

Attachment H
Ohio Adm.Code 4906-4
Certificate Applications for Electric Generation Facilities
Case No.: 21-902-GE-BRO
Page 1 of 8



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio (PUCO)

Rule Contact Name and Contact Information:

Angela Hawkins, Legal Director

Phone: 614-466-0122

Email: Angela.Hawkins@puco.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Certificate Applications for Electric Generation Facilities, Electric Transmission Facilities, and Gas Pipelines

Rule Number(s): 4906-4-01 through 4906-4-10

Date of Submission for CSI Review: N/A

Public Comment Period End Date: August 12, 2022

Rule Type/Number of Rules:

X New/ 1 rules

☐ No Change/ rules (FYR?)

X Amended/ 9 rules (FYR? Y)

X Rescinded/ 1 rules (FYR? Y)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule:

- ☒ a. **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- ☒ b. **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- ☒ c. **Requires specific expenditures or the report of information as a condition of compliance.**
- ☒ d. **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

The proposed revisions to the rules in Chapter 4906-4, Ohio Adm.Code (OAC), merge the procedures for applying for certification from the OPSB, which were previously contained in Chapters 4906-4 and 4906-5, OAC. The proposed combined chapter will address applications by electric generation facilities, electric transmission facilities, and gas

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

pipelines. In addition, in accordance with the requirements in R.C. 4906.06 and 4906.10, proposed Chapter 4906-4 more specifically identifies information that the OPSB requires in order to evaluate certificate applications, including: plans for future electric generation additions on a site, more detail as to construction sequence expectations, more details as to the purpose of proposed projects, additional mapping requirements, additional public safety information regarding proposed projects, additional economic and public impact information, and additional information regarding decommissioning plans.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

The amendments to the rules in Chapter 4906-4, OAC, are proposed pursuant to Section 119.032, Revised Code, which requires 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 OPSB is authorized to adopt the proposed rules pursuant to Chapter 4906, Revised Code, which governs the rules and regulations promulgated by the OPSB. Further, on July 12, 2021, the governor of the state of Ohio signed into law Am. S.B. 52 (S.B. 52) amending provisions that govern OPSB certificates, including those contained in Chapter 4906, Revised Code. The OPSB intends to combine the review of its rules with its review of possible provisions to the rules resulting from the enactment of S.B. 52.

4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to enforce a federal requirement.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Chapter 4906-4, OAC, is proposed in fulfillment of the OPSB's requirement to evaluate certification applications as described in R.C. 4906.06 and 4906.10.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The rules contained in this chapter are designed to provide certificate applicants and the general public a more complete understanding of the information the OPSB must consider in determining whether to certificate a major utility facility. As such, there will not be measurable outputs or outcomes as a result of the adoption of Chapter 4906-4, OAC.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The OPSB conducted a three-part workshop on October 4 and October 8, 2021, using virtual hearing technology, to receive feedback from interested stakeholders and the general public in Case No. 21-902-GE-ORD. Additionally, the OPSB conducted three stakeholder engagement meetings on March 11, March 12, and May 12, 2020, to gather stakeholder information as to the rules.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The OPSB considered recommendations by stakeholders at the engagement meetings and workshop as follows:

- (1) Additional project information should be included in certificate applications.
- (2) Specific to electric transmission and gas pipeline projects, the types of information that should be required in relation to the public interest, convenience, and necessity of the project.
- (3) In regard to project siting, the types of information that a certificate applicant should submit in consideration of public involvement as to the site/route selections.

(4) The types of information that should be filed regarding public interaction and any complaint resolution issues concerning significant preconstruction and pre-operation project developments.

(5) The types of information that a wind or solar facility applicant should file regarding decommissioning plans.

(6) The types of information that an applicant should file regarding interactions with local governments in a project area.

(7) The types of information that an applicant should file regarding environmental, aviation, noxious weed management, irrigation and filed drainage system mitigation, storm water runoff management, and communication system mitigation.

(8) Additional considerations the OPSB should utilize as to solar project certifications.

(9) The types of additional enforcement measures the OPSB should consider, and how they are best funded.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

No scientific data was considered. In adopting Chapter 4906-4, OAC, the OPSB takes into account feedback from stakeholders and the general public regarding the rules in effect prior to the proposed changes. Stakeholder and public feedback can be made directly to the OPSB by filing comments from such entities as persons proposing, owning, or operating major utility facilities or economically significant wind farms, electric distribution utilities, gas and natural gas local distribution companies, the Ohio Gas Association, the Oil and Gas Association, applicants who have filed cases with the OPSB, members of the general public, or any other entity. The requirements in S.B. 52 were also taken into account.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The rules were developed based on stakeholder input from industry and the general public, as well as in consideration of the requirements on the OPSB as described in Chapter 4906 of the Revised Code. As a result, regulatory alternatives were not available.

13. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

No performance-based regulations were considered, as the rules in Chapter 4906-4, OAC, are required by Chapter 4906, Revised Code, and dictate process and do not define a required outcome. Thus, performance-based regulation is not appropriate.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The OPSB has reviewed other state regulations and found no duplication as to the adoption of these rules pursuant to Chapter 4906, Revised Code, and S.B. 52.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The OPSB will notify interested stakeholders that have participated in Case No. 21-902-GE-BRO, as well as posting the regulations on its website.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

Chapter 4906-4, OAC, provides guidance to entities seeking to site facilities within the state of Ohio. Only entities seeking certificates to build, own, or operate facilities will be affected by these rules. Effects to business include the continuing application fees and the time it takes for compliance with application and certificate monitoring requirements. OPSB modified the application fee provision in Rule 4906-3-12(D), OAC, to eliminate fee caps in order to better align application fees with the costs of certificate consideration and monitoring of the largest class of certificate applicants.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

Costs of compliance vary greatly depending on the nature of the facility that is seeking or operating pursuant to a OPSB certificate. Costs include environmental studies, application preparation, service and distribution of the application, participation in the

public review process, and the OPSB's cost of reviewing applications and ongoing operations to ensure that they align with certificate conditions.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

Costs of compliance with the application requirements in the regulation are not expected to materially increase. The OPSB has been working with the regulated community on a longstanding basis, and the enhancements to the proposed regulation are intended to clarify the criteria the OPSB requires in order to consider certificate applications consistent with the public protection requirements in R.C. 4906.06 and 4906.10.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

As described herein, the regulatory intent is consistent with the requirements in Chapter 4906, Revised Code. Therefore, the rules are required by law and were drafted to minimize adverse impacts on business while maintaining a strong focus on the rights and protections afforded the public.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Not applicable, as the rule requirements apply to facility applicants, which are not entities that would be defined as small businesses.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable, as the OPSB only assesses penalties for violations of certificates, which occur after an applicant begins construction of an approved facility.

20. What resources are available to assist small businesses with compliance of the regulation?

The OPSB actively works with applicants, as well as parties who have been granted certificates, to assure compliance with the OPSB's rules and the terms and conditions of their certificates.