised the same concerns. For example:

AEP at page 5: "the rule change will, with no countervailing benefit, materially increase the risk of construction delays...missing outage windows mandated by PJM, and even missing in-service dates required for the reliability and safety of the public..."

AEP at page 16: "It is particularly troublesome that the proposed rule is ill-tailored to distinguish de minimis incidents that are not a reasonable or appropriate occurrence justifying stopping construction work, particularly for an undetermined period of time for OPSB to review the reported information, and when that information is already appropriately and closely monitored by other specialized agencies at the state and federal level."

IBEW at page 9: "This is an unnecessarily burdensome requirement that will have a materially adverse impact to business. First, halting construction until such time as the Board's executive director can evaluate a report will necessarily lead to delays which could cause missed deadlines and incur financial penalties. Shutting down construction for any substantial period also incurs the risk of losing the skilled labor to complete the project, who may have to move to other jobs to continue to earn a living. Finally, in the event of an outage event, having a project shut down will only serve to extend outages and delay the restoration of service."

National Grid Renewables at page 24: “The proposed rule, as written, is not feasible because it will create unnecessary and costly construction delays for minor incidents. Further, there is no timeframe indicated within which the Board has to respond and allow construction to recommence. NG Renewables believes project owners/operators will employ construction teams who will be experienced and trained in determining when a project area should be shut down.”

American Clean Power at page 63: “the prospect of total, indefinite shutdown for even a relatively minor incident introduces a needlessly large amount of uncertainty into Ohio’s regulatory structure.”

For a power plant currently under construction, the proposed rule poses a significant risk for construction delays, increased costs, and financing issues. Combined cycle natural gas-fired power plants are large scale construction projects. At peak construction times up to 800-1000 laborers and craft workers can be on site. The proposed rule not only requires reporting of any incidents involving an injury, even minor injury, but also under proposed Section (F), halts construction until resuming work is approved by the OPSB executive director, or designee. The prospect of a construction halt by the OPSB poses a significant risk of additional cost in maintaining an idle workforce during the stoppage, construction contract losses for missed construction milestones, and perhaps create financing issues for new developments if lenders determine OPSB shutdowns are a regulatory risk.

Construction timelines for combined cycle natural gas-fired power plants are strict and inflexible, with facilities often contractually obligated to enter commercial operation by a date certain, for example through the PJM capacity market, and any construction stoppage or delay could prove devastating. Successfully reaching milestones in construction are also essential in the financing agreements of these assets. Missed milestones can lead to technical defaults in the credit agreements of these assets risking a default and bankruptcy even before commercial operation.

For operational power plants, the proposed rule is also problematic. Requiring a facility to go offline for a reportable incident can result in a massive financial losses and lost opportunity costs. OIPP facilities, like many generators in Ohio, participating the PJM capacity market. Being forced offline can result in severe financial penalties in the form of Capacity Deficiency Penalties or at their worst, Capacity Performance Penalties which can cost a large CCGT facility \$1-2MM per hour. Forced outages jeopardizes grid reliability. Again, as mentioned above a forced outage for a minor injury with no discernible time frame for resuming operations is impractical, places considerable financial strain on power plants, and risks grid reliability.

Lastly, the proposed rule puts undue restraints on the facility operators and puts OPSB requirements in their decision making process in the middle of a potential incident. The rule states that “Except 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.” This rule puts facility operators in the middle of an “incident” in a position where they may not take appropriate actions to place equipment in a safe and secure condition after an incident if they determine that the public safety threshold is not met. This can lead to potential additional equipment damage or an operator not following optimum operating procedures that they would be trained to take.

Moreover, OIPP facilities are already subject to considerable workplace safety regulations, both state and federal, making the proposed rule duplicitous, unnecessary, and burdensome.

Similarly, the proposed rule’s threshold for a reportable incident of damage of \$50,000 to the facility operator’s property creates a similar unnecessary risk. The highly valuable and technical equipment utilized during construction and commercial operation could easily exceed the threshold, which again subjects facilities to unnecessary and burden regulatory risk.

OIPP members take workplace safety seriously and appreciate the intention of the proposed rule, but believe the intentions are best suited through existing regulatory requirements and our internal efforts to strive for best practices in safety and performance.

Relatedly, the PUCO’s Business Impact Analysis (B.I.A.) fails to fully contemplate the potential negative business impacts posed by the proposed Self Reporting Incidents rule. The only impact identified by the OPSB is “the time and expense of notifying the OPSB of a reportable incident and reporting the results of the companies’ investigation of an incident to the OPSB in the form of a written report.” B.I.A., Par. 14. In response to the requirement to quantify these impacts, the Board states:

Any adverse impact in terms of dollars and hours to comply should, in most instances, be minimal. Whenever an incident as defined by the rule occurs, a responsible wind farm operator will conduct an investigation to determine the cause and extent of the damage to its facilities to ensure that the facility returns to full generating capacity as soon as possible. Adoption of this rule just standardizes this investigation process and requires that the results of the investigation be shared with the OPSB.

First, this description fails to meet the requirement that the impact “be quantified, hours to comply, or other factors” and to “include the source for [the] estimated impact.” Second, and critically, this description is not an accurate description of the rule and its impacts. Nowhere does the proposed rule state the purpose of ensuring “that the facility returns to full generating capacity as soon as possible.” Nor does the rule “just” standardize the investigation and reporting process. Instead, the rule establishes a mandatory continued shut-down of generators and construction sites for an indeterminate period of time, until the Board’s executive director or designee approves the restart of the facilities. The rule provides no basis for approval, no timeline for a decision, and no indication of whether the decision is subject to an undefined staff investigation process. The rule creates the potential for significant delays to returning to full generating capacity.

Ohio Independent Power Producers  
Reply Comments on OPSB Proposed Rulemaking  
Case No. 21-0902-GE-BRO  
September 2, 2022  
Page 4 of 4

The cost of such delay is significant: up to many thousands of dollars an hour, and possibly millions, if the facility is unable to operate. The rule as drafted creates a costly and uncertain business environment. We urge reconsideration of the rule and refinement to provide clear and appropriate conditions for notice of only major incidents. OIPP asks that the shut-down requirement be eliminated, and commit to both formal and informal communication with the OPSB whenever appropriate.

Thank you again for the opportunity to comment on the proposed rulemaking.

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**9/2/2022 10:18:38 AM**

**in**

**Case No(s). 21-0902-GE-BRO**

Summary: Comments of The Ohio Independent Power Producers electronically  
filed by Teresa Orahod on behalf of Matthew Koppitch on behalf of The Ohio  
Independent Power Producers