

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

ORDER ON REHEARING

Entered in the Journal on December 21, 2023

I. SUMMARY

{¶ 1} The Ohio Board Siting Board grants, in part, and denies, in part, the applications for rehearing filed by Duke Energy Ohio, Inc.; the Ohio Consumers' Counsel; American Clean Power and MAREC Action and Utility Scale Solar Energy Coalition of Ohio; the Ohio Independent Power Producers; National Grid Renewables Development, LLC; and Columbia Gas of Ohio, Inc.

II. PROCEDURAL HISTORY

{¶ 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} Following a series of workshops, 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 recommended changes to the rules, which were published by the Board for comments on June 16, 2022.

{¶ 4} Thereafter, comments and/or reply comments were submitted by numerous interested parties.

{¶ 5} Following its review of the comments, Staff recommended further modifications to the proposed rules, as provided in a Board Entry issued January 19, 2023. The Board sought additional comments related to Staff's modifications. In response, numerous comments and reply comments were again submitted.

{¶ 6} On July 20, 2023, the Board issued a Finding and Order that adopted the rules, as amended.

{¶ 7} R.C. 4906.12 states, in part, that R.C. 4903.02 to 4903.16 apply to a proceeding or order of the Board in the same manner as if the Board were the Public Utilities Commission of Ohio (Commission). R.C. 4903.10 provides that any party to a proceeding before the Commission may apply for rehearing with respect to any matter determined in that proceeding within 30 days after the entry of the order upon the journal of the Commission. Similarly, Ohio Adm.Code 4906-2-32 provides that any party may file an application for rehearing within 30 days after an order has been journalized by the Board in the manner, form, and circumstances set forth in R.C. 4903.10.

{¶ 8} On August 21, 2023, Duke Energy Ohio, Inc. (Duke); the Ohio Consumers' Counsel (OCC); American Clean Power and MAREC Action and Utility Scale Solar Energy Coalition of Ohio (collectively, USSEC); the Ohio Independent Power Producers (OIPP); National Grid Renewables Development, LLC (NGRD); and Columbia Gas of Ohio, Inc. (Columbia) filed applications for rehearing. By Entry issued September 15, 2023, the administrative law judge issued an entry granting the applications for rehearing in order to afford the Board additional time to consider the issues raised in the applications for rehearing.

III. DISCUSSION

{¶ 9} As noted, several stakeholders filed applications for rehearing. Within those applications, Duke submits six assignments of error; OCC submits, broadly, one assignment of error; USSEC submits five assignments of error; OIPP submits one assignment of error; NGRD submits 20 assignments of error; and Columbia submits seven assignments of error. Due to the large number of arguments, which, in some instances, are repeated by various parties, we will address the applications for rehearing as they relate to each rule proposed rule chapter.

A. *Chapter 4906-1 General Provisions*

{¶ 10} Duke asserts three assignments of error associated with Chapter 4906-1, largely concerning certain definitions. Duke first alleges the Board erred in not adopting a definition of “public interest.” Duke observes that R.C. 4906.10(A)(6) requires the Board to determine whether a facility serves the “public interest, convenience, and necessity.” According to Duke, the statute provides no further guidance and the Board’s orders have been inconsistent. Thus, Duke asserts that a definition of the term would give applicants certainty as to what is expected. Duke maintains the Board’s explanation for declining to adopt a definition of “public interest” was lacking.

{¶ 11} Upon consideration, the Board affirms its decision in the July 20, 2023 Finding and Order. As discussed therein, we determined that R.C. 4906.10(A)(6) speaks for itself. July 20, 2023 Finding and Order at ¶ 19. We recognize that, especially with this prong, each project, and its relationship to local community, is different. Thus, the Board declines to adopt a specific definition.

{¶ 12} Duke additionally contests the proposed revision to the definition of “replacement of an existing facility with a like facility.” Duke explains that, consistent with R.C. 4906.04, the replacement of an existing facility with a like facility is not considered construction of a major utility facility, and thus an application and Board approval is not

necessary in such instances. The definition of “replacement of an existing facility with a like facility” is determined by the Board. According to Duke, as proposed, the current definition would be adjusted to delete the allowance for material that is no longer used by the applicant from being replaced with the nearest equivalent size and material. Duke states that, under the current version, an applicant could, for example, replace wood poles with steel poles that are more durable and more wind resistant without going through the lengthy and expensive application process. However, with the revised rule, as wooden poles are still manufactured and available, it would need to submit a full application to replace the poles. Duke asserts this is unnecessarily burdensome and the Board should not alter the current definition.

{¶ 13} Duke’s application for rehearing on this issue is denied. The Board finds the rule change to be appropriate in order to allow the Board and Staff the opportunity to review. We recognize that such projects may be filed as accelerated applications, subject to an expediated automatic approval process.

{¶ 14} Duke also seeks rehearing concerning the proposed change to the definition of “resident.” The revised definition now includes tenants. Duke avers that is impossible to know if a building has tenants or who those tenants are, as such information is not public record. As explained by Duke, the term “resident” is used for numerous required notices. Duke states that while it agrees that it is important to notify impacted persons about a project, full compliance with the rule may be impossible.

{¶ 15} We affirm the definition of “resident.” As discussed by Duke, the term is applied to numerous rules concerning various required notices about a project. The Board emphasizes the importance of notifying the people that are most affected by a project, which would include tenants living nearby.

{¶ 16} Both Duke and Columbia filed applications for rehearing concerning the revised definition of “route.” Duke and Columbia both assert that the most recently proposed definition of the term is an improvement, as it adopts, in essence, the ‘corridor’

approach that they originally advocated for. However, they contend that the rule needs further adjustment. The definition that is currently proposed has a “centerline and a proposed distance from each side of the centerline, with such total distance not to exceed the proposed right-of-way width.” Columbia contends that limiting the width of the corridor to the right-of-way is too restrictive. According to Columbia, with a more expansive corridor, an applicant can better respond to the needs of local governments and impacted landowners to make small adjustments to the route after receiving Board approval. With a more restrictive corridor, Columbia explains that applicants will be less motivated to accommodate the needs of local governments and landowners in order to avoid seeking a formal approved amendment. Similarly, Duke avers that focus on the right-of-way does not account for easements and the need for temporary construction workspace.

{¶ 17} The Board finds that the applications for rehearing on this issue should be denied. As we described in adopting the new definition of a “route,” the Board finds this approach provides developers with more flexibility to make adjustments. Despite Duke’s contentions, this does not prevent applicants from seeking alterations, as needed, through supplements or amendments.

{¶ 18} Columbia also filed for rehearing regarding the proposed adjustments to Ohio Adm.Code 4906-1-05, which concerns project site visits from Staff. As revised, language was deleted that stated applicants should “make all reasonable efforts to ensure that, upon prior notification,” Staff may make site visits. Columbia contends that the removal of a notice requirement prevents facilities from ensuring that proper protective equipment is available or securing specific areas for inspection.

{¶ 19} Upon further consideration, the Board agrees with Columbia on this issue that prior notice is generally beneficial for all involved. However, we recognize that, in some instances advanced notice may not be practicable. Accordingly, site visits will be subject to advance notice when reasonably appropriate.

B. Chapter 4906-3 Certificate Applications Generally

{¶ 20} NGRD's fifth assignment of error is regarding Ohio Adm.Code 4906-4-09(A)(1), which considers public notice of applications. According to NGRD, the rule is different than the requirements in R.C. 4906.06(C) and could cause confusion. The Board agrees, and the rule should be clarified to note that notices in Ohio Adm.Code 4906-4-09(A)(1) are in addition to the requirements in R.C. 4906.06(C).

{¶ 21} Duke submitted an application for rehearing as to application fees addressed in Ohio Adm.Code 4906-3-12. Duke explains that it originally proposed that fees should be charged to applicants within a reasonable amount of time after the applicant has filed its notice of completion. Duke maintains that the issuance of bills months or years after the project has been completed causes significant difficulty for some applicants.

{¶ 22} Duke's application for rehearing on this issue is denied. The Board and its Staff strive to issue any necessary fees in a timely and reasonable manner. However, the Board does not find a specific timing requirement within the rules is appropriate.

{¶ 23} Both NGRD and Columbia note a reference to "Appendix D" in Ohio Adm.Code 4906-3-13(C) that is not otherwise included in the rules. The Board determines this reference was in error and should be deleted.

{¶ 24} Columbia submits an assignment of error as to protected information that should not be publicly disclosed. Columbia notes that that three rules, Ohio Adm.Code 4906-3-13(D), 4906-3-14(C)(1), and 4906-4-03(A)(5), add protections such that critical energy infrastructure information (CEII) can be redacted from certain required filings. Columbia explains that CEII is defined by federal law and may not encompass all necessary information that should be redacted. According to Columbia, the Board added language to Ohio Adm.Code 4906-3-03(B)(5) that protects "other facility information that is confidentially protected from public disclosure." Columbia asserts that similar language should be added to rules that already protect CEII. The Board agrees and finds such

language should be added to Ohio Adm.Code 4906-3-13(D), 4906-3-14(C)(1), and 4906-4-03(A)(5).

{¶ 25} NGRD's sixth assignment of error concerns the requirements in Ohio Adm.Code 4906-3-15 that a certificate holder notify the Board concerning any change in its corporate structure. NGRD contends this goes beyond the scope of useful information for the Board and would result in unnecessary costs to the certificate holder. As explained by NGRD, the rule as written would require notices to be filed regarding tax equity financing of upstream holding companies. NGRD asks that such filing be limited to a change in the immediate ownership of the certificate holder. The Board finds that the current version of the rule may be unnecessarily burdensome for certificate holders and that it is logical to adjust the rule such that only changes in the corporate structure of immediate owners of certificate holders need to be filed in the docket.

C. *Chapter 4906-4 Certificate Applications*

{¶ 26} NGRD files an application for rehearing alleging that various proposed changes in Ohio Adm.Code 4906-4 now create a conflict with Ohio Adm.Code 4906-2-04(C)(3). NGRD observes that various revisions to the rules in this chapter no longer make providing certain information in the application a requirement, but instead describes examples of relevant information to include in an application. According to NGRD, this conflicts with Ohio Adm.Code 4906-2-04(C)(3), which permits applicants to explain why certain requirements may not be applicable. As explained by NGRD, the various changed rules should be described as examples of information "that may be" relevant to include in an application for Staff's review. As Ohio Adm.Code 4906-2-04(C)(3) only pertains to requirements, NGRD asserts there is no longer a reasonable method for applicants to not include information that is otherwise unnecessary for a particular project application.

{¶ 27} We deny NGRD's application for rehearing as the Board does not find the revision is necessary. As noted by NGRD, the examples of relevant information described

by NGRD would no longer be requirements. Applicants can provide explanations to Staff as to why typically relevant information is not included.

{¶ 28} A rehearing request was filed by both NGRD and USSEC as to the requirement in Ohio Adm.Code 4906-4-03(B)(3) that applications include finalized equipment specifications. NGRD asserts that, for solar facilities, panels and other equipment are not selected until after final engineering, due to technology changes and panel availability. USSEC echoes NGRD's concerns. NGRD and USSEC submit that the rule could instead request that examples of expected equipment be included in the initial applications. Upon additional consideration, the Board finds the requested change is appropriate and Ohio Adm.Code 4906-4-03(B)(3) should be revised to only require indicative examples of facility equipment.

{¶ 29} Similar to Duke's rehearing request to add a definition of "public interest," Columbia filed rehearing asking the Board to adopt a definition of "need." Columbia proposes a definition of need that could be added to Ohio Adm.Code 4906-4-03(C)(1)(a). For the same reasons as described above, we decline to adopt such a definition, and Columbia's application for rehearing on this issue is denied.

{¶ 30} Duke submits an assignment of error concerning changes to Ohio Adm.Code 4906-4-03(D)(1) and Ohio Adm.Code 4906-4-05(A)(2). As proposed, these rules cite one-line diagrams as examples of information that should be provided for applications concerning transmission lines. Duke states such diagrams contain CEII and should not be publicly filed. Further, filing continuous motions for protective order would be burdensome. The Board is persuaded that such information does not need to be publicly filed and revises the rule.

{¶ 31} USSEC, as well as NGRD, filed applications for rehearing as to the complaint summaries that must be submitted to Staff and filed on the docket, as described in Ohio Adm.Code 4906-4-06(E)(8). According to USSEC and NGRD, if complaint summaries are to be publicly docketed, names of complainants should not be included in the summaries. The Board finds rehearing on this issue is warranted and the rule should be adjusted

accordingly. Additionally, USSEC asserts that the Board should have discretion to allow applicants to not docket summaries concerning vexatious complaining parties that may file meritless complaints. The Board declines to adopt such language. While we note that any rule may be waived consistent with Ohio Adm.Code 4906-4-01, we do not find a separate delineation needs to be made here.

{¶ 32} As to Ohio Adm.Code 4906-4-07(E)(7), NGRD's application for rehearing points out a drafting error. The Board determines that the rule should be corrected.

{¶ 33} USSEC and NGRD each submitted an application for rehearing regarding the example of a grading plan to be submitted to assess geological features, as described in Ohio Adm.Code 4906-4-08(A)(5)(b). The example provided in the rule calls for a preliminary grading plan that describes maximum grade acreage expectations. As described above regarding the rehearing for requests regarding equipment specifications in Ohio Adm.Code 4906-4-03, USSEC and NGRD explain that such specifications are not known until final engineering is complete, which does not take place until after certification. Both USSEC and NGRD maintain that estimates of grading plans would be more appropriate. After review, the Board agrees and finds the rule should be revised to recommend estimates of maximum graded acreage.

{¶ 34} NGRD also submitted a rehearing application as to Ohio Adm.Code 4906-4-08(A)(5)(e), which asks for a description of coordination with the Ohio Department of Natural Resources (ODNR) on the geological suitability of the project. NGRD states each project is unique and some projects may not require coordination with ODNR. NGRD avers that the rule could be adjusted to seek a description for "any" coordination with ODNR. The Board finds NGRD's application for rehearing on this issue should be denied. Initially, we note the rule is an example of information to include in an application that is relevant for the Staff to review. While NGRD argues that the rule is somehow both vague and inflexible, we disagree. The proposed rule allows for each unique project to provide an

appropriate description of whatever coordination took place, if any, between the applicant and ODNR.

{¶ 35} NGRD's next assignment of error concerns Ohio Adm.Code 4906-4-08(E)(3)(a)'s request for applicants to submit the location of all main and lateral drain tile. NGRD submits that, in many instances, this is an impossible task to complete prior to construction. The Board denies application for rehearing as to this issue. While this is an example of information that the Staff would find relevant in its review, the Board recognizes that damaged drain tiles are a consistent complaint brought to the Board and Staff's attention.

{¶ 36} Also concerning drain tiles, NGRD and USSEC filed rehearing as to Ohio Adm.Code 4906-4-08(E)(3)(c)'s request for plans associated with how an applicant will repair damaged drain tiles. NGRD asserts such repairs may not always be necessary and it would create a burden to unnecessarily repair drain tiles. USSEC states laterals may not need to be repaired and the rule should encourage developers to work with landowners, similar to what is described in Ohio Adm.Code 4906-4-08(E)(3)(e). For the same reasons discussed above concerning drain tiles, the Board also denies rehearing on this issue.

{¶ 37} NGRD also filed an application for rehearing regarding a proposed addition to Ohio Adm.Code 4906-4-09(A)(1). The addition would require that the construction of structures not associated with the generation of electricity be in compliance with Ohio Board of Building standards. NGRD asserts this addition conflicts with R.C. 4906.13 and would cause unnecessary confusion. Upon review, the Board finds the additional language is unnecessary. We agree that the language may cause confusion and is otherwise duplicative.

{¶ 38} A rehearing application was also submitted by USSEC and NGRD concerning the requirement of Ohio Adm.Code 4906-4-09(D)(5) that, in certain circumstances, an environmental specialist must be on hand with the authority to indefinitely shut down construction. Both USSEC and NGRD contend an indefinite suspension could have massive, detrimental consequences to a project. Both entities ask

that any suspension of construction be limited to 48 hours. The Board agrees, after further consideration, that this would be an appropriate remedy.

{¶ 39} NGRD's final assignment of error concerning Chapter 4906-4 relates to noise limitations described in Ohio Adm.Code 4906-4-09(E)(2). NGRD maintains that the proposed rule is too restrictive. Further, NGRD asserts that a different method of measuring noise should be used. The Board is unpersuaded that the noise limit proposed is too restrictive or that the method of measuring noise is inappropriate. Accordingly, NGRD's application for rehearing on this issue is denied.

D. Chapter 4906-7 Procedure

{¶ 40} Multiple rehearing applications were filed regarding Ohio Adm.Code 4909-7-06. NGRD submits an assignment of error as to Ohio Adm.Code 4909-7-06(E) and (F). Section (E), as proposed, directs a facility operator not to disturb any damaged property resulting from a reportable incident, unless approved by Staff or as necessary for public safety. Section (F) requires that a facility be shut down after a defined incident until a written report is submitted and either the Board gives approval or three business days pass. NGRD contends this rule does not consider the impact a shutdown may have on the facility operator and that there should be a means for a facility to restart operations sooner. NGRD argues that this potentially could result in contractual damages or penalties if a facility cannot immediately take action to make repairs and continue operation. Alternatively, NGRD states facilities should be required to document the damage with pictures and videos and presented to Staff as soon as practicable. The Board denies NGRD's application for rehearing on these two issues. In the event of an incident causing property damage, it is important for Staff to be able to complete an investigation and understand the causes of the incident. The rule provides exceptions to ensure safety or when otherwise approved by Staff.

{¶ 41} In Columbia's application for rehearing, they note that while the rule concerning the self-reporting of incidents was revised from previous iterations to only relate

to electric generating, the current version could still be read to apply to gas pipelines. Columbia maintains the rule should more explicitly read that the rule does not apply to gas pipelines. Going further, OIPP asserts that the rule should not apply to natural gas power plants. OIPP states that, as compared to wind and solar facilities, natural gas power plants operate completely differently. Whereas for wind or solar facilities, singular panels or turbines can be shut down, incident reporting for gas facilities may require entire plants to be shut down. OIPP explains that gas facilities have expensive equipment that may also more easily meet the \$50,000 minimum to qualify as an incident. Further, according to OIPP, a shutdown of such a facility could have detrimental effects on the electric grid. After review, the Boards finds that the rule should be revised to only apply to solar electric generation facilities. We note the discrepancies between the facilities identified by OIPP and note that natural gas power plants are subject to other reporting requirements. Accordingly, we find that the rules concerning the self-reporting of incidents should be restricted to solar facilities.

E. Other Applications for Rehearing

{¶ 42} NGRD submitted two assignments of error arguing that the rule package does not comply with R.C. 121.95. As described in the statute, a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions. As the proposed rules include new regulatory restrictions, NGRD asserts the Board is required to explain how it will comply with R.C. 121.95. According to NGRD, the Board's discussion of regulatory restrictions in the Finding and Order was vague and lacking. By not providing specific numbers, NGRD contends the Board is violating the statute.

{¶ 43} The Board finds NGRD's argument to be meritless. As we stated in the Finding and Order, "the Board intends to be fully compliant with the statute and guidance associated with counting regulatory restrictions, in general and as it pertains to merging these rule chapters." July 20, 2023 Finding and Order at ¶ 22. Consistent with R.C. 121.95 and R.C. 121.951, the rules will be sent to the Joint Committee on Agency Rule Review

(JCARR) for review, along with required forms such as a rule summary and fiscal analysis. The function of JCARR is to ensure state agency rules do not exceed rulemaking authority granted to them by the General Assembly. Further, this rule package could be filed with JCARR alongside other rule packages from the Public Utilities Commission of Ohio that are also up for review. As stated, the Board expects to be in full compliance with the relevant statutes and finds this is not the proper forum to adjudicate regulatory restrictions.

{¶ 44} NGRD also filed an application for rehearing arguing that, generally, the Board's merger of Chapters 4906-4 and 4906-5 is inappropriate and in violation of R.C. 121.95. Columbia filed a similar application for rehearing. Columbia and NGRD contend the merger was done for the purpose of removing regulatory restrictions, a requirement of R.C. 121.95(F). Columbia and NGRD note, however, that the statute explicitly prohibits merging two rule chapters for the purpose of R.C. 121.95 compliance. Furthermore, Columbia adds that in merging the rule chapters, the Board has created additional regulatory restrictions that did not previously apply to natural gas pipelines. As an example, Columbia notes requirements regarding airport information and wind velocity that are relevant for above-ground facilities, but not underground gas pipelines.

{¶ 45} The Board finds NGRD and Columbia's applications for rehearing as to this issue should be denied. As we discussed in the Finding and Order, the chapters are not being merged for the sole purpose of removing regulatory restrictions. Therein, we also recognized that there are "obviously differences" between the different types of applications that come before the Board. However, we explained that rules account for the unique characteristics of each type of application. While the rules were merged, additional changes were made to accommodate the various applications. July 20, 2023 Finding and Order at ¶ 22. Accordingly, the Board is unpersuaded from that finding by Columbia's rehearing request.

{¶ 46} Another assignment of error from NGRD concerns the business impact analysis (BIA) required by R.C. 121.82(A). NGRD notes that this form is required to be

submitted with the rules and describes whether a rule creates any adverse impacts on businesses. NGRD states a BIA was included with the original proposed rules in the Board's June 16, 2022 Finding and Order, but was not included in the most recent Finding and Order that adopted the rules. According to NGRD, the BIA wrongly asserts that Ohio Adm.Code Chapters 4906-4 and 4906-7 will not result in a material increase in the cost of compliance. Specifically, NGRD asserts that the requirement for full grading plans required in Ohio Adm.Code 4906-4-08 will lead to increased expenses. Likewise, if a facility is required to be shut down as a result of a self-reported incident consistent with Ohio Adm.Code 4906-7-06, NGRD maintains a facility may be subject to additional costs due to contractual damages or penalties. NGRD seeks the Board to submit a revised BIA.

{¶ 47} NGRD's application for rehearing on this issue is denied. The Board is unpersuaded that revisions to the BIA are necessary or that the previous BIA is inaccurate. As to the specific examples described by NGRD, we note those have been addressed above in other applications for rehearing. The Board also recognizes that the BIA is sent to the Common Sense Initiative (CSI) for a full and comprehensive review. CSI reviews not just the BIA, but also the rules and any comments received. The Board will continue to work with CSI and will defer to their analysis.

{¶ 48} NGRD additionally submits an application for rehearing alleging that the Board wrongfully imposed common certificate conditions into the proposed rules. As described by NGRD, the Board has the authority through R.C. 4906.10 to issue conditions when approving a certificate. Thereafter, an applicant could withdraw its application if it disagreed with those conditions. NGRD contends the Board is now inputting common conditions that are typically found in many certificate orders into the rules. According to NGRD, this goes beyond the Board's rulemaking authority in R.C. 4906.03 and deprives applicants of the ability to contest those conditions. Further, NGRD asserts this would hinder the ability to negotiate stipulations with Staff and intervening parties. NGRD specifically identifies parts of Ohio Adm.Code 4906-3-13, 4906-3-14, 4906-4-06, 4906-4-08, 4906-4-09, and 4906-7-06. NGRD states these rules do not assist the Board in evaluating the

environmental impacts of an application and are not necessary or convenient to implement the Board's authority under R.C. Chapter 4906. NGRD's application for rehearing on this issue is denied. R.C. 4906.03(C) grants the Board broad authority to adopt necessary and convenient rules associated with implementing R.C. Chapter 4906. This obviously includes R.C. 4906.10 and R.C. 4906.98 and the rule additions assist the Board in implementing those sections.

{¶ 49} OCC filed rehearing concerning its original comment, asserting they were not sufficiently addressed by the Board. In its original comments, OCC asserted that the Board should modify the rules to expand the Board's authority to review supplemental transmission projects for need and cost effectiveness. According to OCC, supplemental transmission projects are in a middle ground where they are not reviewed at the state level nor at the federal level. Thus, explains OCC, spending on supplemental transmission projects has unnecessarily accelerated, to the detriment of ratepayers. OCC submitted multiple associated rule modifications. First, OCC asked for a definition of supplemental transmission project. OCC also requested that all such projects be subject to a prudence review and a cost/benefit analysis. Further, OCC sought rules requiring competitive solicitation for transmission projects. OCC contends that R.C. 4903.09 requires the Board to explain why it did not consider OCC's comments, and the Finding and Order issued by the Board failed to do so.

{¶ 50} Memoranda contra OCC's application were filed by Duke, The Dayton Power and Light Company d/b/a AES Ohio (AES), and AEP Ohio Transmission Company, Inc. and Ohio Power Company d/b/a AEP Ohio (AEP). Duke asserts R.C. 4903.09 only applies to contested cases and the Ohio Supreme Court has long held that rules proceedings are not considered contested cases, citing *Craun Transp., Inc. v. Pub. Util. Comm.*, 162 Ohio St. 9, 10, 120 N.E.2d 436 (1954). Along those lines, AES states the Public Utilities Commission of Ohio has routinely found that R.C. 4903.09 does not apply to rule proceedings. Further, AES points out that the Board addressed OCC's comments and explicitly declined to adopt OCC's recommendations, citing the July 20, 2023 Finding and Order at ¶ 15. Both AES and

AEP argue that OCC's comments lack merit as OCC's recommendations would exceed the Board's authority. As stated by AES and AEP, such projects are the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC).

{¶ 51} OCC's application for rehearing is denied. As noted, R.C. 4909.09, while applicable to the Board via R.C. 4906.12, does not apply to rule proceedings. *See, e.g., In re the Commission's Review of Chapter 4901:1-37 of the Ohio Administrative Code*, Case No. 18-1190-EL-ORD, Entry on Rehearing (Aug. 12, 2020) at ¶ 19; *In re the Commission's Review of Its Rules for Electrical Safety and Service Standards Contained in Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 17-1842-EL-ORD, Entry on Rehearing (Jan. 27, 2021) at ¶ 10, *In re the Commission's Review of Chapter 4901:1- 19 of the Ohio Administrative Code*, Case No. 17-1945-GA-ORD, Second Entry on Rehearing (Feb. 27, 2019) at ¶ 10. Further, the Board specifically addressed and denied OCC's request, determining that R.C. 4906.10(A) already addresses the basis of need for a project and noting that such projects are subject to review at the federal level. July 20, 2023 Finding and Order at ¶ 15. Further, as discussed, the Board cannot assert authority that is not specifically granted to the Board by the General Assembly.

{¶ 52} Accordingly, the Board finds that the applications for rehearing should be granted, in part, and denied, in part, as discussed above. The relevant revised rules are attached. Additionally, we note that Appendices A, B, and C were inadvertently not included in the previous rules attachment in the July 20, 2023 Finding and Order and are thus attached here.

IV. ORDER

{¶ 53} It is, therefore,

{¶ 54} ORDERED, That the applications for rehearing filed in this case be granted, in part, and denied, in part, in accordance with this Order on Rehearing. It is, further,

{¶ 55} ORDERED, That a copy of this Order on Rehearing be served upon all parties and interested persons of record.

BOARD MEMBERS:

Approving:

Jenifer French, Chair
Public Utilities Commission of Ohio

Matt McClellan, Designee for Lydia Mihalik, Director
Ohio Department of Development

Damian Sikora, Designee for Mary Mertz, Director
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Bruce T. Vanderhoff, M.D., Director
Ohio Department of Health

Drew Bergman, Designee for Anne Vogel, Director
Ohio Environmental Protection Agency

Sarah Huffman, Designee for Brian Baldrige, Director
Ohio Department of Agriculture

Gregory Slone
Public Member

NJW/dr

*****DRAFT - NOT FOR FILING*****

AMENDED

4906-1-05 Site visits.

Persons proposing, owning or operating major utility facilities or economically significant wind farms shall 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, subject to advance notice when reasonably appropriate, to proposed or alternative sites or routes of a major 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.

AMENDED

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

- (A) After filing an accepted, complete application with the board, the applicant shall, in addition to the newspaper publication requirement in section 4906.06 (C) of the Revised Code, 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

*****DRAFT - NOT FOR FILING*****

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.
 - (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 to whom~~that received~~ 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, ~~Inability~~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.

*****DRAFT - NOT FOR FILING*****

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.
- ~~(D)~~ (C) 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 require an easement for the proposed modified facility. The applicant shall 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 administrative law judge, modification(s) shall not be considered amendments to the certificate if ~~not listed within 4906-1-01 Appendix D, and such~~ modification(s) would be minimal in nature and would be adequately addressed by the conditions of the certificate. The applicant's written notification shall reference, and include a copy of, paragraph (D) 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 shall 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~~

*****DRAFT - NOT FOR FILING*****

~~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)-(D) 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, subject to any redactions pertaining to critical energy infrastructure information and other facility information protected from public disclosure, 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)-(E) 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.~~
- (F) Proof of condition compliance shall 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

4906-3-14 Preconstruction requirements.

- (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 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

*****DRAFT - NOT FOR FILING*****

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: ~~submit to staff 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 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 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.~~

-(1) submit to staff and on the docket of the certificate case one set of engineering drawings of the final project design, including associated facilities and construction access plans, subject to any redactions pertaining to critical energy infrastructure information and other facility information that is protected from public disclosure. The engineering drawings shall be 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 is in compliance with the certificate would be sited as certificated. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically call out any adjustments made from the siting detailed in the application and any associated amendments.

- (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 shall file a table listing each preconstruction condition deliverable, the corresponding condition number, status of compliance, and date on which the compliance was filed.

*****DRAFT - NOT FOR FILING*****

NEW

4906-3-15 Change in corporate structure.

Within thirty days of any change to the corporate structure to the immediate owners of a certificate holder, the certificate holder shall notify the board of such change by filing notification of the change in the case docket in which the certificate was granted.

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 project activities and milestones. Examples of scheduling information for inclusion are the timing of the:

(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) Describe the proposed construction sequence.

(3) Provide a description of the project area. Examples of relevant project area information include: geography, topography, population centers, major industries, and landmarks, including.

*****DRAFT - NOT FOR FILING*****

- (a) 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. Examples of information that should be included in the map include:
 - (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).
 - (viii) 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) Describe the project's proposed installation methods. Examples of relevant information include:
 - (a) 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.

*****DRAFT - NOT FOR FILING*****

(vi) Post-construction reclamation.

(b) Provide the layout of facilities. Examples of relevant information include:

(i) 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) Reasons for the proposed layout and any unusual features.

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

(5) The filing requirements in this chapter are subject to any redactions that are necessary to protect critical energy infrastructure information and other facility information that is protected from public disclosure.

(B) For a proposed electric generation facility:

(1) Confirm that an interactive map on the project's website containing a one-mile radius from the project area and showing the features listed in rule 4906-4-03(A)(3)(a) of the Administrative Code was posted at least fourteen days before the first public informational meeting under rule 4906-3-03 of the Administrative Code and that such map will be updated and maintained until construction completes.

(2) 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) Provide, in as much detail as is available at the time of submission of the application, ~~descriptive~~ indicative examples of specifications for each generation equipment alternative, where applicable. Examples of relevant specifications include (subject to revision and update):

(a) Type, number of units, estimated net demonstrated capacity, heat rate, annual capacity factor, and hours of annual generation.

*****DRAFT - NOT FOR FILING*****

- (b) ~~The Indicative~~ manufacturers, models, specifications, and material safety data sheets for all solar panels, inverters, racking systems, wind turbine models, and ~~all other~~ material components. The actual component information shall be provided when selected and prior to commencement or construction and shall not cause an increase in impacts associated with the preliminary maximum site plan. In the case of a wind farm, final component selections shall not exceed the disclosed maximum turbine hub height, tip height, rotor diameter and blade length. ~~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) Describe, in as much detail as is available at the time of submission of the application, relevant information as to 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. Examples of relevant information include:
- (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.
- (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.

*****DRAFT - NOT FOR FILING*****

- (j) Security, operations, and maintenance facilities or buildings.
 - (k) Other pertinent installations.
- (5) Supply a map of at least 1:12,000 scale of the project area. Examples of relevant features for map depiction include:
 - (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) 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). Examples of information relevant to the need determination include:
 - (a) The purpose of the proposed facility.
 - (b) 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) Relevant load flow studies and contingency analyses, if appropriate, identifying the need for system improvement.
 - (2) Describe why the proposed facility was selected to meet the projected need and how the facility complies with R.C. 4906.10(A)(6).
- (D) For a proposed electric power transmission line, provide information in support of the basis of need. Examples of information relevant to the need determination include:
 - (1) Load flow data ~~and one-line diagrams in the form of transcription diagrams~~ depicting system performance with and without the proposed facility.
 - (2) An analysis of the impact of the proposed facility on the electric power system economy and reliability, including the evaluation of the impact of the proposed facility on all interconnected utility systems as supported by relevant load flow studies that the applicant provides to staff.

*****DRAFT - NOT FOR FILING*****

- (3) An analysis and evaluation of the options considered that 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) A brief statement of how the proposed facility fits 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) 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) Unless exempt from filing a long-term forecast report, 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:
 - (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

4906-4-05 Electric grid interconnection.

- (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, including any provisions for future expansion. Examples of information

*****DRAFT - NOT FOR FILING*****

relevant to future use and expansion include a description of:~~The applicant shall describe how the facility will be connected to the regional electric grid.~~

(1) 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) 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) 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.

*****DRAFT - NOT FOR FILING*****

(B) Additional examples of relevant information requirements for electric generation facilities include:

(1) A description of how the facility will be connected to the regional electric grid.

~~(B) (2) The applicant shall provide information~~ Information on interconnection of the facility to the regional electric power grid, including:-

~~(1) (a) The applicant shall provide information~~ Information relating to their generation interconnection request, including interconnection queue name, number, date, and website.

~~(2) (b) The applicant shall provide system~~ System studies on their generation interconnection request, ~~The studies shall include~~ including, 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. Examples of relevant construction cost information include:

(1) ~~The applicant shall provide estimates~~ Estimates of applicable capital and intangible costs for the facility and various applicable alternatives that is. ~~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). Examples of relevant cost estimates include:

(a) Land and land rights.

(b) Structures and improvements.

(c) Substation equipment.

(d) Poles and fixtures.

*****DRAFT - NOT FOR FILING*****

(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.

(l) Any other material cost items.

- (2) ~~The applicant shall provide a~~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~~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.
Examples of information relevant to these expenses include:
- (1) ~~The applicant shall provide applicable~~Applicable estimated annual operation and maintenance expenses for the first two years of commercial operation. ~~The data submitted shall be~~that is 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~~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.

*****DRAFT - NOT FOR FILING*****

- (3) ~~The applicant shall provide a~~ 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)~~ (D) The applicant shall provide information regarding the economic impact of the project.
Examples of relevant economic impact information include:
- (1) ~~The applicant shall provide an~~ An estimate of the annual total and present worth of construction and operation payroll.
 - (2) ~~The applicant shall provide an~~ 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~~ An estimate of the increase in county, township, and municipal tax revenue accruing from the facility.
 - (4) ~~The applicant shall provide an~~ An estimate of the economic impact of the proposed facility on local commercial and industrial activities.
- ~~(F)~~ (E) The applicant shall provide information regarding public ~~responsibility~~ interaction.
Examples of relevant public interaction information include:
- (1) ~~The applicant shall describe~~ A description of 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, including. ~~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~~ A description of 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~~ An evaluation and description of the anticipated impact to roads and bridges associated with construction vehicles and equipment delivery, and any. ~~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.

*****DRAFT - NOT FOR FILING*****

- (4) ~~The applicant shall list~~ A list of 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) Except as to electric power transmission lines and gas pipelines, The applicant ~~applicant's shall describe~~ description of 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, applicant's plan description should be consistent with sections 4906.21 to 4906.222 of the Revised Code and rule 4906-4-09 of the Administrative Code.
- (6) A list of counties, townships, villages, and cities within the project area.
- (7) 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 that applies for a certificate after the effective date of the adoption of this chapter, the following requirements apply.
- (a) The applicant shall file a copy of the final complaint resolution plan on the public docket.
 - (b) 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.
 - (c) 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.
 - (d) 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.

*****DRAFT - NOT FOR FILING*****

- ~~-(e) During the construction and operation of the facility, the applicant shall submit to staff a complaint summary report by the fifteenth day of January and July 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, though the name and other personal identifying information can be redacted at the request of any complainant.~~
- ~~-(f) The applicant shall file a copy of all preconstruction notices and complaint summaries on the public docket.~~

AMENDED

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

- (A) The information requested in this rule ~~shall be~~ is 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. Examples of information relevant to this determination include:

 - (1) ~~The applicant shall submit information~~ Information regarding preconstruction air quality and permits ~~including~~ including

 - (a) ~~Provide available~~ Available information concerning the ambient air quality of the proposed project area and any proposed alternative project area(s).
 - (b) ~~Describe~~ A description of 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 as~~ described for each proposed fuel. These parameters ~~shall be included~~ apply to ~~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~~ A description of applicable federal and/or Ohio new source performance standards (NSPS), applicable air quality limitations, applicable national ambient air

*****DRAFT - NOT FOR FILING*****

quality standards (NAAQS), and applicable prevention of significant deterioration (PSD) increments.

- (d) ~~Provide a~~ 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 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.
 - (ii) The location of major present and anticipated air pollution point sources.
- (f) ~~Describe~~ A description of 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~~ A description of plans to control emissions and fugitive dust during the site clearing and construction phase.
- (3) Except for wind farms and solar facilities, ~~the applicant shall provide~~ information regarding air quality for the operation of the proposed facility ~~-, including:~~
 - (a) ~~Describe~~ A description of ambient air quality monitoring plans for air pollutants regulated by the federal or state environmental protection agency.
 - (b) ~~On a~~ 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~~ should depict the concentrations within a five-mile radius of the proposed facility. A screening analysis may be used to estimate the concentrations.
 - (c) ~~Describe~~ A description of 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. Examples of relevant information include:

*****DRAFT - NOT FOR FILING*****

- (1) ~~The applicant shall provide information~~ Information regarding preconstruction water quality and permits.
 - (a) ~~Provide a~~ A list of all permits required to install and operate the facility, including water pollution control equipment and treatment processes.
 - (b) ~~On a~~ 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, including. ~~Samples 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~~ provided that the applicant identifies all such sources of data.
 - (c) ~~Describe~~ A description of the ownership, equipment, capability, and sampling and reporting procedures of each station.
 - (d) ~~Describe~~ A description of 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~~ Available data necessary for completion of any application required for a water discharge permit from any state or federal agency for this project, including. ~~Comparable comparable~~ information ~~shall be~~ provided for the proposed site and any proposed alternative site(s).
- (2) ~~The applicant shall provide information~~ Information regarding water quality during construction.
 - (a) ~~Indicate, on a~~ A map of at least 1:24,000 ~~scale, that indicates~~ the location of the water monitoring and gauging stations to be utilized during construction.
 - (b) ~~Provide an~~ 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~~ A description of any plans to mitigate the above effects in accordance with current federal and Ohio regulations.
 - (d) ~~Describe~~ A description of any changes in flow patterns and erosion due to site clearing and grading operations.

*****DRAFT - NOT FOR FILING*****

- (e) ~~Describe~~ A description of the equipment proposed for control of effluents discharged into bodies of water and receiving streams.
- (3) ~~The applicant shall provide information~~ Information on water quality during operation of the facility.
 - (a) ~~Indicate, on a~~ A map of at least 1:24,000 scale, that indicates the location of the water quality monitoring and gauging stations to be utilized during operation.
 - (b) ~~Describe~~ A description of the water pollution control equipment and treatment processes planned for the proposed facility.
 - (c) ~~Describe~~ A description of the schedule for receipt of the national pollution discharge elimination system permit.
 - (d) ~~Provide a~~ A quantitative flow diagram or description for water and water-borne wastes through the proposed facility, showing the following potential sources of pollution, including:
 - (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~~ A description of 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. Examples of relevant information include:
 - (1) ~~The applicant shall provide information~~ Information regarding preconstruction solid waste.
 - (a) ~~Describe the~~ The nature and amount of debris and solid waste in the project area.

*****DRAFT - NOT FOR FILING*****

- (b) ~~Describe any~~ Any plans to deal with such wastes.
- (2) ~~The applicant shall provide information~~ Information regarding solid waste during construction.
 - (a) ~~Provide an~~ An estimate of the nature and amounts of debris and other solid waste generated during construction.
 - (b) ~~Describe the~~ The proposed method of storage and disposal of these wastes.
- (3) ~~The applicant shall provide information~~ Information regarding solid waste during operation of the facility.
 - (a) ~~Provide an~~ An estimate of the amount, nature, and composition of solid wastes generated during the operation of the proposed facility.
 - (b) ~~Describe proposed~~ Proposed methods for storage, treatment, transport, and disposal of these wastes.
- (4) ~~The applicant shall describe its plans~~ Plans and activities leading toward acquisition of waste generation, storage, treatment, transportation and/or disposal permits. 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) ~~The applicant shall provide information~~ Information on compliance with environmental and aviation regulations. Examples of relevant information include:
 - (1) The height of the tallest anticipated installed, above ground structures.
 - ~~(1)~~ (2) A List list of all public-use airports, helicopter pads, 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, an indication of the maximum possible height of construction equipment, and a list of air transportation facilities, existing or proposed, and copies of any correspondence with the federal aviation administration and the Ohio office of aviation. Additionally, 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.

*****DRAFT - NOT FOR FILING*****

- ~~(2)~~ (3) ~~Provide~~ A description of 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) A description of whether the proposed facility or a specific structure that is part of the proposed facility has any 14 CFR part 77 impacts.
- (5) A list and brief discussion of all licenses, permits, and authorizations that will be required for construction of the facility.
- (6) A description, quantification and characterization of debris that will result from construction of the facility, and the plans for disposal of the debris.
- (7) Confirmation ~~that~~ 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) Confirmation 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. This confirmation is in recognition of that responsibility for removal of contaminated soil is 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, and does not include additional remediation measures beyond the scope of the project.
- (9) 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. Examples of relevant information include:
- (1) Equipment safety. ~~The applicant shall provide information on~~ A description of the safety and reliability of all equipment, including:-
- (a) How the facility will be constructed, operated, and maintained to comply with the requirements of applicable state and federal statutes and regulations, including, but

*****DRAFT - NOT FOR FILING*****

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.

- ~~(a)~~ (b) ~~Describe all~~ All proposed major public safety equipment.
 - ~~(b)~~ (c) ~~Describe the~~ The reliability of the equipment.
 - ~~(e)~~ (d) ~~Provide the~~ The generation equipment manufacturer's safety standards, including ~~Include~~ a complete copy of the manufacturer's safety manual or similar document and any recommended setbacks from the manufacturer.
 - ~~(d)~~ (e) ~~Describe the~~ The measures that will be taken to restrict public access to the facility.
 - ~~(e)~~ (f) ~~Describe the~~ 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) The 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 farms and solar facilities, ~~the applicant shall describe a description~~ in conceptual terms of the probable impact to the population due to failures of air pollution control equipment.
- (3) Noise. ~~The applicant shall provide information~~ A description of anticipated ~~on~~ noise from the construction, ~~and~~ operation, and maintenance of the facility, including:
- (a) An estimate the nature of any intermittent or, 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.

*****DRAFT - NOT FOR FILING*****

- (b) ~~Describe~~ A description of the operational noise levels expected at the nearest property boundary, including: ~~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, using ~~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~~ A description of 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~~ A description of equipment and procedures to mitigate the effects of noise emissions from the proposed facility during construction and operation, including limits on the time of day at which construction activities may occur.
- (e) ~~Submit a~~ A preconstruction background noise study of the project area that includes measurements taken under both day and nighttime conditions.
- (4) Water impacts. A description of relevant information, including: ~~The applicant shall provide information regarding water impacts~~
 - (a) ~~Provide an~~ An evaluation of the potential impact to public and private water supplies due to construction and operation of the proposed facility.
 - (b) ~~Provide an~~ An evaluation of the impact to public and private water supplies due to pollution control equipment failures.
 - (c) ~~Provide existing~~ 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~~ A description of how construction and operation of the facility will comply with any drinking water source protection plans near the project area.

*****DRAFT - NOT FOR FILING*****

- (e) ~~Provide an~~ 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~~ 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, as well as. ~~The applicant shall also:~~
- (a) ~~Describe~~ A description of the suitability of the site geology and plans to remedy any site-specific inadequacies, including proposed mitigation.
- (b) ~~Describe~~ A description of 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 providing a preliminary grading plan that describes estimates maximum graded acreage expectations.
- (c) A description of 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 resources representative of the project area) that may be affected by the proposed facility.
- ~~(e)-(d)~~ The results and initial analysis of preliminary test borings and ~~Describe~~ describe plans for ~~the additional~~ test borings, including closure plans for such borings, and describe. ~~Plans plans~~ for the test borings ~~shall that~~ 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) A description of coordination 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.

*****DRAFT - NOT FOR FILING*****

- (6) Wind velocity. ~~The applicant shall provide an~~ 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 an evaluate evaluation~~ and ~~describe~~ description of the potential impact from blade shear at the nearest property boundary and public road.
- (8) Ice throw. For a wind farm, ~~the applicant shall an evaluate evaluation~~ and ~~describe, by providing description of~~ 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 an evaluation~~ and ~~describe~~ description of 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~~ A description of the potential for the facility to interfere with radio and TV reception and describe measures that will be taken to minimize interference.
- (11) Radar interference. ~~The applicant shall evaluate and describe~~ A description of 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~~ A description of the potential for the facility to interfere with navigable airspace and describe measures that will be taken to minimize interference, including plans to. ~~The applicant shall~~ coordinate such efforts with appropriate state and federal agencies.
- (13) Communication interference. ~~The applicant shall evaluate and describe~~ A description of 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 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, a description of the production of electric and magnetic fields during operation of the preferred and alternate site/route. If more than

*****DRAFT - NOT FOR FILING*****

one conductor configuration is to be used on the proposed facility, a description of information 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, a description of information on the alternate structure, including:

(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. Corresponding current flows, conductor ground clearance for normal maximum loading and distance from the centerline to the edge of the right-of-way using estimates for minimum conductor height. 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, a description of only one set of field strength values. Where there are two or more occupied residences or institutions within one hundred feet of the centerline, a description of field strength values 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) A 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) A 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. Examples of relevant information include:

*****DRAFT - NOT FOR FILING*****

- (1) Ecological information. ~~The applicant shall provide information~~ Information regarding ecological resources in the project area: including:
- (a) ~~Provide a~~ 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 that discusses 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, the estimated extent 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.
 - (vii) Naturally occurring woody and herbaceous vegetation land.
 - (viii) Sensitive habitat areas, including habitat used for breeding, 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~~ 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 including:~~ 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 probable impact of the operation and maintenance of the proposed facility on vegetation and surface waters.
- (c) A description of the probable impact of the construction of the proposed facility on the vegetation and surface waters, including impacts from route/site clearing and grading, and disposal of vegetation, including 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.

*****DRAFT - NOT FOR FILING*****

- (~~e~~)(d) ~~Provide the~~ The results of a literature survey of the plant and animal life within at least one-fourth mile of the project area boundary which. ~~The literature survey shall include~~ includes aquatic and terrestrial plant and animal species that are of commercial or recreational value, or species designated as endangered or threatened.
- (~~d~~)(e) ~~Conduct and provide the~~ The results of field surveys conducted as to ~~of~~ the plant and animal species identified in the literature survey, including; their federal and state protection status; and 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, including impacts from route clearing and any impact to natural nesting areas.
- (~~e~~)(f) ~~Provide a~~ 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~~ Information regarding potential impacts to ecological resources during construction.
- (a) ~~Provide an~~ 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 linear feet and acreage impacted, 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. Specify the extent of vegetation clearing, and describe how such clearing work will be done so as to minimize removal of woody vegetation. Describe potential impacts to wildlife and their habitat.~~
- (i) A table displaying the report name, linear feet and acreage impacted, quality, flow regime, and the proposed crossing methodology of each stream 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 the extent of clearing of each vegetative community type, including a clearing total.
- (iv) A description of how such clearing work will be done so as to minimize removal of woody vegetation and minimize forest fragmentation.

*****DRAFT - NOT FOR FILING*****

- (v) 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~~ A description of 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 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~~ or 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.

*****DRAFT - NOT FOR FILING*****

- (3) Operational ecological impacts. ~~The applicant shall provide information~~ Information regarding potential impacts to ecological resources during operation and maintenance of the facility.
- (a) ~~Provide an~~ 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 A description of: 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.~~
- (i) the procedures to be utilized to avoid, minimize, and mitigate both the short- and long-term impacts of operation and maintenance.
- (ii) methods for protecting streams, wetlands, and vegetation, particularly mature trees, wetland vegetation, and woody vegetation in riparian areas.
- (iii) a description of any expected use of herbicides for maintenance.
- (c) ~~Describe any~~ Any plans for post-construction monitoring of wildlife impacts.
- (4) 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) A description of anticipated actions to prevent establishment and/or further propagation of noxious weeds identified in rule 901:5-37 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. Additionally, a description of the commitment to comply with any public orders concerning the abatement of noxious weeds.
- (C) ~~The applicant shall provide information~~ Information on land use and community development.
- (1) Existing land use. ~~The applicant shall provide information~~ Information regarding land use in the region and potential impacts of the facility through the following maps and related information: including a map of at least 1:24,000 scale showing the following:
- (a) For a proposed electric generation facility, detail ~~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 within one thousand feet as to:

*****DRAFT - NOT FOR FILING*****

- (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.
 - ~~(ii)~~ (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)~~ (iv) 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)~~ (v) Incorporated areas and population centers.
 - (vi) Road names.
- (b) ~~Provide, for~~ 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 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.

*****DRAFT - NOT FOR FILING*****

- (c) ~~Provide an~~ 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, a description of the construction impact area and permanent impact area in acres total for all land use types.
- (d) ~~Identify~~ The identity of structures that will be removed or relocated.
- (2) Wind farm maps. For wind farms only, ~~(a) 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. ~~(b) Indicate~~ indicator 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. ~~(c) Include~~ indicator 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 at~~ least the following information:
- (a) ~~The Confirmation that the~~ distance from a wind turbine base to the property line of the wind farm property ~~shall be is~~ 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 Confirmation that the~~ wind turbine ~~shall be is~~ at least one thousand, one hundred, twenty-five feet in horizontal 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 Confirmation that 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 is~~ 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~~ Setback requirements ~~shall~~ apply in all cases except those in which all owner(s) of property adjacent to the wind farm property waive application of

*****DRAFT - NOT FOR FILING*****

the setback to that property. ~~The~~ In order to be effective, 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~~ Provide information regarding land use plans.
 - (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.

*****DRAFT - NOT FOR FILING*****

- (D) ~~The applicant shall provide information~~ Information on cultural and archaeological resources
- (1) Landmark mapping. ~~The applicant shall indicate, A description~~ on a map of at least 1:24,000 scale, of 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. Examples of ~~Landmarks~~ landmarks to be considered for purposes of paragraph (D) of this rule ~~are~~ include 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, and include correspondence with the state historic preservation office.
- ~~(2)~~ (3) Impacts ~~A description of impacts~~ on mapped landmarks, including ~~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.
- ~~(3)~~ (4) Recreation and scenic areas. The applicant shall describe the identified recreation and scenic areas within ten miles of the project area in terms of their proximity to population centers, uniqueness, topography, vegetation, hydrology, and wildlife. Provide an evaluation of the impact of the proposed facility on identified recreational and scenic areas within ten miles of the project area and describe plans to mitigate any adverse impact.
- (a) A description of the recreation and scenic areas 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) An evaluation of the impact of the proposed facility on those identified recreational and scenic areas and describe plans to mitigate any adverse impact.
- (5) A description of plans to avoid or mitigate any adverse impacts to cultural resources. A description of mitigation procedures to be used during the operation and maintenance of the proposed facility as developed in consultation with the Ohio history connection. A description of procedures for flagging and avoiding all landmarks in the project area,

*****DRAFT - NOT FOR FILING*****

including measures to be taken should previously unidentified landmarks be discovered during construction of the project.

~~(4)~~ (6) Visual impact of facility. ~~The applicant shall evaluate the~~ The visual impact of the proposed above-ground facility within at least a ten-mile radius from the project area, as ~~The evaluation shall be~~ conducted or reviewed by a licensed landscape architect ~~or~~ other professional with experience in developing a visual impact assessment. ~~The applicant shall:~~

(a) ~~Describe~~ A description of 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~~ should not incorporate deciduous vegetation, agricultural crops, or other seasonal land cover as viewing obstacles. ~~If the viewshed~~ Viewshed analysis that includes atmospheric conditions ~~, it shall~~ should incorporate the atmospheric conditions under which the facility would be most visible.

(b) A description of 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)~~ (c) ~~Describe~~ A description of the existing landscape and evaluate its scenic quality. ~~This description shall include~~ including 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.

~~(e)~~ (d) ~~Describe~~ A description of 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 of the site and surrounding area.

~~(d)~~ (e) ~~Evaluate~~ An evaluation of 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.

~~(e)~~ (f) ~~Provide photographic~~ 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.

*****DRAFT - NOT FOR FILING*****

- ~~(f)~~ ~~(g)~~ ~~Describe~~ A description of 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~~ A description that these measures do not conflict with relevant safety requirements.
- (E) ~~The applicant shall provide information~~ Information regarding agricultural districts and potential impacts to agricultural land.
- (1) Mapping of agricultural land. ~~The applicant shall identify on~~ On a map of at least 1:24,000 scale, a description of 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~~ 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.
- (ii) Irrigation. A description of 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. A description and map of field drainage systems that can reasonably be determined and demonstrate how impacts to those systems will be avoided or mitigated, and describe how damaged drainage systems will promptly be repaired to restore original drainage conditions. A description of data sources and methods used to obtain information for field drainage system mapping.

*****DRAFT - NOT FOR FILING*****

- (iv) Soils. A description of 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)~~ (v) Structures used for agricultural operations. A description of 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)~~ (vi) The viability as agricultural district land of any land so identified, including identifying all agricultural district properties and properties enrolled in the Current Agricultural Use Valuation (CAUV) program, discussing the specific impacts on each property, and providing an evaluation on how those impacts will affect the viability of the property as agricultural land.
- (c) ~~A description of~~ 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 including~~ how avoidance and mitigation procedures will achieve ~~the following: segregation of excavated topsoil, and decompaction and restoration of all topsoil to original conditions unless otherwise agreed to by the landowner.~~
- ~~(i) (i) Avoidance or minimization to the maximum extent practicable of any damage to field tile drainage systems and soils in agricultural areas.~~
- ~~(ii) (ii) Timely repair of damaged field tile systems to at least original conditions, at the applicant's expense.~~
- ~~(iii) (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. Examples of relevant information include:
 - (a) Benchmark conditions of the project drain tile system by locating all mains and laterals and consult with owners of all parcels adjacent to the property, the county soil and water conservation district, and appropriate county representatives to request drainage system information over those parcels.
 - (b) Plans to avoid known drain tile systems that flow into or out of the construction area and repair any damage that occurs from the project.

*****DRAFT - NOT FOR FILING*****

- (c) Plans to locate and avoid all mains and laterals in the construction area and, where any main or lateral is damaged, to repair such damage in a timely manner.
- (d) Plans to 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) Plans to 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. Following completion of any repair, the applicant will file a map of the repaired drain tile systems in the case docket at the close of the project's construction.

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 apply to renewable energy generation facilities, and amendments to this rule apply only to applications filed after the rule's effective date.~~

(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 section 4906.13 of the Revised Code, an 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.~~

*****DRAFT - NOT FOR FILING*****

(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.

~~(i)-(ii)~~ (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.

~~(ii) 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.~~

(iii) The applicant must fill all boreholes and borehole abandonment must comply with state and local regulations.

(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:

*****DRAFT - NOT FOR FILING*****

- (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.~~
- ~~(4)~~ (3) Maintenance and use.
- (a) The applicant shall maintain the ~~wind farm~~ renewable energy generation facility equipment in good condition. Maintenance 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

*****DRAFT - NOT FOR FILING*****

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 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.

*****DRAFT - NOT FOR FILING*****

~~(e)~~ (f) 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.

~~(5)~~ (4) 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 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,

*****DRAFT - NOT FOR FILING*****

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.
 - (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

*****DRAFT - NOT FOR FILING*****

aviation administration. Lighting of other parts of the wind farm, 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.~~

~~(5)~~ (4) 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.

~~(6)~~ (5) 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 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

*****DRAFT - NOT FOR FILING*****

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)~~ (4) 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.
- (5) The Applicant shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas. Sensitive areas 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 at the location where a sensitive impact is unexpectedly encountered for up to 48 hours after any incident that is reported to staff to mitigate unforeseen environmental impacts and to recommend procedures to resolve the sensitive 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) Ice throw.~~

*****DRAFT - NOT FOR FILING*****

- ~~(1) The ice throw analysis shall, at a minimum, include the probability of ice throw impacts at the nearest property boundary and public road.~~
- ~~(2) The applicant's plans to minimize potential impacts shall include:~~
- ~~(a) Restricting public access to the facility with appropriately placed warning signs or other necessary measures;~~
 - ~~(b) Instructing workers on the potential hazards of ice conditions on wind turbines, and~~
 - ~~(c) 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.~~
- ~~(3) 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.~~

~~(F)~~ (E) 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~~ its daytime and nighttime noise ~~contribution~~ contributions ~~does~~ do not result in noise levels at any non-participating sensitive receptor within one mile of the project boundary that exceed the greater of 40 dBA or the project area ambient daytime and nighttime average sound level (~~Leq~~ L50) 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-related noise~~

*****DRAFT - NOT FOR FILING*****

~~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.

~~(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.~~

~~(1) 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.~~

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

~~(3) 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 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.~~

~~(H) Shadow flicker.~~

*****DRAFT - NOT FOR FILING*****

- ~~(1) 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.~~
- ~~(2) 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.~~
- ~~(F)~~ (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.

*****DRAFT - NOT FOR FILING*****

The board may 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.

*****DRAFT - NOT FOR FILING*****

(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 within a reasonable time after decommissioning activities.

*****DRAFT - NOT FOR FILING*****

- (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.
- ~~(H)~~ (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 high wind velocities, and describe plans, approved by a professional engineer, to mitigate any likely adverse consequences.
 - (2) Stormwater management. The applicant shall construct the facility in a manner that considers 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.
 - (4) Setbacks. The facility design is to incorporate a minimum setback from the project's solar modules of (i) at least 50 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.

*****DRAFT - NOT FOR FILING*****

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

(1) 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.

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

(i) 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;

(ii) A pitch control system;

(iii) A lightning protection system; and

(iv) 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.

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

(c) 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 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.

(2) Shadow flicker.

*****DRAFT - NOT FOR FILING*****

- (a) 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.
- (b) 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.

- (a) The ice throw analysis shall, at a minimum, include the probability of ice throw impacts at the nearest property boundary and public road.
- (b) The applicant's plans to minimize potential impacts shall include:
 - (i) Restricting public access to the facility with appropriately placed warning signs or other necessary measures,
 - (ii) Instructing workers on the potential hazards of ice conditions on wind turbines, and
 - (iii) 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.
- (c) 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.

- (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

*****DRAFT - NOT FOR FILING*****

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 omnidirectional 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 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.

*****DRAFT - NOT FOR FILING*****

- (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.

NEW

4906-7-06 Self-reporting of incidents for solar electric generation facilities.

- (A) This rule does not apply to a facility subject to rule 4906-4-10 of the Administrative Code where those rules would require 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~~ generation facility certified by the board where:
 - (1) There is injury to any person that requires medical treatment beyond first aid.
 - (2) There is damage to property other than the property leased or owned by 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 shall 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 shall 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.

*****DRAFT - NOT FOR FILING*****

- (2) Each facility operator shall 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 shall 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) of this rule. Except as necessary for public safety, a facility operator shall not 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.
- (F) A facility involved in a reportable incident under this rule shall not restart or resume construction as to any damaged property within a facility involved in a reportable incident until such action is approved by the board's executive director or the executive director's designee pursuant to the following process:
- (1) Such approval is premised upon the filing of:

*****DRAFT - NOT FOR FILING*****

- (a) A complete and final written report fully addressing the factors set forth in paragraph (D) of this rule.
- (b) A representation by the facility operator that it is ready to restart the damaged property, and,
- (c) A notarized statement that a satisfactory repair or replacement of the damaged property has been completed from:
 - (i) A licensed professional engineer;
 - (ii) A qualified representative from the manufacturer of the damaged equipment; or
 - (iii) A person employed by or hired by the operator having appropriate qualifications under the circumstances to provide the required statement.
- (2) Unless otherwise suspended for good cause shown by the board, executive director, or an administrative law judge, a facility operator may restart damaged property five business days after docketing the information required in this rule.

4906-1-01 APPENDIX A**APPLICATION REQUIREMENT MATRIX FOR ELECTRIC POWER TRANSMISSION LINES**

Description of the Proposed Electric Power Transmission Line and Associated Facilities	Standard Application (BTX or BTA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-54	4906-6-05	4906-6-05
(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.			X
(b) Line(s) greater than 0.2 miles in length but not greater than two miles in length.		X	
(c) Line(s) greater than two miles in length.	X		
(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.			X
(ii) Any portion of the line is on property owned by someone other than the specific customer or applicant.		X	

Description of the Proposed Electric Power Transmission Line and Associated Facilities	Standard Application (BTX or BTA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-54	4906-6-05	4906-6-05
(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.		X	
(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.			X
(b) More than two miles.		X	
(3) Constructing a new electric power transmission substation.		X	
(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.			X
(b) There is a greater than twenty percent expansion of the fenced area.		X	
(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.			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 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
	4906-54	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**

Description of the Proposed Electric Generation Facility	Standard Application (BGN or BGA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-4	4906-6-05	4906-6-05
(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.		X	
(2) A wind-powered electric generation facility designed for, or capable of, operation at a capacity of five megawatts or more.	X		
(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.	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 A**APPLICATION REQUIREMENT MATRIX FOR ELECTRIC POWER TRANSMISSION LINES**

Description of the Proposed Electric Power Transmission Line and Associated Facilities	Standard Application (BTX or BTA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-54	4906-6-05	4906-6-05
(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.			X
(b) Line(s) greater than 0.2 miles in length but not greater than two miles in length.		X	
(c) Line(s) greater than two miles in length.	X		
(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.			X
(ii) Any portion of the line is on property owned by someone other than the specific customer or applicant.		X	

Description of the Proposed Electric Power Transmission Line and Associated Facilities	Standard Application (BTX or BTA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-54	4906-6-05	4906-6-05
(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.		X	
(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.			X
(b) More than two miles.		X	
(3) Constructing a new electric power transmission substation.		X	
(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.			X
(b) There is a greater than twenty percent expansion of the fenced area.		X	
(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.			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 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
	4906-54	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**

Description of the Proposed Electric Generation Facility	Standard Application (BGN or BGA)* Required	Letter of Notification Application (BLN) Required	Construction Notice Application (BNR) Required
	4906-4	4906-6-05	4906-6-05
(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.		X	
(2) A wind-powered electric generation facility designed for, or capable of, operation at a capacity of five megawatts or more.	X		
(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.	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.**

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

12/21/2023 2:34:14 PM

in

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

Summary: Opinion & Order on Rehearing granting, in part, and denying, in part, the applications for rehearing filed by Duke Energy Ohio, Inc.; the Ohio Consumers' Counsel; American Clean Power and MAREC Action and Utility Scale Solar Energy Coalition of Ohio; the Ohio Independent Power Producers; National Grid Renewables Development, LLC; and Columbia Gas of Ohio, Inc. electronically filed by Debbie S. Ryan on behalf of Ohio Power Siting Board.