

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Ohio Power Siting Board’s)
Review of Ohio Administrative Chapters)
4906-1, 4906-1, 4906-2, 4906-3, 4906-4,)
4906-5, 4906-6, and 4906-7.)

Case No. 21-902-GE-BRO

**APPLICATION FOR REHEARING OF
THE OHIO INDEPENDENT POWER PRODUCERS**

In accordance with Ohio Revised Code Section (“R.C.”) 4903.10 and R.C. 4906.12, the Ohio Independent Power Producers (“OIPP”) respectfully files its Application for Rehearing of the July 20, 2023 Finding and Order issued in the above-captioned case (“the Order”). OIPP contests the new rule, Ohio Administrative Code Rule (“Rule”) 4906-7-06, adopted by the Ohio Power Siting Board (“Board” or “OPSB”). The newly adopted rule is unreasonable and unlawful in these respects:

1. The Board erred by adopting an incident reporting rule that will cause unreasonable forced outages or construction delays of critical baseload generation.
2. The Board unlawfully and unreasonably failed to justify its revisions to the originally proposed Rule 4906-7-06 to address concerns with the rule raised by interested parties or explain in the Order its rationale why additional revisions were not necessary.

For these reasons, as explained in detail in the attached Memorandum in Support, the Board should grant this application for rehearing and modify the proposed rules accordingly.

Dated: August 21, 2023

Respectfully submitted,

/s/ Dylan Borchers

Dylan Borchers (0090690)

Rachael N. Mains (0098681)

Counsel of Record

BRICKER GRAYDON LLP

100 South Third Street

Columbus, Ohio 43215

Telephone: (614) 227-8813

E-mail: dborchers@brickergraydon.com

rmains@brickergraydon.com

Attorneys for

THE OHIO INDEPENDENT POWER PRODUCERS

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MEMORANDUM IN SUPPORT

I. INTRODUCTION & BACKGROUND

Members of the Ohio Independent Power Producers (“OIPP”) develop, construct, and operate modern 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 (900 MW), Middletown Energy Center (475 MW), South Field Energy (1,100 MW), Carroll County Energy (742 MW), and the Guernsey Power Station (1,650 MW). OIPP members provide critical baseload generation to Ohio consumers.

On June 16, 2022, the Ohio Power Siting Board (“Board” or “OPSB”) issued an entry requesting comments from interested parties on revisions to Ohio Administrative Code Chapters 4906-1 through 4906-7. OIPP filed comments on September 2, 2022 to address concerns related to the proposed Rule 4906-7-06, regarding the self-reporting of incidents for electric generation facilities (the “Incident Reporting Rule”). Specifically, OIPP described how the proposed rule would negatively harm construction schedules and necessarily extend operational facility outages, harming grid reliability and service to consumers. OIPP’s comments also highlighted and supported

similar comments on the Incident Reporting Rule from a variety of interested parties, including organized labor, electric utilities, and renewable energy generators.

On July 20, 2023, the Board issued the Order adopting the new rules. OIPP's application for rehearing is limited in scope and only pertains to the newly adopted Rule 4906-7-06.

The Board should grant rehearing for two reasons. First, while the Board's Order adopted an Incident Reporting Rule with changes to the rule, these changes are insufficient to address the core concerns raised by OIPP. As adopted, the Incident Report Rule will still cause unnecessary forced outages to critical baseload generation facilities. OIPP notes that the Board's changes to the Incident Reporting Rule may offer relief or less of an adverse impact to renewable generation facilities with spread-apart footprints. However, the changes to the Incident Reporting Rule do not offer the same narrow application to the compact facility footprint of natural gas combined cycle facilities. In particular, the Incident Reporting Rule's threshold for an incident of fifty thousand dollars creates extraordinary risks for prolong shutdowns of baseload natural power plant facilities. Natural Gas Combined Cycle facilities such as those operated by OIPP members have many components valued greater than fifty thousand dollars that can fail under normal operating conditions and can lead to a unit trip and forced outage. The rule, as adopted, creates unreasonable delays in routine maintenance and repair by inserting unnecessary OPSB rules, reviews and executive approvals in to the site restoration activities, prolonging shutdowns of critical baseload generation. For similar reasons, the rules also creates extraordinary risks of extended construction delays for new power plants. Second, the Order is deficient in responding to the comments raised by OIPP and multiple stakeholders with concerns about the Incident Reporting Rule. The Board does not explain the intent of its revisions or address why additional revisions are not necessary.

II. ARGUMENT

A. Assignment of Error No. 1: The Board erred by adopting an incident reporting rule that will cause unreasonable forced outages or construction delays of critical baseload generation.

As originally proposed by the Board, the Incident Reporting Rule contained two primary provisions that raised significant concerns from OIPP and other interested parties. Specifically Paragraphs (E) and (F) of the initially proposed Incident Reporting Rule stated:

(E) Staff will investigate every incident that results in a report being submitted under paragraph (D)(1) of 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.

And

(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.

OIPP and many interested parties raised concerns with these provisions and the significant risk for forced outage extensions and construction delays, increased cost, PJM market penalty exposures, and financing issues. More specifically, OIPP and other interested parties identified concerns that fairly minor or isolated incidents could result in a total shutdown of an entire generation facility, with no defined timeframe for restarting activities.

Presumably, in response to these concerns, the Order includes revisions to both paragraphs of the Incident Reporting Rule. In Paragraph (E), the Board added a sentence, underlined below:

(E) Staff will investigate every incident that results in a report being submitted under paragraph (D)(1) of 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. Staff will make its initial visit to review any damaged property within three business days of a reported incident unless otherwise prohibited from accessing the area of the damaged property by public safety officials.

The Board also revised Paragraph (F) to—presumably—clarify and narrow the scope of the shutdown requirement by adding language that the requirement that the facility “shall not restart or resume construction **as to any damaged property** within a facility involved in reportable incident. . . .” Moreover, Paragraph (F) also now includes a number of requirements that must be met prior to the Board’s executive direct approving the restart or resumption of construction of the damaged property. Some of these requirements include written reports and notarized statements that the damaged property has been repaired or replaced.¹

The Board’s revisions to the proposed rule appear to attempt to narrow the scope of the impact of the initially proposed rule. However, these revisions provide a more reasonable impact for generating facilities with a spread-out footprint, such as wind and solar facilities. Due to the compact facility footprint of natural gas plants, the revised rule, as adopted, does not offer any meaningful relief from extended shutdowns of an entire baseload generating facility due a damaged piece of equipment valued over fifty thousand dollars.

For instance, Paragraph (E) prohibits the facility operator from disturbing any damaged property until staff approves moving the damaged property. For a wind or solar generating facility this may mean a discrete turbine or block of solar panels, while the rest of the undamaged facility can remain in operation. Equipment within a natural gas plant, on the other hand, is highly integrated, and damage to a single piece of equipment may impact the operations of the entire facility. In particular, the Incident Reporting Rule’s threshold for an incident of fifty thousand dollars creates extraordinary risks for prolong shutdowns of baseload natural power plant facilities. Natural Gas Combined Cycle facilities such as those operated by OIPP members have many

¹ As adopted, the rule states that “incidents” include: 1) “injury to any person that requires medical treatment beyond first aid,” 2) “there is damage to property other than the property leased of owned by the facility operator,” and 3) “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.” Rule 4906-7-06(B).

components valued greater than fifty thousand dollars that can fail under normal operating conditions and can lead to a unit trip and forced outage.

Whereas a prohibition on moving or disturbing damaged property may only affect specific turbines or solar panel blocks for wind and solar facilities, this prohibition could render an entire natural gas plant—and its output of hundreds or thousands of megawatts of baseload generation—inoperable until staff approval. Paragraph (E) of the adopted rule gives staff up to three days to inspect the damaged property, but there is no required timeline for staff to grant approval for the damaged property to be moved or repaired and brought back to service.

Similarly, the revisions to the adopted rule in Paragraph (F) appears to be an attempt by the Board to narrow the detrimental impact of the originally proposed rule. Notably, the Board revised the requirement that the entire “facility” not “restart or resume construction” if the facility was involved in a reportable incident to a more narrow requirement that the only “damaged property” within the facility is prohibited from restarting or resuming construction. Presumably, the Board’s intention with this revision is to isolate the restrictions to the damaged property and not the entire facility. As discussed above, this appears to be reasonable approach when applied to certain generation facilities, such as wind and solar facilities. For wind and solar generating facilities, the damaged property is likely to be isolated to a limited set of turbines or panel blocks. The adopted rule would allow the undamaged turbines and panel blocks to continue to operate, while prohibiting restarting of the damaged property. In contrast, for a natural gas plant, the damaged property is much more likely to be integral to the operation of the entire facility, resulting in shutdowns of baseload generation until approval is granted by the executive director.

The concerns with Paragraphs (E) and (F) described above will also create significant risks for new natural gas power plants under construction. Unlike wind and solar facilities with construction project areas of hundreds or thousands of acres, the construction sites for natural gas

power plants are much more compact. Property damage of equipment during the construction process could occur in a central location of the facility construction site. In this scenario, the rule's requirement that construction activity as to the damaged property halt until approval from the staff executive director could lead to a complete suspension of construction activity for the entire facility. During peak construction of combined cycle natural gas power plants, there are often over a thousand works onsite, working in close quarters. Again, this is in contrast to a scenario involving equipment damage at a particular block of panels or at a specific turbine sites for winds and solar projects, where construction can continue on other parts of the project, away from the damaged property at issue.

The newly adopted Rule 4906-7-06 (E) and (F) places undue burdens and hardship specifically on natural gas power plant facilities under construction and or in commercial operation. Requiring an operational facility to go offline or extend an outage for a reportable incident can result in a massive financial losses and lost opportunity costs. OIPP facilities, like many generators in Ohio, participate in 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 combined-cycle gas turbine facility \$1-2MM per hour. Forced outages jeopardizes grid reliability. Likewise, suspending all construction activity for multiple days or more as a result of merely fifty thousand dollars of equipment damage (in the context of equipment involving hundreds of millions of dollars) will have severe economic consequences, idle hundreds of workers, and could lead to delays in projects achieving commercial operations.

OIPP is concerned that the rule as approved in the Order would cause unacceptable forced outage times if waiting for the Board staff to approve the removal of damaged property, which would only delay the repair of the damaged property. Delay in moving the damaged property would cause a domino effect in the repair process and the facility may be down longer, which in turn

would affect the facility's ability to respond to the grid's needs and therefore impact reliability. Relatedly, OIPP is also concerned that the adopted rule creates a substantial risk that fairly minor equipment damage could lead to a suspension of construction activities impacting the entire project site.

OIPP understands the Board's desire to keep damaged equipment for review purposes, but limited and relatively minor damage to equipment should not halt an entire facility's operations or construction activity. For these reasons, the Board should grant the application for rehearing and amend the rule. In particular, the Board should consider the following when further amending the rule:

- A combined cycle natural gas facility has hundreds of millions of dollars of highly calibrated equipment within a consolidated space. Damage of equipment exceeding fifty thousand dollars can fail during normal operations. Waiting days or more, as required by the Incident Report Rule, to conduct routine repairs may lead to hundreds of megawatts of generation being offline, with severe economic and electric grid reliability impacts. The Board should consider significantly increasing the threshold dollar amount of equipment damage required to trigger an "incident" under the rule and modifying the rules so as OPSB staff does not interfere or delay the facility repair and restoration process.
- A relatively minor amount of damage to equipment should not result in an entire baseload power plant going offline for multiple days or more. The Board should consider the differences between generating facilities and the consequences of equipment damage. The shutdown of a specific damaged wind turbine or limited block of damaged solar panels until

approval to restart, while the rest of the wind or solar facility continues operates, is fundamentally different than the shutdown of an entire baseload power plant. The Board should consider provisions within the Incident Reporting Rule that avoids the shutdown of an entire facility while awaiting staff inspection.

B. Assignment of Error No.2: The Board unreasonably and unlawfully failed to justify its revisions to the originally proposed rule addresses these stakeholders' comments. The Board failed to explain its rationale as to why its revisions addresses stakeholders' comments.

Even though the Board states it received a variety of comments on the rule, the Board does not address those comments specifically in the Order or explain why the revisions to the originally proposed rule addresses those comments. In the Order, the Board simply states it received various comments regarding facility shutdowns², and then proceeds to state the rules on construction of facilities are important to the public interest, but the Board fails to describe how their revisions address the reliability and shut down concern.³ The Board did not provide reasoning as to why the grid reliability concerns raised by several stakeholders was addressed by their revisions or why the concerns did not merit further revisions.

At a minimum, the Board should provide a written explanation as to why the Board does not believe the stakeholders' concerns will occur or that the rule does not impact grid reliability.

² See *In the Matter of the Ohio Power Siting Board's Review of Ohio Adm. Chapters 4906-1, 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7*, Initial Comments of Ohio Power Company and AEP Transmission Company, Inc. (August 5, 2022), pg. 5 and 16, *In the Matter of the Ohio Power Siting Board's Review of Ohio Adm. Chapters 4906-1, 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7*, Initial Comments of International Brotherhood of Electrical Workers, District 4 (August 5, 2022), pg. 9, *In the Matter of the Ohio Power Siting Board's Review of Ohio Adm. Chapters 4906-1, 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7*, Initial Comments of National Grid Renewables Development, LLC. (August 5, 2022), pg. 24, *In the Matter of the Ohio Power Siting Board's Review of Ohio Adm. Chapters 4906-1, 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7*, Initial Comments of American Clean Power Association, MAREC Action, and the Utility Scale Solar Energy Coalition of Ohio (August 5, 2022), pg. 63.

³ *In the Matter of the Ohio Power Siting Board's Review of Ohio Adm. Chapters 4906-1, 4906-1, 4906-2, 4906-3, 4906-4, 4906-5, 4906-6, and 4906-7*, Finding and Order (July 20, 2023), ¶ 28.

The Board's failure to do so is detrimental to stakeholders' understanding of the rules application and purpose. This is illustrated in OIPP's Assignment of Error No. 1, above. As discussed above, the Board's changes to the Incident Reporting Rule were presumably made to attempt to address comments from interested parties. But the Order provides no explanation of these changes or their intent. The result is that interested parties, like OIPP, are left to guess the purpose of the changes when attempting to productively respond to the adopted rules. The Board's failure to explain its reasons for the changes to the Incident Report Rule is unreasonable.

Dated: August 21, 2023

Respectfully submitted,

/s/ Dylan Borchers

Dylan Borchers (0090690)

Rachael N. Mains (0098681)

Counsel of Record

BRICKER GRAYDON LLP

100 South Third Street

Columbus, Ohio 43215

Telephone: (614) 227-8813

E-mail: dborchers@brickergraydon.com
rmains@brickergraydon.com

Attorneys for

THE OHIO INDEPENDENT POWER PRODUCERS

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/s/ Dylan Borchers

Dylan Borchers

Attorney for

THE OHIO INDEPENDENT POWER PRODUCERS

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Summary: Application for Rehearing of The Ohio Independent Power Producers
electronically filed by Teresa Orahood on behalf of Dylan F. Borchers.