

**CHAMPAIGN COUNTY PROSECUTOR'S OFFICE**  
**RESPONSE TO OPSB 2020 RULE REVIEW QUESTIONS POSED**  
**MARCH 11, 2020**

**Public Awareness and Participation in the Evaluation of Projects**

As the legal representative of record for the Champaign County Board of Commissioners and six townships in the first wind project filed before this board, there was a great deal of public confusion and anger regarding this process at that time which continued to the time that a second project was filed covering a portion of the same footprint of the first project in Champaign County. Some of that confusion and anger still exist today. Much of the confusion and anger stems from the belief that the process was unfair and the public was not heard, essentially being a “rubber-stamp” of the developer’s application.

It is imperative that the community members have a voice as a wind project by its nature spans a large area and is, basically, a large-scale commercial project near homes, schools, parks, *etc*, which may affect the local economy, both present and in the foreseeable future, and the quality of life in the community.

*1. How can the Board better engage the public?*

*A. How can the process provide meaningful participation in project reviews?*

*1. Prior to the filing of applications by the applicant or the Board?*

Public Notice should be made to affected jurisdictions at the time an applicant files for a case number with the OPSB. Jurisdictions and the public should be given the opportunity to be added to OPSB notification lists for any activity related to the case.

*2. During the period between the application filing and the finding of completeness?*

Between the application filing and the finding of completeness, the county board of commissioners as well as the board of township trustees and municipal governments within the footprint of the project and within 5 miles of the closest boundary of the project area should be automatically included as parties to the application. Those local public entities should not need to take steps to “intervene” but may opt out of the matter by filing a notice to do so.

Additionally, the townships should have the opportunity to adopt and submit legislation in support of or in opposition to the specific project or to renewable energy development in general in the township.

*3. During the period of Staff review and development of its report (within the statutory deadline of 15 days prior to public hearing - R.C. 4906.07)?*

During the period of Staff review, the applicant should be required to explain, as appropriate, why it has chosen to develop a project in any township which has adopted a resolution in opposition to the project or to development in general.

4. *What methods of participation are most useful to the public (i.e. public testimony, verbal comments on the record, written comments, or other forms of participation)?*

There is no opportunity for the public to ask questions regarding aspects of the project from the developer on the record. Much of the public's confusion and anger is not getting adequate information regarding the project. The OPSB should require question and answer sessions to take place in a targeted community at places and times convenient to the public prior to public testimony at a hearing in the community. This would be most useful to the public. Written comments would also be useful. Most importantly, any method of participation established for the public to utilize should allow them to do so without the need to obtain an attorney to navigate the participation process.

- B. How can Staff become better informed as to local knowledge and project concerns prior to completing its formal report?*

Staff should ascertain whether there are existing or contemplated opposition to or support for the development adopted by township government, county government, municipal government or local community groups and the basis for the opposition or support and the issues that these entities raise. Staff can also consult the Regional Planning Organization and find out accurate and detailed information from local authorities to support the recommended conditions set forth in its report. The report would then be seen as an accurate and non-biased report from the Staff and would show the public that the Staff has heard and acknowledged the public's concerns which builds the public's confidence that the Staff is looking out for the public interest. Many times the local media is interested in the process and is a main resource of information for the public. If inaccuracies or perceptions of bias by the Staff are noted by the press, then the public loses confidence with the process as a whole.

Additionally, the vision of a community is an important consideration so current zoning designations in and around the project footprint and terms of any comprehensive plan for the project area should be reviewed. The OPSB should not have the power to take steps against the community's plan for the future.

- C. Current rules require 4 public notices regarding a proposed project: (1) pre-application informational meeting; (2) the determination of application completeness; (3) the first public notice 15 days after the application is accepted; and, (4) the second public notice 7-21 days prior to public hearing. What additional public notices might be helpful during the evaluation of a project?*

The first public notice should include a detailed summary of the project as well as how it meets all the requirements of R.C. §4906.10. The information usually provided by developers is either too voluminous, with hundreds of pages of technical information and maps, or it is a brief flyer which doesn't answer many frequently asked questions about the project and how it will affect the neighboring properties or economic interests locally. This can enable the public to better prepare for the preapplication informational meeting.

D. *How else should the Board modify or update the current processes, including the public information meeting, public hearing, and evidentiary hearing?*

The developer should be required to respond publicly and on the record to questions posed by the public. Applications for projects in townships where they are not wanted should not be deemed “complete” and should be withdrawn. All applications should be subject to local referendum at the township level.

E. *Staff currently consults with and engages subject matter experts from state and federal agencies to seek and provide information while reviewing projects for possible approval. Can this process be improved? And if so, what recommendations do you have?*

As there have been a number of wind projects in Ohio, state agencies should include impacts observed in other certificated projects and those impacts noted should be available for public inspection. Such impacts may affect minimum setbacks, placement of turbine, etc. and the Staff should deviate from minimum standards if applicable.

F. *How can the Staff improve the quality and timeliness of its review of transmission projects through coordination with regional planning authorities such as PJM Interconnect LLC? No suggestions at this time.*

### **The Application Review and Adjudication Process**

2. *What modifications should occur as to application processing?*

a. *With regard to the findings that the Board must make pursuant to R.C. 4906.10, to what extent can any of the required determinations be deferred after a certificate is authorized to accommodate the receipt of information for which the provision may not be feasible until after the certificate is authorized?*

No required determination should be postponed until after a certificate is approved, unless it is absolutely impossible to obtain necessary information until after approval. Additionally, in lieu of allowing the provision of preliminary information with the application, including but not limited to transportation routes, laydown sites, etc., all information should be in final form at the time of application (including evidence of obtaining permission to use private property) in order to have a complete project to review.

b. *If any such determination is so deferred, should the Board consider unbundling a certificate to construct and operate, and permit construction to move forward while the operating authority is deferred until such time and any open items are addressed?*

It is unclear whether “open items” would need to be specified in order to approve the certificate.

*Should certain phases or components of the application be: (1) approved only upon submission of “final designs;” or, (2) approved pursuant to more fully developed project information if it is impractical or not feasible to provide final detailed studies/designs or plans? What should the Board consider when making this determination of feasibility?*

It is difficult to answer as the process now utilized does not allow further hearing when a phase or component is approved upon a certain contingency. Therefore, due process is thwarted in having a review/hearing before all information is provided.

1. Landscape/lighting plans- Landscape and lighting plans must be fully developed.
2. Solar glare studies- Solar glare studies should be publicly available prior to the consideration of the application including information from other approved projects.
3. Cultural resource studies- Cultural resource studies should be submitted, reviewed and subject to public comment as early in the process as possible. Cultural resource studies should provide for input from the target community.
4. Vegetation management and plant/animal impact action plans- Where solar development occurs on or near farmland, requirements for native vegetation and pollinator habitat should be required as opposed to the sustained use of herbicides. Maintaining soil health should be a requirement for solar facilities placed on productive agricultural land.
5. Final decommissioning plans- Final decommissioning plans must be established at the time of approval of the certificate. The amount of the bond imposed for the entire project should be funded prior to any construction. Updates on bond amounts and decommissioning plans should be reviewed periodically in order to be sufficient to reimburse the entity required to decommission if the applicant or transferee does not.
6. Geotechnical and other testing results- Geotechnical reports must be completed and available to the public during the application review process and prior to hearing and certificate approval. Project impacts on or near natural resources must be identified and tested as early as possible in the process and be considered as a part of a feasibility determination.
7. Adaptive engineering plans (i.e. turbine modifications)- Any modification made post-certification must be considered a significant change triggering new application review and compliance with any law or rule in effect at the time of the modification.
8. Impacts to agricultural land- The impacts of the subject project should be looked at in conjunction with other approved or pending projects which overlap the subject project area or are in the vicinity of the subject property area.
9. Land use authority- Land use plans should be considered not only within the project area but in the surrounding area to determine if the project is inconsistent with growth patterns and may inhibit desired or necessary growth in the area.
10. Transparent safety information, including access to non-proprietary safety manual information- Safety manual information must be made available to the public and safety information provided in the manual submitted should be reviewed as pertinent information, especially regarding recommended setbacks, both permanent and for emergency purposes
11. Interconnection information-No suggestions at this time.
12. Land lease/use arrangements  
Lease agreements and easements should be recorded prior to the filing of the application. Leases should not include any type of restriction on discussing the project, the lease agreement or any easement granted.

13. Other -No suggestions at this time.

*c. What level of design and engineering drawings should be provided in the application? Should the final design be provided?*

Yes, final design should be provided at time of application in order for sufficient review from all authorities. Final transportation route maps (which include all county and township roads to be used and whether easements from private landowners along with roadway needed to enlarge the width and the radius of intersections have been obtained) should be filed with the application along with rights to use property for laydown sites for local officials to review for foreseeable traffic issues and road construction issues.

*d. To the extent the applicant submits supportive studies, should the studies be subject to a trustworthiness standard such as the evidentiary standard applicable to expert opinions? If so, what standard? If not, why not?*

Yes, however, if the OPSB is going to allow a relaxed evidentiary standard to include trustworthy hearsay, then that standard should be allowed for intervenors as well. However, an expert should be required to testify regarding the process and substance of the findings of any study submitted and be subject to cross-examination. If the witness cannot provide any meaningful testimony to support the findings of the study, the study should be stricken from the application.

*e. Does the application need to be expanded, including the required information in the filing?*

Not sure what this question is asking.

*f. Should multi-stage projects be required to be filed as one combined application (i.e., transmission line, substation, generating facility)? Why or why not?*

There should be a disclosure in the application that the project is a part of a multi-stage project. The cumulative effects of projects that are extremely large and may be under construction in phases for many years may have a detrimental impact on the local community and should be reviewed not only on just the filed project but in conjunction with any planned future project or any project already approved or pending.

*g. What criteria should determine the difference between a "modification" versus an "amendment"?*

There should be no difference between a "modification" and an "amendment" and both should be considered a "change" and require public notice, OPSB review and approval.

*h. What criteria should determine if a proposed change in the facility would result in any material increase in environmental impact or a substantial change in location for purposes of R.C. 4906.07?*

A proposed change should always be reviewed in a facility to determine if it will result in an increase in environmental impact along with allowing public notice and comment.

*i. Where provision for decommissioning is appropriate, should the applicant be required to demonstrate project financial viability/adequate cash flow sufficient to accommodate estimated and actual decommissioning expense?*

Yes, but the local entities believe that providing for decommissioning is always appropriate, especially by provision of a bond. Financial viability or adequate cash flow do not lessen the risk that, in the future, the project owner (which may or may not be the developer) will be able to decommission or wish to expend funds to decommission. Further, there should be periodic review of the decommissioning provisions to ensure they remain adequate throughout the life of the project.

*j. Should an applicant be required to submit manufacture safety manuals and other materials and to what extent should such information be available to the public?*

Yes. Applicants should be required to submit manufacturer safety manuals and they should be available to the public.

*k. Should the applicant be required to address issues and concerns raised in public comments?*

Yes.

### **Certificate Monitoring and Enforcement**

*3. How should the Board monitor and enforce the terms of its certificates?*

*a. How should compliance with certificated conditions be documented both with regard to the determination of when construction may commence and through the life of the certificate/facility?*

Monitoring should be performed by the Board or its contractors, at certain intervals and any results from such monitoring should be posted for intervenor comment, if not public comment. If any issue arises where the developer is not in compliance with the certificated conditions and fails to comply within a time set by the Board, then the Board should set a date for hearing on non-compliance to allow the developer to be heard as to why there is non-compliance with the possible result of suspending or revoking the certificate.

*b. To the extent that permits, licenses or other consents must be obtained from federal, state or local authorities before the project can move forward, how should the applicant document satisfaction of these requirements and update the Staff and Board as a result of changes in circumstances that may affect the authority provided by such permits, licenses or other consents.*

The certificated conditions should set forth a timeframe for obtaining permits, licenses and other consents and the approval of the certificate should be subject to getting all required permits, licenses and consents. The applicant should file all licenses, permits, etc., with the Board for public inspection or file a motion for modification due to such change of circumstances for review by the Board, staff and public which should also be subject to hearing on the basis for the change.

*c. More generally, what post-construction monitoring and enforcement procedures should apply, including during the operation and decommissioning phase?*

During operation and decommissioning, complaints and the action taken on such complaints should be publicly available and follow a format developed by the Board pursuant to its rules.

*d. What additional procedures should apply, if any, to certificate transfers beyond the transferee agreeing to comply with the terms, conditions, and modifications imposed upon the certificate by the*

*Board? What enforcement mechanisms should exist to ensure compliance with certificated conditions, board orders, rules, or laws (i.e. suspension of certificate or operating authority in the event of a violation of 4906.98)?*

Whether the original applicant/developer or transferee is involved, the Board must use the threat of suspension or revocation of the certificate to ensure compliance with the certificated conditions, rules, orders, or laws. Certainly, a hearing should be held to allow the applicant or transferee to be heard, but such hearing should be held within a short period of time after notice of non-compliance, especially if the non-compliance puts the public in immediate danger.

*e. By what process should decommissioning costs be revisited and evaluated for purposes of establishing the bond level?*

There should be periodic review of the amount of the decommissioning bond to ensure it remains adequate during the life of the project. The process should include input from local officials as decommissioning costs will most likely be borne by the local entities if the decommissioning bond is not adequate.