Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

Authors: Kathleen L. Luikart, Research Analyst,
Rocky Hernandez, Attorney
Reviewer: Ralph D. Clark, Division Chief

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Power Siting Board Certification Process

To operate in Ohio, major utility facilities and economically significant wind farms must obtain a certificate of environmental compatibility and public need for construction, operation, and maintenance. The Power Siting Board (PSB) issues certificates following a standard or accelerated certification application process, which includes, depending on the process, notice, hearings, testimony, fees, and PSB staff investigations.

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Power Siting Board

The Power Siting Board (PSB) is responsible for approving the siting of major utility facilities and economically significant wind farms (ESWFs) and ensuring that they meet requirements specified in Ohio law. Those facilities and ESWFs must obtain certification to operate.[1]

PSB has two processes for certification applications: Standard and Accelerated. In issuing certificates, all hearings, studies, and consideration of applications for certificates must be conducted by PSB members or their representatives. PSB also may conduct any necessary or appropriate studies or investigations and require persons subject to PSB jurisdiction to provide information necessary for hearings and investigations.[2]

Standard certificate application process

Pre-application process

An applicant considering construction of a major utility facility or ESWF may request a pre-application meeting with PSB staff before applying. This conference is optional, does not constitute approval of a project, and does not predetermine PSB's certification decision.[3]

Informational meetings

After satisfying any applicable county informational meeting requirements, an applicant must conduct at least two public, informational meetings in the area where the project will be located. At the first informational meeting, the applicant should notify the public and solicit input on the scope of the proposed project. During the second meeting, which must occur not more than 90 days prior to filling the application, the applicant must present the project to the public as it will be presented in the application. After this second meeting, should there be changes made to the application, PSB may require the applicant to hold another informational meeting.

At all public informational meetings, the applicant must present maps of the proposed facility along with mapping software with aerial imagery and certain other features. The applicant must also solicit written comments from the attendees, and must summarize how many, and what types of, comments were received from the attendees. After redacting certain personal information, the applicant must file the written comments with the application. The applicant maintains the right not to disclose any facility information that is critical energy infrastructure information and other facility information that is confidentially protected from public disclosure.[4]

County informational meetings

Applicants for a "utility facility" (ESWFs, a large wind farm, or a large solar facility; the latter two also being major utility facilities) have separate meeting requirements to complete

[1] R.C. Chapter 4906. An overview of PSB, including its membership and duties, and major utility facilities and econonmically significant wind farms, is detailed in the *Members Brief*, Power Siting Board Overview (PDF), available on LSC's website: lsc.ohio.gov.

[2] R.C. 4906.02(A) and 4906.03.

[3] Ohio Administrative Code (O.A.C.) 4906-3-02.

[4] O.A.C. 4906-3-03(B).

prior to the two meetings described above. At least 90 days, but not more than 300 days, before applying for a PSB certificate, or a material amendment to an existing certificate, for a utility facility located in an unincorporated area of a county, the applicant must hold a public meeting in each county where the utility facility will be located. Should a county adopt a resolution limiting the boundaries of the proposed utility facility, the applicant must reconduct any public informational meetings held prior to the adoption of the resolution to reflect the updated boundaries under the county's resolution.[5]

The requirements and procedures for this county meeting and resolution are detailed in the *Members Brief*, SB 52 and Local Utility Regulation (PDF), available on LSC's website: lsc.ohio.gov.

Notice requirements

The applicant must provide notice of each informational meeting in newspapers of general circulation in the project area not more than 21 days or fewer than seven days before the meeting.

PSB provides a detailed Standard Application Process Flowchart (PDF) on its website that outlines the certification process: optional pre-application meeting → informational meeting notices and meetings → application submission → public notice → PSB investigation → public hearing → PSB decision → certificate issuance/denial → rehearing → Ohio Supreme Court appeal.

The applicant must also send a letter to each property owner and affected resident at least 21 days before each meeting. The letter must include the date, time, and location of the informational meeting; information about the applicant; and a brief description of the project, the certification process, how to participate in the proceeding, and how to request notification of the public hearing.

At least 21 days before each informational meeting, the applicant must also display the above-described information on the applicant's website.[6]

Additionally, an applicant must file a pre-application notification letter with PSB at least 21 days before any informational meeting. The letter must include a basic description of the project; the date, time, and location of the informational meetings; a list of any anticipated PSB rule waivers that the applicant will be requesting; and confirmation that the applicant has prominently posted this information on its website prior to filing the preapplication notification letter.[7]

[5] R.C. 303.61; O.A.C 4906-3-03(B).

[6] O.A.C. 4906-3-03(B)(1) to (3).

[7] O.A.C. 4906-3-03(A); See "Standard Application Process Flow Chart (PDF)," available on PSB's website: opsb.ohio.gov

Application

Certificate applications are filed with the PSB chairperson's office. In addition to any information the applicant considers relevant or PSB, by rule or order, requires, an application must contain:

1. A description of the major utility facility and its location;
2. A statement explaining the need for the facility, the reasons why the proposed location is best suited for it, and how it fits into the applicant's forecast contained in the applicant's long-term forecast report submitted to the Public Utilities Commission of Ohio (PUCO);
3. A summary of how many and what types of comments were received at the informational meeting; and
4. A summary of any environmental impact studies for the facility made by or for the applicant and copies of said studies must be filed with the PSB chairperson's office, if ordered, and made publicly available.

Each applicant must also include proof of service of a copy of the application to the chief executive officer of each municipal corporation and county, and head of each public agency responsible for protecting the environment or of planning land use, in the area where any portion of the facility is to be located.[8]

Notice of applications

Each applicant must also give public notice in area newspapers of general circulation, within 15 days of the application filing date, to persons residing in the municipal corporations and counties where any portion of the facility will be located. The notice must include a summary of the application. Proof of the notice's publication must be filed with the PSB chairperson's office. The law provides for curing inadvertent failures to provide the required notice to those required to receive the notice.[9]

Applications to amend a certificate

An applicant may seek to amend a certificate using an application in the form and containing the information PSB prescribes. Notice of the application must be given as is required for all applications.[10]

Application fees

Each certificate or amendment application must include a fee that is deposited in the Power Siting Board Fund. If moneys credited to the fund are not enough to pay PSB expenses for reviewing an application, the chairperson may request Controlling Board approval to assess the applicant a supplemental application fee to pay anticipated additional expenses associated with

[8] R.C. 4906.06(A) and (B); O.A.C. 4906-3-03(B)(5).

[9] R.C. 4906.06(C) and (D).

[10] R.C. 4906.06(E).

the review. If the application fee exceeds the amount needed to pay PSB review expenses, the chairperson must refund the excess amount to the applicant.[11]

The fee structure for all PSB cases is available on the PSB website, opsb.ohio.gov, and in PSB rules. All applicants must pay a $10,000 initial application fee to initiate the standard certificate review process. Additional application fees are required following the determination that an application is complete, which are stated in the tables below. Table 1 lists the standard certificate application fee formula for electric power generation plants and associated facilities or substantial additions to them, which includes electric generation from solar and wind projects. The fee schedule for standard certificate applications for gas pipelines and electric power transmission lines and associated facilities is listed in Table 2.[12]

Table 1. Electric Power Generation Plant and Associated Facilities	
Application Fee Formula	**Maximum Application Fee**
50¢ x facility's maximum kilowatt electric capacity	$150,000

Table 2. Gas Pipeline and Electric Power Transmission Lines	
Construction Cost	**Application Fee**
Up to $500,000	$10,000
$500,000[13] to $1,000,000	$25,000
$1,000,001 to $2,000,000	$35,000
$2,000,001 to $5,000,000	$50,000
$5,000,001 and above	1% of the estimated cost of the preferred route, not to exceed $85,000

The application filing fee for an amendment to a certificate must be paid by the applicant upon filing the amendment application. [14] Those amounts are stated in the table below.

[11] R.C. 4906.06(F); O.A.C 4906-3-12(I).

[12] O.A.C. 4906-3-12; See "Application Fees and Billing," available PSB's website: opsb.ohio.gov.

[13] At the time of this writing, there appears to be an omission in the rules as filed by PUCO. The intended value in the chart is likely "500,001 to 1,000,000."

[14] O.A.C. 4906-3-12(H).

Table 3. Amendment to a certificate	
Construction Cost	**Application Fee**
Up to $500,000	$3,000
$500,000 to $1,000,000	$6,000
$1,000,001 to $2,000,000	$9,000
$2,000,001 to $5,000,000	$12,000
$5,000,00[15] to $25,000,000	$15,000
$25,000,001 to $50,000,000	$18,000
$50,000,001 to $75,000,000	$21,000
$75,000,001 and up	$24,000

Investigations

Applications to PSB are investigated and scheduled for a public hearing. PSB staff must conduct an investigation for each certification application and submit a written report of the investigation to PSB and the applicant at least 15 days before the application hearing. Reports must describe the nature of the investigation and include recommended findings regarding the factors PSB considers before granting certifications. The report is part of the application case record and must be provided to all parties in the proceeding and any person upon request.[16]

Hearings

On receiving a standard certificate application that complies with notice and fee requirements, PSB must promptly fix a hearing date that is not less than 60 days nor more than 90 days after it received the application. The application proceeding also must conclude "as expeditiously as practicable."

Hearings to amend a certificate must be held in the same manner as standard certificate application hearings, if the proposed change to the certified facility would result in "any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application."[17]

[15] At the time of this writing, there appears to be an omission in the rules as filed by PUCO. The intended values in the chart are likely "500,001 to 1,000,000" and "5,000,001 to 25,000,000."

[16] R.C. 4906.07(A) and (C). The factors PSB must consider before granting certifications are described in the *Members Brief*, Power Siting Board Overview (PDF), available on LSC's website: lsc.ohio.gov.

[17] R.C. 4906.07(A) and (B).

PSB proceedings and orders must be conducted in the same manner as, and according to the law for, PUCO hearings. Under PSB rules, hearings are conducted by an administrative law judge (a PUCO attorney examiner). Unless otherwise ordered, they are held at the principle PSB office. However, where practicable, a hearing session for taking public testimony must be scheduled in the vicinity of the project.[18]

PSB must accept written or oral testimony from any person at the public hearing, but only parties to a certification proceeding have the right to call and examine witnesses. PSB may adopt rules to exclude repetitive, immaterial, or irrelevant testimony. A record must be made of the hearing and all testimony taken. Rules of evidence, as specified by PSB, apply to the proceeding.[19]

Accelerated certificate application process

PSB rules provide for an accelerated certificate application process. Those eligible for this process include certain electric transmission lines that are not more than two miles long, electric generating facilities that use waste heat or natural gas and are primarily within the current boundary of an existing industrial or electric generating facility, and gas pipelines that are not more than five miles long or are primarily needed to meet the requirements of specific customers. The law also provides for major utility facilities related to coal research and development projects or coal development projects that are also submitted to the Ohio Coal Development Office for review to use the accelerated application process.[20]

The accelerated process is initiated either by a letter of notification application or construction notice application.[21] But, at least five days prior to submitting an expedited accelerated application, the applicant must request a case number and file a preapplication notification letter with PSB containing certain information about the project and requests for expedited processing. If an applicant fails to file a preapplication notification letter, the expedited processing of its application will not begin until five business days after its application is filed.[22]

The letter or notice application must be filed no later than 90 days before the planned construction commencement, if expedited processing is not requested. A letter of notification, however, where the applicant requests expedited processing must be filed not less than 28 days before the planned construction commencement. For good cause shown, the applicant may request a shorter automatic approval date than the 28- or 90-day requirements. Construction notices have similar requirements, except that expedited processing must be filed not less than 21 days before the planned construction commencement. For good cause shown, the applicant may request a shorter automatic approval date than the 21- or 90-day requirements.[23]

[18] R.C. 4906.12; O.A.C. 4906-1-01(C) and 4906-2-09(A) and (B).

[19] R.C. 4906.08(C) and 4906.09.

[20] R.C. 4906.03(E), and (F); O.A.C. 4906-1-01 (Appendix) and 4906-6-02(A).

[21] O.A.C. 4906-1-01 (Appendix) and 4906-6-02(A).

[22] O.A.C. 4906-6-04(A).

[23] O.A.C. 4906-6-03.

PSB staff reviews accelerated applications and recommends an automatic approval date (unless staff recommends suspension of an automatic approval date). The recommended automatic approval date must be no sooner than seven calendar days after the filing of the staff report and no later than 90 days after the application's filing. Staff must investigate accelerated certificate applications and submit a written report no less than seven calendar days before the automatic approval date. The report sets forth the nature of the investigation, contains recommended findings regarding approval of the facility, and becomes part of the record and is distributed to all those involved in the case and PSB members.[24]

If the application is not suspended and PSB does not act on a letter of notification or construction notice before the automatic approval date, the letter of notification or construction notice is automatically approved, subject to any conditions contained in the staff report, on the day after the date set forth in the staff report. But, if the application is suspended, for good cause shown, by PSB, an administrative law judge, or the PSB executive director, then the PSB, judge, or executive director must docket the decision and notify the applicant of the reasons for the suspension. The applicant may be asked to furnish additional information. PSB must approve, modify, or deny the application within 90 days of the suspension. If suspended, PSB or the judge may, at PSB's or the judge's discretion, set the matter for a hearing.[25]

Most accelerated certificate applications do not require filing fees, but applicants are invoiced quarterly for work performed. Expedited accelerated certificate applications must include a nonrefundable $2,000 fee due at the time of the filing. If expedited processing is rejected, the fee will be retained and credited against an applicant's final invoice.[26]

Parties

A person may request to intervene as a party to a certification proceeding. In addition to the applicant, parties to a PSB certification proceeding include:

- Each person entitled to receive service of a copy of the certificate application, if the person has filed with PSB notice of intervention as a party, within 30 days after being served with a copy of the application;
- Any person residing in a municipal corporation or county entitled to be provided a copy of the certificate application and any other person, if the person has petitioned PSB for permission to intervene as a party within 30 days after the publication of the required notice (described above) and if PSB has granted the petition for good cause shown.[27]

If a person would like to intervene as a party to a proceeding, but has failed to file a notice of intervention or a petition to intervene within the 30-day period, PSB may grant a petition, in extraordinary circumstances for good cause shown, allowing the person to intervene as a party

[24] O.A.C. 4906-6-06(B) and 4906-6-10(A).

[25] O.A.C. 4906-6-09 and 4906-6-10.

[26] O.A.C. 4906-6-04(B)(2), (C) and (D); see "Application Fees and Billing," available on PSB's website: opsb.ohio.gov.

[27] R.C. 4906.08(A).

in subsequent phases of the certification proceeding. PSB also may provide for consolidating the representation of parties that have similar interests.[28]

Rehearings and appeals

After PSB grants or denies a certificate in an order, any party who has entered an appearance in the proceeding may apply for a rehearing in respect to any matter determined in the certificate proceeding. Appeals of final PSB decisions are appealed to the Ohio Supreme Court. Rehearings and appeals are conducted according to R.C. Chapter 4903.[29]

Transfer of certificate

At PSB's discretion, any PSB-granted certificate may be transferred to another person, subject to the requirement that the person agrees to comply with the terms, conditions, and modifications contained within the certificate. An application requesting the transfer must be made by filing a request for certificate transfer in the docket of the case in which the certificate was granted. Both parties must indicate, either separately or jointly, their agreement to transfer. Unless PSB or an administrative law judge orders otherwise, the transfer is deemed approved, and the effective date of the transfer will be on the 30th day after the filing requesting the transfer.[30]

How to find PSB case information

PSB case information is available through the Cases page on the PSB website home page: opsb.ohio.gov. It allows users to apply search filters to locate cases by project name, case number, project type, project status, and county. For each project selected, the website includes the case record as filed in the PUCO Docketing Information System (DIS), which includes a table including the dates and descriptions of PSB actions, and links to the documents associated with each filing date. Users can also find PSB case information by going directly to the DIS webpage, which is available on PUCO's website: puco.ohio.gov. A purpose code table for cases appears on the DIS advanced search webpage.

Maps

PSB also produces maps and statistics for various projects, including, for example, wind farm projects, that are available on the PSB website home page under Featured Resources. See "OPSB Solar Facilities Mapping Application," "Wind Facilities Map and Statistics," and "Natural Gas-Fired Power Plant Map and Statistics" all available on PSB's website: opsb.ohio.gov.

[28] R.C. 4906.08(B) and 4906.09.

[29] R.C. 4903.10, 4903.13, and 4906.12; O.A.C. 4906-2-32 and 4906-2-33.

[30] O.A.C. 4906-3-16.