



# Members Brief

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

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## Power Siting Board Certification Process

To operate in Ohio, major utility facilities and certain 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 such certificates following a standard or accelerated certification application process, which includes, depending on the process, notice, hearings, testimony, fees, and PSB staff investigations.

### Contents

Power Siting Board.....	1
Standard certificate application process .....	2
Pre-application process.....	2
Application .....	3
Notice of applications.....	3
Applications to amend a certificate .....	3
Application fees.....	3
Investigations .....	4
Hearings.....	5
Accelerated certificate application process.....	5
Parties .....	6
Rehearings and appeals .....	7
How to find PSB case information .....	7
Maps.....	7

### Power Siting Board

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

<sup>1</sup> R.C. Chapter 4906. An overview of PSB, including its membership and duties, and major utility facilities and economically significant wind farms, is detailed in the *Members Brief*, [Power Siting Board Overview](#).

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 and appropriate studies or investigations and require persons subject to PSB jurisdiction to provide information necessary for hearings and investigations.<sup>2</sup>

## Standard certificate application process

### Pre-application process

An applicant considering construction of a major utility facility or economically significant wind farm may request a pre-application conference with PSB staff before submitting an application. This conference is optional, does not constitute approval of a project, and does not predetermine PSB's certification decision.<sup>3</sup>

Not more than 90 days before filing a standard certificate application to PSB, an applicant must conduct at least one public, informational meeting in the area in which the project is located. At the informational meeting, the applicant must (1) present maps of the proposed facility that allow affected property owners to identify their property in relation to the facility and (2) solicit written comments from the attendees.

The applicant must provide notice of the meeting in newspapers of general circulation in the project area not more than 21 days or fewer than seven days before the meeting. The applicant must also send a letter to each property owner and affected tenant at least 21 days before the 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.<sup>4</sup>

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

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Before filing an application for a certificate, an applicant must file a pre-application notification letter with PSB at least 15 days before the date of the informational meeting. The letter must include a basic description of the project; the date, time, and location of the informational meeting; and a list of any anticipated PSB rule waivers that the applicant will be requesting.<sup>5</sup>

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<sup>2</sup> R.C. 4906.02(A) and 4906.03.

<sup>3</sup> Ohio Administrative Code (O.A.C.) 4906-3-02.

<sup>4</sup> O.A.C. 4906-3-03(B).

<sup>5</sup> O.A.C. 4906-3-03(A); The Power Siting Board "Standard Application Process Flow Chart," is available at: <https://opsb.ohio.gov/wps/wcm/connect/gov/675362ac-1edf-4d7d-9a3e-6902b6056373/OPSB>

## 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.

Copies of the environmental studies must be filed with the PSB chairperson's office and made available for public inspection. 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 in which any portion of the facility is to be located.<sup>6</sup>

## Notice of applications

Each applicant must also give public notice, within 15 days of the application filing date, to persons residing in the municipal corporations and counties in area newspapers of general circulation. 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.<sup>7</sup>

## Applications to amend a certificate

An applicant may submit an application to amend a certificate in the form and containing the information PSB prescribes. Notice of the application must be given as is required for all applications.<sup>8</sup>

## Application fees

Each certificate 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 the review of an application, the chairperson may request Controlling Board approval to assess the applicant a supplemental application fee to pay anticipated additional expenses associated with the

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[Flowchart June2017.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTWORKSPACE.Z18\\_M1HGGIKON0JO00QO9DDDDM3000-675362ac-1edf-4d7d-9a3e-6902b6056373-nb8tFbH.](#)

<sup>6</sup> R.C. 4906.06(A) and (B); O.A.C. 4906-3-03(B)(4).

<sup>7</sup> R.C. 4906.06(C) and (D).

<sup>8</sup> R.C. 4906.06(E).

application or amendment. If the application fee exceeds the amount needed to pay PSB review expenses, the chairperson must refund the excess amount to the applicant.<sup>9</sup> Filing fees are not required for an amendment to a certificate, but the applicant is invoiced on a quarterly basis for work performed.<sup>10</sup>

The fee structure for all PSB cases is available on the [PSB website](#) and in PSB rules. Table 1 lists the standard certificate application fee formula for electric power generation plants and associated facilities, which includes electric generation from solar and wind projects. The fee schedule for standard certificate applications for gas pipelines and electric power transmission lines is listed in Table 2.<sup>11</sup>

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 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	\$65,000

## 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 date of the application hearing. Reports must describe the nature of the investigation and include recommended findings

<sup>9</sup> R.C. 4906.06(F).

<sup>10</sup> O.A.C. 4906-3-12(D); email from PUCO staff on January 15, 2021.

<sup>11</sup> O.A.C. 4906-3-12; Power Siting Board, "Application Fees and Billing," available at: <https://opsb.ohio.gov/wps/portal/gov/opsb/processes/application-fees-and-billing>.

regarding the factors PSB considers before granting certifications.<sup>12</sup> The report is part of the application case record and must be provided to all parties in the proceeding and any person upon request.<sup>13</sup>

## Hearings

On receiving a standard certificate application that complies with notice and fee requirements, PSB must promptly fix a date for a hearing. The hearing must occur not less than 60 days nor more than 90 days after PSB receives the application, and the application proceeding must conclude “as expeditiously as practicable.”<sup>14</sup>

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 that is the subject of the hearing.<sup>15</sup>

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.<sup>16</sup>

## Accelerated certificate application process

PSB rules provide for an accelerated certificate application process (which also includes expedited processing of an application). This process is initiated either by a letter of notification application or construction notice application.<sup>17</sup> Those eligible for this process include certain electric transmission lines that are not more than two miles in length, 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 in length or are primarily needed to meet the requirements of specific customers. The law also provides for major utility facilities related to coal research development

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Hearings for an application 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.”

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<sup>12</sup> The factors PSB must consider before granting certifications are described in the *Members Brief*, [Power Siting Board Overview](#).

<sup>13</sup> R.C. 4906.07(A) and (C).

<sup>14</sup> R.C. 4906.07(A) and (B).

<sup>15</sup> R.C. 4906.12; O.A.C. 4906-1-01(C) and 4906-2-09(A) and (B).

<sup>16</sup> R.C. 4906.08(C) and 4906.09.

<sup>17</sup> O.A.C. 4906-6-02(A).

projects or coal development projects that are also submitted to the Ohio Coal Development Office for review to use the accelerated application process.<sup>18</sup>

The letter or notice application must be filed no later than 90 days before the planned construction commencement. PSB staff reviews accelerated applications and recommends an automatic approval date for the accelerated application (unless staff recommends suspension of the application). 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 filing of the application.<sup>19</sup>

If the application is not suspended and PSB does not act upon a letter of notification or construction notice prior to the automatic approval date set in the staff report, 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, a PUCO attorney examiner, or the PSB executive director, PSB must approve, modify and approve, or disapprove the application within 90 days of the suspension. If suspended, PSB or the attorney examiner may, in their discretion, set the matter for a hearing.<sup>20</sup>

Most accelerated certificate applications do not require filing fees, but applicants are invoiced quarterly for work performed. Expedited accelerated certificate applications, however, must include a nonrefundable \$2,000 fee.<sup>21</sup>

## Parties

PSB law provides a process through which 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.<sup>22</sup>

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

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<sup>18</sup> R.C. 4906.03(E) and (F).

<sup>19</sup> O.A.C. 4906-6-03(B) and (C), 4906-6-06(B), and 4906-6-10(A).

<sup>20</sup> O.A.C. 4906-6-09 and 4906-6-10(B).

<sup>21</sup> O.A.C. 4906-6-04(A)(2) and (C); see Application Fees and Billing, at <https://opsb.ohio.gov/wps/portal/gov/opsb/processes/application-fees-and-billing>.

<sup>22</sup> R.C. 4906.08(A).

extraordinary circumstances for good cause shown, allowing the person to intervene as a party in subsequent phases of the certification proceeding. PSB also may provide for the consolidation of the representation of parties that have similar interests.<sup>23</sup>

## 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 PUCO law in R.C. Chapter 4903.<sup>24</sup>

## How to find PSB case information

PSB case information is available through links on the PSB website home page. The link to cases 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.<sup>25</sup> Users can also find PSB case information by going directly to the DIS webpage.<sup>26</sup> A purpose code table for cases appears on the DIS advanced search webpage.<sup>27</sup>

## 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.<sup>28</sup>

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<sup>23</sup> R.C. 4906.08(B) and 4906.09.

<sup>24</sup> R.C. 4903.10, 4903.13, and 4906.12; O.A.C. 4906-2-32 and 4906-2-33.

<sup>25</sup> Power Siting Board, “Cases” available at: <https://opsb.ohio.gov/wps/portal/gov/opsb/cases>.

<sup>26</sup> Public Utilities Commission, “Docketing Information System,” available at: <https://dis.puc.state.oh.us/>.

<sup>27</sup> Public Utilities Commission, “Docketing Information System: Advanced Search,” available at: <https://dis.puc.state.oh.us/AdvS.aspx>.

<sup>28</sup> Major utility and economically significant wind farm project maps produced by the Power Siting Board are available at: <https://opsb.ohio.gov/wps/portal/gov/opsb/about-us/resources/Solar-farm-map-and-statistics>, <https://opsb.ohio.gov/wps/portal/gov/opsb/about-us/resources/wind-power-map-and-stats>, and <https://opsb.ohio.gov/wps/portal/gov/opsb/about-us/resources/Natural-gas-fired-power-plant-map-and-statistics>.