ORIGINAL

In The
SUPREME COURT OF OHIO

Joseph J. Grant,	:	Case No. 2014-1198
	:	
Appellant,	:	On appeal from the Ohio Power Siting Board, Case No. 13-1177-EL-BGN, *In the Matter of Application of Hardin Wind LLC for a Certificate to Construct a Wind-Powered Electric Generation Facility in Hardin and Logan Counties, Ohio.*
v.	:	
Ohio Power Siting Board,	:	
Appellee.	:	

MERIT BRIEF
SUBMITTED ON BEHALF OF APPELLEE, THE OHIO POWER SITING BOARD

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MERIT BRIEF
SUBMITTED ON BEHALF OF APPELLEE,
THE OHIO POWER SITING BOARD

INTRODUCTION

This case presents no genuine factual or legal issues. Ohio law establishes the minimum setback distance that wind turbines must be placed from adjoining property lines. It is undisputed that the Ohio Power Siting Board's (Board's) order approves setback requirements that comply with and, on average, significantly exceed these statutory requirements. Therefore the Board's order complies with the law and no legal or factual issues exist.

This case presents the Court with a straightforward illustration where the appellant argues the Board has violated the setback distances established by statute, while simultaneously acknowledging the Board applied the legally-mandated setback distances established by R.C. 4906.20. Appellant's only contention is that the Board did not choose to apply more restrictive, non-mandatory setback distances.

Because neither a legal nor factual issue exists in this case, the Board order should be affirmed.

STATEMENT OF THE FACTS AND CASE

Hardin Wind, LLC (Hardin Wind or Applicant) applied to construct a commercial wind farm consisting of approximately 172 turbines on private, leased agricultural land in Hardin and Logan counties. *In the Matter of Application of Hardin Wind LLC for a Certificate to Construct a Wind-Powered Electric Generation Facility in Hardin and Logan Counties, Ohio*, Case Nos. 13-1177-EL-BGN, *et al.*. (*In re Hardin Wind*) (Opinion, Order, and Certificates at 2-4) (Mar. 17, 2014) ("Order"), Appellant's App. at A-7 - A-9.[1] The total capacity of the wind farm will not exceed 300 megawatts. Hardin Wind has also proposed to construct a 345kV transmission line and a substation to connect the project to an existing AEP transmission line.[2] *Id.*

The Project footprint encompasses 17,000 acres of farmland under lease from farming families to Hardin Wind. The Project will convert approximately 186.5 acres, or only one percent from current farm use to built facilities. *In re Hardin Wind* (Joint Stipulation at 4) (Jan. 21, 2014) (Joint Stipulation), Appellant's Supp. at S-278. Testimony

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[1] References to appellant's appendix filed with its October 14, 2014 Merit Brief are denoted "Appellant's App. at ___;" references to appellant's October 14, 2014 supplement are denoted "Appellant's Supp. at ___;" references to appellee's supplement are denoted "Supp. at ___; references to appellee's attached appendix are denoted "App. at ___."

[2] These matters are before the Board in different case dockets (Substation/Case No. 13-1767-EL-BSB and Transmission line/Case No. 13-1768-EL-BTX) and are not part of this appeal.

from the Ohio Farm Bureau Federation, whose members are located in all 88 Ohio counties, testified in favor of the Project, noting that responsible wind development like this project will enhance farm income, protect natural resources, and preserve farmland. *In re Hardin Wind* (Testimony of D. Arnold at 3-4) (Jan. 15, 2014) (Arnold Test.), Supp. at 10-11. Equally important, wind development is a compatible use that permanently removes only a fraction of farmland from agricultural use as opposed to industrial and other forms of development that eliminate farmland altogether and literally change the complexion of the landscape. *Id.* The Project will provide a positive economic impact to the area, including increased tax revenues of $1.8 to 2.7 million annually, as well as lease payments of up to $7,000 per turbine paid annually to participating landowners. Construction activity is expected to generate another $65 million in wages and salaries. *In re Hardin Wind* (Testimony of Michael Speerschneider at 9) (Jan. 9, 2014) (Speerschneider Test.), Supp. at 4.

A local public hearing was held at the Hardin County Courthouse in Kenton and was attended by nearly 30 people who offered comments both for and against the wind farm. Several people intervened in this case, but all withdrew except for the appellant.[3] Mr. Grant lists his address on a busy highway, U.S. Route 68. Grant Test. at 1,

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[3] A small group of landowners sought to intervene, *after* the Board issued its order, to seek rehearing and *raise* issues regarding the proximity of the Project to Indian Lake State Park. The Board properly rejected their late-filed efforts. *In re Hardin Wind* (Entry on Rehearing at 2) (May 19, 2014), Appellant's App. At A-50. It is uncontested that Hardin Wind publically noticed the project in conformance with Ohio law Board rules. See, e.g. Speerschneider Test. at 6-7, Supp. at 2-3.

Appellant's Supp. At S-296. This property is on the fringe of the proposed wind farm. Staff Report at 19, Appellant's Supp. at S-219.

Discussions among the remaining parties, in which Mr. Grant was invited to participate in, led to a joint agreement among Hardin Wind, the Ohio Farm Bureau Federation and the Board's staff. Joint Stipulation, Appellant's Supp. at S-275 - S-295; Tr. at 71, Supp. at 19. This agreement contained numerous, comprehensive conditions intended to minimize impacts of construction and operation within the Project area. Joint Stipulation at 5-13. This agreement was the subject of an adjudicatory hearing in which Mr. Grant participated. On March 17, 2014, the Board approved the agreement and issued its Opinion, Order and Certificate after making all requisite factual findings under R.C. 4906.10.

Following the hearing, Mr. Grant filed an application for rehearing and raised five assignments of error: 1) that the Project posed a threat to the Indiana Bat; 2) that setbacks from turbines were insufficient; 3) that the Project will cause excessive shadow flicker; 4) that the Project will cause excessive noise; and, 5) a general statement that the Project should be subjected to and decided by a public vote of all residents in the Project area. *In re Hardin Wind* (Entry on Rehearing at 3-8) (May 19, 2014), Appellant's App. at A-51-56. The Board denied rehearing of all the issues raised by Mr. Grant. *Id.*

The sole issue Mr. Grant raises on appeal is that the setbacks from turbines are insufficient. Setback distances are established by statute, R.C. 4906.20. While Mr. Grant

acknowledges that statutory setback requirements are met and, in fact, exceeded on average, for all proposed turbine locations, he nonetheless argues that they should be even more generous (i.e. greater distances). That is the subject of this appeal.

ARGUMENT

Proposition of Law No. I:

> **A Board order "shall be reversed, vacated, or modified by this court only when, upon consideration of the record as a whole, the court finds the order to be unlawful or unreasonable."." *In re Application of American Transmission Systems, Inc.,* 125 Ohio St.3d 333, 2010-Ohio-1841, ¶ 17.**

A. Standard of Review

Pursuant to R.C. 4906.12, the Court must apply the same standard of review to Power Siting Board determinations as it applies to orders by the Public Utilities Commission. *In re Application of Am. Transm. Sys.,* Inc., 125 Ohio St. 3d 333, 928 N.E.2d 427 (2010), *citing Chester Twp. v. Power Siting Comm'n,* 49 Ohio St. 2d 231, 238, 361 N.E.2d 436 (1977). R.C. 4903.13 applies to board proceedings pursuant to R.C. 4906.12 and provides that an order "shall be reversed, vacated, or modified by this court only when, upon consideration of the record, the court finds the order to be unlawful or unreasonable." *Constellation NewEnergy, Inc. v. Pub. Util. Comm'n*, 104 Ohio St. 3d 530, 820 N.E.2d 885, ¶ 50 (2004).

Under the 'unlawful or unreasonable' standard of R.C. 4903.13, the Court should not reverse or modify a determination unless it is manifestly against the weight of the

evidence and so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. *Chester Twp. v. Power Siting Comm'n*, 49 Ohio St. 2d 231, 238, 361 N.E.2d 436 (1977). The appellant bears the burden of showing that the [Board's] decision is against the manifest weight of the evidence or clearly unsupported by the evidence. *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St. 3d 81, 765 N.E.2d 862 (2002).

The Court has consistently refused to substitute its judgment for that of the [Board] on evidentiary matters. *See, e.g., Payphone Ass'n v. Pub. Util. Comm.*, 109 Ohio St. 3d 453, 849 N.E.2d 4 (2006). Deference should be shown to Board determinations where, as here, the Board applies its specialized expertise and discretion. *Cincinnati Bell Tel. Co. v. Pub. Util. Comm.*, 92 Ohio St. 3d 177, 180, 749 N.E.2d 262 (2001); *Weiss v. Pub. Util. Comm.*, 90 Ohio St. 3d 15, 17-18, 734 N.E.2d 775 (2000).

B. The setback distances approved by the Board comply with the requirements of R.C. 4906.20.

The governing statute has two minimum setback requirements for turbine locations, one for property lines and another for habitable residential structures. At the time of the Board decision, R.C. 4906.20 provided that the minimum setback requirement is as follows[4]:

> That minimum shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the

[4] R.C. 4906.20 authorizes owners of land adjacent to a wind farm to waive setback requirements as to their property.

> turbine structure as measured from its based to the tip of its highest blade and be at least one thousand one hundred twenty-five feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the certification application.

R.C. 4906.20(B)(2), App. at 3-4.[5]

The statute vests the Board with discretion to require more than the minimum setback distance where it deems it necessary. Stated differently, a party who argues for greater setback distances must present unique facts and circumstances to support that argument and Mr. Grant has not done so. The Appellant contests only the setback from property lines. The setback from residential structures is not at issue in this appeal. The maximum turbine height for this project is 492 feet. *In re Hardin Wind* (Application at 142) (Jun. 28, 2013) (Application), Appellant's Supp. at S-150. Applying the statutory formula, the minimum setback from non-participating property lines is 541 feet.[6]

All the turbine locations approved by the Board meet and, on average, significantly exceed the statutory minimum. In fact, the average setback distance from property lines varies from 549 feet to 2,637 feet and averages 1,198 feet, well in *excess* of the statutory minimum under the statutory formula. *In re Hardin Wind* (Staff Report at 33) (Dec. 24, 2013) (Staff Report), Appellant's Supp. at S-196 - S-274; *In re Hardin Wind*

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[5] House Bill 483 amended the stature to increase the setback requirement. The amendment did not take effect until September 15, 2014 and so is not applicable here because the Board's Order (March 17, 2014) and its Rehearing Entry (May 19, 2014) were issued well before the effective date.

[6] Under R.C. 4906.20(B)(2), the property line setback is determined by multiplying the maximum height of the turbine by 1.1. (492 x 1.1 = 541).

(Entry on Rehearing at 5) (May 19, 2014), Appellant's App. at A-53. While Appellant does not dispute this fact, he nonetheless argues in general fashion that the Board should have imposed greater setback requirements. To prevail in this Court, however, Appellant must show that the Board abused its discretion. The Appellant cannot make this showing because the Board applied the statutorily-defined standard when it approved the setback requirements.

C. The setback distances approved by the Board will serve the public interest, convenience, and necessity as required by R.C. 4903.10(A)(6).

Although he does not contest that statutory setback requirements approved by the Board are met, Mr. Grant nonetheless argues that more generous setback distances are required because of the dangers of ice throw and blade shear. Whether the Board-approved setback distances that are reasonable is a question of fact, and the Court should not reverse or modify a factual determination of the Board "unless it is manifestly against the weight of the evidence and so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty." *Chester Twp. v. Power Siting Comm.,* 49 Ohio St.2d 231, 238, 361 N.E.2d 436 (1977).

This Court has already considered and decided arguments regarding setback distances from wind turbines. *In re Buckeye Wind, LLC*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869, ¶¶ 20-21, 34. In fact, the very same setback distances from property lines (541 feet) were required by the Board in that case. *Id.* at ¶ 5. Like here, the appellants in *Buckeye Wind* argued that this setback was insufficient to protect nearby

property owners in the event of blade shear. The Court in *Buckeye Wind* rejected this argument and found that the setbacks and Board-approved conditions were reasonable, noting that ample evidence supported the order, and that the numerous conditions approved by the Board in its order granting the *Buckeye* certificate were sufficient to ensure their adequacy." *Id.* at ¶ 34. The Court should reach the same conclusion here.

The record shows that the setback distances adopted by the Board below comply with Ohio law and are reasonable. Significantly, Appellant did not reference setbacks in his direct testimony. *In re Hardin Wind* (Direct Testimony of Joseph Grant) (Jan. 14, 2014) (Grant Test.), Appellant's Supp. at S-296 - S-297.

On the other hand, the Staff Report presents a more thorough picture, discussing the safety features of the turbine design and equipment that will mitigate the safety concerns cited by Appellant, namely ice throw and blade shear. Staff Report at 38, Appellant's Supp. at S-238; Application at 87-90, Appellant's Supp. at S-95 – S-98. With respect to ice buildup, the report notes that the proposed turbines are equipped with ice detection equipment and other safety features that shut down turbine operation if ice buildup causes excess vibration or the speed to power ratio becomes too high. *Id.* at 38, Appellant's Supp. at S-238; Tr. at 33-34, Supp. at 16-17. To guard against blade shear, the report explained that the turbine design has multiple safety features, including "two fully independent braking systems, a pitch control system, and turbine shut-offs in the event of excessive wind speeds, excessive blade vibration or stress." Staff Report at 38, Appellant's Supp. at S-238; Tr. at 33-34, 81, Supp. at 16-17, 20. Additionally, the Applicant can employ a number of investigative approaches to limit shadow flicker

including periodic shutdowns of some turbines to minimize this effect. Staff Report at 31, Appellant's Supp. at S-231.

Hardin Wind witness Michael Speerschneider also testified regarding the multiple safety features of the turbines that the Appellant proposes to use. Speerschneider Test. at 11-12, Supp. at 5-6. He further pointed out that turbines operated by his company have never experienced a blade failure and he stated that there has never been a reported injury caused by ice thrown from a wind turbine blade. *Id.* at 11-12, Supp. at 5-6.

The Appellant failed to rebut any of this evidence. Rather, he simply points to testimony on cross-examination that the mere possibility of a blade shear-related injury, however remote it may be, is too much. Merit Brief of Appellant at 10. Elimination of *all* risk is not the standard that the Board is legally required to apply.

Appellant posits that some non-participating property owners[7] *may in the future* wish to build residential structures on property within the 541-foot setback requirement. He does not say that he is one of these landowners. Nor does he explain why this could not occur – in fact one could build within the set back area if they choose to do so. *See, e.g.*, Tr. at 35, Supp. at 18. Instead, Mr. Grant simply asserts that the Board should have protected the interests of these unknown and unidentified landowners by imposing a greater setback distance for occupied structures that may never be built. Appellant's argument is entirely speculative. It is well-settled that this Court will not reverse an order

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[7] Mr. Grant intervened on his own behalf and does not represent any landowner other than himself.

of the Board on the basis of an error that did not prejudice the party seeking reversal. *Holladay Corp. v. Pub. Util. Comm.,* 61 Ohio St.2d 335, 335, 402 N.E.2d 475 (1980). Appellant cannot rely merely on claims of generalized harm. *In re Complaint of Buckeye Energy Brokers, Inc. v. Palmer Energy Co*, 139 Ohio St.3d 284, 2014-Ohio-1532, 11 N.E.3d 1126, ¶ 23. To successfully pursue an appeal the appellant must demonstrate a present and immediate interest and here Mr. Grant has shown none. *See East Ohio Gas Co. v. Pub. Util. Comm.*, 39 Ohio St.3d 295, 295, 530 N.E.2d 875 (1988).

The Board found the extensive, unrebutted evidence regarding turbine safety features to be persuasive. *In re Hardin Wind* (Entry on Rehearing at 5) (May 19, 2014), Appellant's App. at A-53. Accordingly, the Board appropriately exercised its judgment in finding that greater setback requirements were not warranted on the facts before it. The Court should not substitute its judgment for that of the Board on this evidentiary issue. *See Payphone Ass'n v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 34.

Proposition of Law No. II:

> **Failure to raise an issue in a rehearing application to the Power Siting Board deprives this Court of jurisdiction to consider that issue. R.C. 4903.10, App. at 1; *In re Application of Ohio Power Co.*, Slip Opinion No. 2014-Ohio-4271, ¶ 45.**

In his Merit Brief, Appellant for the first time raises arguments concerning the proximity of wind turbines to Indian Lake State Park. He contends that the turbines will disturb the scenic views and serenity of the lake. This argument, however, is not properly before the Court.

Appellant's application for rehearing fails to mention Indian Lake State Park and presents no arguments regarding the location of the wind turbines in relation to the lake.[8] *In re Hardin Wind* (Application for Rehearing of J. Grant) (Apr. 16, 2014) (Application for Rehearing), Supp. at 21-28. Appellant's failure to raise this issue in his application for rehearing prevents the Court from considering it. R.C. 4903.10, App. at 1; *In re Application of Ohio Power Co.*, Slip Opinion No. 2014-Ohio-4271, ¶ 45 ("[appellant] has forfeited this argument by failing to present it to the commission in an application for rehearing.")

Ohio law requires that such matters be specifically presented to the Board as a ground for rehearing as a prerequisite to asserting it on appeal:[9]

> Such an application [for rehearing] shall be in writing and shall set forth specifically the ground or grounds on which the applicant considers the [Board's] order to be unreasonable or unlawful. No party shall in any court urge or rely on any ground for reversal, vacation, or modification not so set forth in the application.

R.C. 4903.10, App. at 1. This Court has consistently refused to consider matters that were not raised in a rehearing application. *The Cincinnati, New Orleans and Texas Pacific Ry. Co. v. Pub. Util. Comm.,* 31 Ohio St.2d 81, 82, 285 N.E.2d 371, 372-373 (1972); *Agin v. Pub. Util. Comm.*, 12 Ohio St.2d 97, 98-99, 232 N.E.2d 828, 829 (1967). Specifically, this Court has stated that:

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[8] Appellant had not previously referred to Indian Lake at any time during the proceeding before the Board.

[9] Any assertions by Mr. Grant that area landowners were unaware of the Project is totally at odds with the record evidence. *See, e.g.,* Speerschneider Test. at 6-7; Supp. at 2-3.

> On an appeal from an order of the Public Utilities Commission, the Supreme Court cannot consider any matter which was not specifically set forth in an application * * * for a rehearing as a ground on which the appellant considered the order * * * to be unreasonable or unlawful.

Agin, 12 Ohio St.2d at 98-99, 232 N.E.2d at 829 (emphasis added).

Having failed to raise this issue on rehearing to the Board, Appellant should not be permitted to raise it before this Court.

Should the Court nevertheless decide to consider this argument, the Court should recognize that the record does discuss and the Board did consider the Project's impact on Indian Lake State Park. *In re Hardin Wind* (Opinion, Order, and Certificate) (Apr. 16, 2014), Appellant's App. at A-6-48. Appellant does not dispute the Board's finding and instead he simply offers his personal opinion that wind turbines should not be placed near lakes. The Court should defer to the Board on this evidentiary matter and uphold the Board's decision.

CONCLUSION

Appellant has failed to show that the Board committed any factual or legal errors in the proceeding below. The Board's decision is supported by the record and approves numerous conditions to minimize Project impacts that the law requires it to consider. The Board's order is reasonable, lawful and should be affirmed.

Respectfully submitted,

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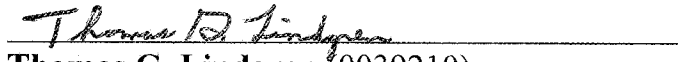

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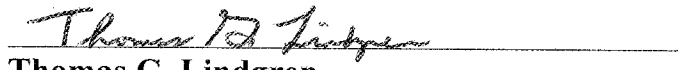
PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Merit Brief, submitted on behalf of appellee, the Ohio Power Siting Board, was served by regular U.S. mail, postage pre-paid, or hand-delivered, upon the following parties of record, this 3rd day of December, 2014.



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4903.10 Application for rehearing.

After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding. Such application shall be filed within thirty days after the entry of the order upon the journal of the commission. Notwithstanding the preceding paragraph, in any uncontested proceeding or, by leave of the commission first had in any other proceeding, any affected person, firm, or corporation may make an application for a rehearing within thirty days after the entry of any final order upon the journal of the commission. Leave to file an application for rehearing shall not be granted to any person, firm, or corporation who did not enter an appearance in the proceeding unless the commission first finds:

(A) The applicant's failure to enter an appearance prior to the entry upon the journal of the commission of the order complained of was due to just cause; and,

(B) The interests of the applicant were not adequately considered in the proceeding. Every applicant for rehearing or for leave to file an application for rehearing shall give due notice of the filing of such application to all parties who have entered an appearance in the proceeding in the manner and form prescribed by the commission. Such application shall be in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful. No party shall in any court urge or rely on any ground for reversal, vacation, or modification not so set forth in the application. Where such application for rehearing has been filed before the effective date of the order as to which a rehearing is sought, the effective date of such order, unless otherwise ordered by the commission, shall be postponed or stayed pending disposition of the matter by the commission or by operation of law. In all other cases the making of such an application shall not excuse any person from complying with the order, or operate to stay or postpone the enforcement thereof, without a special order of the commission. Where such application for rehearing has been filed, the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear. Notice of such rehearing shall be given by regular mail to all parties who have entered an appearance in the proceeding. If the commission does not grant or deny such application for rehearing within thirty days from the date of filing thereof, it is denied by operation of law. If the commission grants such rehearing, it shall specify in the notice of such granting the purpose for which it is granted. The commission shall also specify the scope of the additional evidence, if any, that will be taken, but it shall not upon such rehearing take any evidence that, with reasonable diligence, could have been offered upon the original hearing. If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed. An order made after such rehearing, abrogating or modifying the original order, shall have the same effect as an original order, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order prior to the receipt of notice by the affected party of the filing of the application for rehearing. No cause of action arising out of any order of the commission, other than in support of the order, shall accrue in any court to any person, firm, or corporation unless such person, firm, or corporation has made a proper application to the commission for a rehearing.

4903.13 Reversal of final order - notice of appeal.

A final order made by the public utilities commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable. The proceeding to obtain such reversal, vacation, or modification shall be by notice of appeal, filed with the public utilities commission by any party to the proceeding before it, against the commission, setting forth the order appealed from and the errors complained of. The notice of appeal shall be served, unless waived, upon the chairman of the commission, or, in the event of his absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. The court may permit any interested party to intervene by cross-appeal.

4906.10 Basis for decision granting or denying certificate.

(A) The power siting board shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the board considers appropriate. The certificate shall be conditioned upon the facility being in compliance with standards and rules adopted under sections 1501.33 , 1501.34 , and 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code. An applicant may withdraw an application if the board grants a certificate on terms, conditions, or modifications other than those proposed by the applicant in the application. The period of initial operation under a certificate shall expire two years after the date on which electric power is first generated by the facility. During the period of initial operation, the facility shall be subject to the enforcement and monitoring powers of the director of environmental protection under Chapters 3704., 3734., and 6111. of the Revised Code and to the emergency provisions under those chapters. If a major utility facility constructed in accordance with the terms and conditions of its certificate is unable to operate in compliance with all applicable requirements of state laws, rules, and standards pertaining to air pollution, the facility may apply to the director of environmental protection for a conditional operating permit under division (G) of section 3704.03 of the Revised Code and the rules adopted thereunder. The operation of a major utility facility in compliance with a conditional operating permit is not in violation of its certificate. After the expiration of the period of initial operation of a major utility facility, the facility shall be under the jurisdiction of the environmental protection agency and shall comply with all laws, rules, and standards pertaining to air pollution, water pollution, and solid and hazardous waste disposal.

The board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the board, unless it finds and determines all of the following:

(1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline;

(2) The nature of the probable environmental impact;

(3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;

(4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

(5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33 , 1501.34 , and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.

(6) That the facility will serve the public interest, convenience, and necessity;

(7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

(8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

(B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon that modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification shall have been given reasonable notice thereof.

(C) A copy of the decision and any opinion issued therewith shall be served upon each party.

4906.12 Procedures of public utilities commission to be followed.

Sections 4903.02 to 4903.16 and 4903.20 to 4903.23 of the Revised Code shall apply to any proceeding or order of the power siting board under Chapter 4906. of the Revised Code, in the same manner as if the board were the public utilities commission under such sections.

4906.20 Certificate required to construct certain wind farms.

(A) No person shall commence to construct an economically significant wind farm in this state without first having obtained a certificate from the power siting board. An economically significant wind farm with respect to which such a certificate is required shall be constructed, operated, and maintained in conformity with that certificate and any terms, conditions, and modifications it contains. A certificate shall be issued only pursuant to this section. The certificate may be transferred, subject to the approval of the board, to a person that agrees to comply with those terms, conditions, and modifications.

(B) The board shall adopt rules governing the certificating of economically significant wind farms under this section. Initial rules shall be adopted within one hundred twenty days after June 24, 2008.

(1) The rules shall provide for an application process for certificating economically significant wind farms that is identical to the extent practicable to the process applicable to certificating major utility facilities under sections 4906.06, 4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the Revised Code and shall prescribe a reasonable schedule of application filing fees structured in the manner of the schedule of filing fees required for major utility facilities.

(2) Additionally, the rules shall prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with power lines and with regional transmission organizations, independent transmission system operators, or similar organizations, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations.

(a) The rules also shall prescribe a minimum setback for a wind turbine of an economically significant wind farm. That minimum shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be at least one thousand one hundred twenty-five feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to property line of the nearest adjacent property at the time of the certification application.

(b)

(i) For any existing certificates and amendments thereto, and existing certification applications that have been found by the chairperson to be in compliance with division (A) of section 4906.06 of the Revised Code before the effective date of the amendment of this section by H.B. 59 of the 130th general assembly, September 29, 2013, the distance shall be seven hundred fifty feet instead of one thousand one hundred twenty-five feet.

(ii) Any amendment made to an existing certificate after the effective date of the amendment of this section by H.B. 483 of the 130th general assembly shall be subject to the setback provision of this section as amended by that act. The amendments to this section by that act shall not be construed to limit or abridge any rights or remedies in equity or under the common law.

(c) The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.