



OPSB Wind Rules, Ohio Administrative Code amended

April 23, 2018

On March 15, 2018, the Ohio Power Siting Board (OPSB) issued a Finding and Order adopting rules pertaining to wind-powered electric generation facilities.[1] Below is a summary of the primary changes to the rules. Of particular note are clarifications to the turbine setback waiver process and a new procedure to allow certificated projects to make certain adjustments and modifications without triggering the formal certificate amendment application process.

The new rules will become effective on April 26, 2018.

Summary of new rules governing wind projects

The adopted rules are located in OAC Chapter 4906-4. This OAC Chapter addresses certificate applications for electric generation facilities, generally. Within Chapter 4906-4, the new wind rules are located within two sections. The first is an existing section, 4906-4-08, which sets forth the health and safety, land use and ecological information that must be included in a certificate application to construct and operate an electric generating facility. In addition, OPSB's Order creates a new section, 4906-4-09, which sets forth regulations specific to wind farms.

OAC Section 4906-4-08

Perhaps most the most important amendment within this section is clarification of the process by which a project may obtain setback waivers from adjacent property owners. The rule, 4906-4-08(C)(3), sets forth the specific content requirements for the waiver, including a facility description, a legal description of the adjacent property, notice to the landowner of the statutory setback requirement and notice to future landowners that the waiver will run with the land. The rule also establishes that the

waiver must be recorded.

The Order also modifies rules involving the information an applicant must provide for subjects such as ice throw risk analysis (OAC 4906-4-08(A)(8)); shadow flicker cumulative impacts (OAC 4906-4-08(A)(9)); navigable air space interference mitigation (OAC 4906-4-08(A)(12)); communications systems interference (OAC 4906-4-08(A)(13)); infrastructure designated on project maps (OAC 4906-4-08(C)(1)(b)); and visual impact analysis (OAC 4906-4-08(D)(4)).

OAC Section 4906-4-09

This section is entirely new to OAC Chapter 4906-4 and sets forth regulations applicable only to wind farms.

1. A new process to make changes to approved projects

The most noteworthy addition is a procedure to enable certificated projects to make certain changes, including reconstruction, alterations or enlargements to a project without triggering the formal amendment application process under OAC 4906-3-11. Currently, a project must use the amendment application process for even minor changes to its certificated project. The amendment process often takes months and poses a burden on projects, because there are inevitably minor adjustments that must be made between the conclusion of permitting and the start of construction. Further, projects have had to utilize the formal amendment application process to upgrade technology, even though the upgrades create no additional impacts to the project area.

Under the new rule, OAC 4906-4-09(A)(5), if a project makes one or more modifications to the certificate that are “minimal in nature” and “would substantially comply with the conditions of a certificate,” an amendment application will not be required, unless the administrative law judge or OPSB orders otherwise.

The rule also sets forth a process by which a project “may seek review of the proposed modification(s).” This process, which appears to be discretionary for projects, will enable a project to receive a formal recommendation from OPSB staff that the proposed change does not in fact warrant an amendment application.

2. Codification of certificate conditions

The majority of the wind farm regulations established in OAC 4906-4-09 reflect standards that have been included as conditions to certificates in past projects. These conditions are now largely codified in the new regulations under OAC 4906-4-09.

The subject matter of these new regulations include geotechnical and blasting requirements; vegetation clearing, management and herbicide use requirements; wildlife protection requirements; ice throw analysis and mitigation; construction and operational noise standards; blade shear and shadow flicker standards and mitigation; and decommissioning and project removal standards.

Conclusion

In many respects, the amended and new rules should provide improved predictability and flexibility for projects. The new regulations of 4906-4-09, by formally codifying standards that have typically been conditions to project certificates, will enable projects to better know their construction and operational requirements from the outset of the permitting process. Moreover, the amended setback waiver process provides clearer guidance to projects as to how to acquire an acceptable waiver. This clarity is important, as projects will continue to rely on the waiver process, given Ohio’s onerous setback requirements. Finally, the new procedure to allow project modifications with minimal adverse impacts to the project area without a formal amendment application will enable projects greater flexibility to make modifications without overly delaying the project.

[1]Case No. 16-1109-GE-BRO. OPSB’s Order was a culmination of over two years of rulemakings. In early 2014, the board reorganized, revised and replaced its administrative rules, creating new OAC Chapters 4906-1 through 4906-7 (Case No. 12-1981-GE-BRO).

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