



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 – Ohio Power Siting Board (OPSB) Procedures for Compliance, Monitoring, Enforcement and Payment of Forfeitures (OAC 4906-7-01, 4906-7-02, 4906-7-03, 4906-7-04, 4906-7-05, 4906-7-06, and 4906-7-07)**

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 four new rules and three amended rules proposed by the Public Utilities Commission of Ohio (PUCO). The amended 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) 4906-7-01 states that the chapter sets forth the rules for compliance monitoring. The rule is amended to update language 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

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4906-7-02 authorizes the OPSB to investigate alleged violations of ORC 4906.98 and order appropriate remedies after an evidentiary hearing. The rule is amended to update language, including in the title. OAC 4906-7-03 provides for the payment of forfeitures, compromise forfeitures, and payments made pursuant to stipulations. The rule is amended to update language in the title. OAC 4906-7-04, a new rule, requires the certificate holder of a certified generation facility to docket in its certificate case an annual report containing certain information demonstrating compliance with all certificate conditions. OAC 4906-7-05, a new rule, requires certificate holders to docket a written report of any violation of ORC 4906.98 within thirty days of discovery. OAC 4906-7-06, a new rule, requires the operator of any certified 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 facility operator’s, or damage in excess of \$50,000 to the facility operator’s property excluding the cost of electricity lost. OAC 4906-7-07, a new rule, requires each certificate holder to allow OPSB representatives to inspect the operations of certified facilities at any time.

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 4906-7. The OPSB considered the feedback that was offered by stakeholders when developing revisions and new rules. 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 (OPAEC), 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, OPAEC, and IBEW District 4.

Many commenters stated that the annual reporting requirement was overly burdensome, while others believed that the self-reporting of incidents should not apply to critical infrastructure such as

transmission lines and gas pipelines. Some commenters also considered the definition of “incident” to be too broad and with the potential to result in unnecessary and burdensome shutdowns. With an increased number of applications for certificates to operate electric generation facilities in recent years, the PUCO asserted that expanded compliance rules were needed. The PUCO pointed out that these proposed projects encompass large amounts of land and impact a significant number of residents and landowners, thereby increasing the magnitude of public interest. Additionally, the PUCO noted that the compliance rules are similar to the ones already in place for wind farm facilities in OAC 4906-4-10. However, the PUCO revised the rules to define “incident” more narrowly as well as clarify who must report an incident and the response to an incident.

The business community impacted by the rules includes certified facilities in the state of Ohio where certificate violations or safety incidents occur. The adverse impacts created by the rules include the costs of OPSB inspections and investigations, any payments of forfeitures assessed by the OPSB, and the time and costs associated with compiling written reports of any incidents on site. The PUCO states that the adverse impacts to business are justified to enhance public awareness of certificate compliance, protect public safety, and fulfill statutory requirements.

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.