



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Jeff Jones, Public Utilities Commission of Ohio

FROM: Michael Bender, Business Advocate

DATE: February 8, 2024

RE: **CSI Review – Certificate Applications for Electric Generation Facilities, Electric Transmission Facilities, and Gas Pipelines (OAC 4906-4-01, 4906-4-02, 4906-4-03, 4906-4-04, 4906-4-05, 4906-4-06, 4906-4-07, 4906-4-08, 4906-4-09, and 4906-4-10)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Commission as provided for in ORC 107.54.

Analysis

This rule package consists of one new rule, nine amended rules, and one rescinded rule proposed by the Public Utilities Commission of Ohio (PUCO). The amended and rescinded rules are submitted as part of the statutory five-year review process. This rule package was submitted to the CSI Office on June 21, 2022, and the public comment period was held open through September 2, 2022, after a request by stakeholders for an extension from the original August 12, 2022, date was granted. A supplemental comment period was held from January 20, 2023, through February 6, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on January 20, 2023. On February 1, 2024, the PUCO moved forward with the Finding and Order containing its responses to the comments.

Ohio Administrative Code (OAC) 4906-4-01 states that the rules in the chapter govern standard certificate applications for electric generation facilities, electric power transmission lines, and gas pipelines. The rule is amended to add the standard certificate applications for electric power

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transmission lines and gas pipelines and to authorize the Ohio Power Siting Board (OPSB) to waive any requirements of this chapter not mandated by law upon its own motion. OAC 4906-4-02 provides for the project summary that an applicant must provide as a suitable reference of the proposed project for state and local governments as well as the public. The rule is amended to require this summary to be provided at both the scoping and public informational meetings, require the summary to include a description of acreage and a discussion of the suitability of a pipeline route, remove the requirement for an explanation of the project schedule in the summary, and update language and typography. OAC 4906-4-03 is rescinded and replaced by a rule with the same number. The new rule specifies the information that must be provided in certificate applications for electric generation facilities, electric power transmission lines, and gas pipelines, including a proposed project schedule in Gantt chart format.

OAC 4906-4-04 requires the applicant to provide certain information regarding the selection of the project area. The rule is amended to add new information that must be provided, including a site and route selection study for a proposed electric power transmission line or gas pipeline. OAC 4906-4-05 specifies additional information that must be provided by applicants, particularly on interconnection of proposed electric generation facilities to the regional electric power grid. The rule is amended to list the additional information that must be provided by applicants for proposed electric power transmission lines or gas pipelines. OAC 4906-4-06 requires applicants to provide information regarding ownership status, estimates of various costs, and public interaction. The rule is amended to clarify the types of costs that estimates should include, require applicants to provide lists of municipalities within the project area and public officials contacted, provide ORC and OAC citations pertaining to the decommissioning of wind or solar facilities, specify requirements for applicants for electric generation facilities concerning complaint resolution, and update language.

OAC 4906-4-07 specifies the information that an applicant must provide to demonstrate compliance with air, water, solid waste, environmental, and aviation regulations. The rule is amended to provide certain exceptions for wind farms and solar facilities, specify additional information that must be provided with respect to environmental and aviation regulation compliance, and update language. OAC 4906-4-08 requires an applicant to provide certain information on the proposed project's effects on both the project area and adjacent properties concerning health and safety, ecological resources, land use and community development, cultural and archaeological resources, and agricultural districts and agricultural land. The rule is amended to update language and typography and to require additional information, particularly for electric power transmission lines and gas pipelines, including but not limited to how the facility will comply with applicable federal and state statutes and regulations, the effects of electric and magnetic fields, probable impacts to vegetation and surface waters, impacts to wildlife, anticipated impacts to soils, and mitigation procedures.

OAC 4906-4-09 specifies requirements for applicants for renewable energy generation facilities

concerning safety, erosion control, aesthetics and recreational land use, wildlife protection, noise, and decommissioning. The rule is amended to, among other things, update language and typography, revise the rule title, clarify that the requirements are applicable to renewable generation facilities rather than wind farms only, add an OAC citation regarding building standards, require a preliminary geotechnical exploration and evaluation, require the prevention of noxious weeds, require the applicant to minimize the clearing of wooded areas, require an environmental specialist to be on site during construction activities that may affect sensitive areas, revise a facility's permitted daytime and nighttime noise levels, and clarify the requirements for solar facility and wind facility applications. OAC 4906-4-10 requires the operator of a wind farm facility to submit a written report to the executive director of the OPSB within thirty days after discovery of an incident occurring at the facility and a final written report within sixty days of discovery, with "incident" referring to injury to any person, damage to property other than the wind farm operator's, or damage in excess of \$50,000 to the wind farm operator's property excluding the cost of electricity lost. The rule is amended to update grammar.

During early stakeholder outreach, the OPSB conducted a workshop in October 2021 in addition to three stakeholder engagement meetings that took place in March and May 2020 to receive feedback from interested stakeholders and the general public on OAC Chapter 4906-4. The OPSB considered recommendations by stakeholders when reviewing the rules and developing changes. During the CSI public comment period, the PUCO received comments from the National Audubon Society, Chain Link Fence Manufacturers Institute, the Ohio Farm Bureau Federation, the Ohio Oil and Gas Association, the Dayton Power and Light Company dba AES Ohio, the Ohio Economic Development Association, the Data Center Coalition, One Energy Enterprises Inc., Buckeye Power, Inc., the Ohio Energy Group, the Ohio Environmental Council (OEC), the Ohio Power Company (AEP Ohio), AEP Ohio Transmission Company (AEP Transmission), the Ohio Chamber of Commerce (Chamber), International Brotherhood of Electrical Workers, District 4 (IBEW District 4), the National Resources Defense Council (NRDC), Ohio Partners for Affordable Energy (OPAEE), American Transmission Systems Incorporated (ATSI), Duke Energy Ohio, Inc., Generation Pipeline LLC, the Ohio Consumers' Counsel, Columbia Gas of Ohio, Inc. (Columbia), Industrial Energy Users-Ohio, National Grid Renewables Development, LLC, Plus Power, the Ohio Conservative Energy Forum, the Ohio Manufacturers' Association Energy Group (OMAEG), the American Clean Power Association (ACPA), MAREC Action, the Utility Scale Solar Energy Coalition of Ohio (USSEC Ohio), Union Neighbors United (UNN), the Ohio Independent Power Producers, and the Ohio Gas Association. During the supplemental comment period, the PUCO received comments from the NRDC, the Chamber, Buckeye Power, Columbia, AEP Ohio, AEP Transmission, the ACPA, MAREC Action, USSEC Ohio, ATSI, OMAEG, the OEC, UNN, OPAEE, and IBEW District 4.

Several commenters expressed concerns about merging the content of OAC Chapter 4906-5 into OAC Chapter 4906-4, given that the former focused on applications for transmission lines and gas

pipelines while the latter focused on certificate applications for electric generation facilities. The PUCO determined that, while there are differences, there is significant overlap between the two types of applications, and therefore it is worthwhile to combine the two chapters. Many commenters submitted proposals for what should be included in certificate applications. The PUCO amended the rules to clarify that, because all cases and applications differ, the specified information would not necessarily be required but would serve as an example of what PUCO staff would expect to see to properly conduct a review. The PUCO rejected several suggestions as inappropriate, including denying requests to exclude certain information from staff review, or that certain information is not pertinent to staff review. Other revisions to the rules were made by the PUCO with respect to construction notices, complaints, noise limits for renewable energy facilities, stormwater pollution prevention plans, spill prevention control and counter measure plans, horizontal directional drilling and inadvertent release of drilling fluid contingency plans, solar panel perimeter fencing, and setback requirements for solar modules. The PUCO also revised the rules to make technical corrections.

The business community impacted by the rules includes entities that seek certificates to build, own, or operate major utility facilities within the state of Ohio. The adverse impacts created by the rules include the time and costs associated with conducting environmental studies, gathering the data and information required for the application, application preparation, service and distribution of the application, participation in the public review process, and compiling written reports of any incidents on site. The PUCO states that the adverse impacts to business are justified in order for the OPSB to consider certificate applications consistent with the public protection requirements of the ORC.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Commission should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.