

# BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF AN EMERGENCY  
RULEMAKING OF THE OKLAHOMA  
CORPORATION COMMISSION AMENDING  
OAC 165:35, ELECTRIC UTILITY RULES

CAUSE NO. RM 201800009

---

## PUBLIC UTILITY DIVISION'S PROPOSED EMERGENCY RULES

---

### TITLE 165: OKLAHOMA CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES SUBCHAPTER 45. WIND ENERGY

#### **165:35-45-1. Purpose of this subchapter**

The purpose of this Subchapter is to implement provisions of the Oklahoma Wind Energy Development Act, 17 O.S. § 160.11 et seq., by establishing rules and procedures for an entity that builds, constructs, owns, operates, controls, manages or maintains a wind energy facility within the State of Oklahoma. This Subchapter applies to the components of wind energy facilities built, constructed, owned, operated, controlled, managed or maintained within the State of Oklahoma, provided however it does not apply to any Transmission Only Utility TOU.

#### **165:35-45-2. Definitions**

In addition to terms defined in the Oklahoma Wind Energy Development Act, 17 O.S. § 160.11 et seq., the following word(s) or term(s), when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Determination of No Hazard" means a document issued by the Federal Aviation Administration that is issued if the structure exceeds obstruction standards but does not result in a substantial adverse effect. It is a composite of all comments, findings, and aeronautical studies pertaining to effect of adverse physical or electromagnetic interference upon navigable airspace or air navigation facilities.

"FAA" means the Federal Aviation Administration.

"Local base commander" means the commander or commanders from those Federal and/or State Military bases or installations actually located in Oklahoma.

**"Project description"** means a graphic depiction of a wind energy facility's outer boundary, which should adequately demonstrate the project's outer perimeter, inclusive of all wind turbines.

#### **165:35-45-3. Annual reporting requirements**

On or before March 1 of each year, each wind energy facility owner or operator shall submit information required by the Public Utility Division PUD. This submission shall provide to the Public Utility Division PUD information about wind energy facilities the owner constructs, owns, operates, manages or maintains within the State of Oklahoma. Within such submission, the wind energy facility owner or operator shall provide information, which includes but is not limited to the following:

- (1) The commercial generation date of each wind energy facility;
- (2) If a wind energy facility fails to generate power, an explanation of the cause of the failure to generate;

- (3) An attestation indicating that the wind energy facility's insurance coverage will be made available for onsite review by ~~the Public Utility Division~~ PUD as requested;
- (4) For the first annual report(s) associated with a wind energy facility's first year of commercial operation, the report shall also include: ~~a final project description and a final location description for each turbine, as constructed.~~
  - (i) a final project description and a final location description for each turbine, as constructed;
  - (ii) an attestation indicating that setback requirements have been complied with; and
  - (iii) any applicable Determination of No Hazard issued by the FAA or mitigation plan approved by the Military Aviation and Installation Assurance Siting Clearinghouse.
- (5) For those wind energy facility components that are otherwise subject to the rules applicable to the annual reports of ~~Transmission Only Utilities~~ TOUs, this Subchapter does not require duplicative reporting.
- (6) Electronic submission is preferred; however, all forms of submission will be accepted.

#### **165:35-45-4. Notification of intent to build a wind energy facility**

- (a) The owner of a wind energy facility shall electronically submit notification of intent to build a facility to the ~~Corporation~~ Commission within six (6) months of the initial filing pertaining to commencement of construction with the ~~Federal Aviation Administration (FAA)~~ FAA of an FAA Form 7460-1 (Notice of Proposed Construction or Alteration) or any subsequent form required by the FAA ~~for evaluating the impact a proposed wind energy facility will have on air commerce safety and the preservation of navigable airspace.~~ Such notification shall be submitted to the PUD ~~Director of the Public Utility Division of the Corporation Commission.~~
- (b) ~~The Public Utility Division~~ PUD shall provide the owner of a wind energy facility with affirmation of submission of the notification of intent to build by either providing proof of receipt stamp or confirmation of receipt if submission is made electronically.
- (c) In the event that an owner of a wind energy facility submits notification of intent to build a facility with the ~~Corporation~~ Commission and files subsequent forms with the FAA, the owner is not required to submit amended or additional notification of intent to build a wind energy facility unless the project layout is expanded beyond the original project description.
- (d) The owner of the wind energy facility shall submit-send copies of the notification ~~with-to~~ the board of county commissioners of every county in which all or a portion of the wind energy facility is to be located within twenty-four (24) hours of filing with the Commission. If all or a portion of the wind energy facility is to be located within the incorporated area of a municipality, copies of the notification shall also be submitted-sent to the governing body of the municipality within twenty-four (24) hours of filing with the Commission.
- (e) Within six (6) months of submitting the notification with the Commission as provided for in subsection (a) of this section, the owner of the wind energy facility shall cause a copy of the notification to be published in a newspaper of general circulation in the county or counties in which all or a portion of the wind energy facility is to be located. Proof of publication shall be submitted to the PUD ~~Director of the Public Utility Division of the Corporation Commission.~~
- (f) Within sixty (60) calendar days of publishing the notification in a newspaper as provided for in subsection (e) of this section, the owner of the wind energy facility shall hold a public meeting. Notice of the public meeting shall be published in a newspaper of general circulation and submitted to the board of county commissioners in the county or counties in which all or a portion of the wind energy facility is to be located. The notice shall contain the place, date and

time of the public meeting. Proof of publication of the notice shall be submitted to the PUD Director ~~of the Public Utility Division of the Corporation Commission~~. The public meeting shall be held in one of the counties in which all or a portion of the wind energy facility is to be located.

(g) The owner of a wind energy facility shall not commence construction on the facility until the notification and public meeting requirements of this section have been met. If an owner of a wind energy facility fails to submit the information with the Commission as required in this section, the owner shall be subject to an administrative penalty from the Commission not to exceed One Thousand Five Hundred Dollars (\$1,500) per day following hearing and issuance of a final order of the Commission.

(h) Electronic submission is preferred; however, all forms of submission will be accepted.

#### **165:35-45-5. Commission consideration**

(a) ~~The Public Utility Division~~ PUD shall review and may investigate all wind energy facility information reported or submitted for compliance with the annual reporting requirements in this Subchapter or in 17 O.S. § 160.18 or with the notice requirements in this Subchapter or in 17 O.S. § 160.21.

(b) After receiving a report or submission from a wind energy facility pursuant to the annual reporting requirements in this Subchapter or in 17 O.S. § 160.18 or the notice requirements in this Subchapter or in 17 O.S. § 160.21, ~~the Public Utility Division~~ PUD will:

- (1) ~~Will determine~~ Determine whether the report or submission is compliant with the annual reporting or notice requirements; and
- (2) ~~Will inform~~ Inform the wind energy facility owner or operator of ~~the Public Utility Division's PUD's~~ determination within thirty (30) calendar days of receipt of the report or submission if it is not in compliance. In the event ~~the Public Utility Division~~ PUD determines the wind energy facility's report or submission is not in compliance, ~~the Public Utility Division~~ PUD shall contact the owner or operator to require additional information; and, such information shall be provided within fifteen (15) calendar days of such notice. If the facility owner fails to correct such non-compliance, ~~the Public Utility Division~~ PUD may reject the report or submission and may open an investigation to inquire further into the reported or submitted information.

#### **165:35-45-6. Determining assessment of fees**

(a) In wind energy facility causes initiated on the Public Utility Docket for alleged violation(s) of any provision of this Subchapter, fees shall be assessed upon motion of the PUD Staff ~~of the Public Utility Division~~ in wind energy facility causes.

(b) The Commission shall make a determination of the estimated costs of ~~the Public Utility Division~~ PUD required to process, analyze and review wind energy facility causes initiated on the Public Utility Docket. These estimated costs shall be the basis of the fee assessed to a wind energy facility subject to this Subchapter.

(c) After notice to the wind energy facility to be assessed and hearing, the Commission shall issue an order which shall include the following:

- (1) Whether or not the wind energy facility will be assessed a fee(s);
- (2) The amount of the fee(s) to be assessed; and
- (3) The date payment(s) of the fee(s) shall be made.

(d) In causes wherein the wind energy facility owner is also a public utility, as defined in 17 O.S. § 151, required to pay the public utility assessment fee pursuant to 17 O.S. § 180.11 and OAC 165:5-3-20, the above assessment of fees shall not apply.

**165:35-45-7. Decommissioning of wind energy facilities**

(a) The owner of a wind energy facility shall be responsible, at its expense, for the proper decommissioning of the facility upon abandonment or the end of the useful life of the commercial wind energy equipment in the wind energy facility. Decommissioning shall be in a manner consistent with 17 O.S. § 160.14 and 17 O.S. § 160.15.

(b) Evidence of financial security to cover the anticipated costs of decommissioning may be in the form of a surety bond, collateral bond, parent guaranty, cash, cashier's check, certificate of deposit, bank joint custody receipt, or irrevocable letter of credit.

(c) The owner of a wind energy facility shall submit to the PUD Director ~~of the Public Utility Division of the Corporation Commission~~, a notice of decommissioning for the proper retirement of the facility upon abandonment or the end of the useful life of the commercial wind energy facility. Such notice of decommissioning shall be submitted not less than sixty (60) calendar days prior to commencement of decommissioning in a manner consistent with 17 O.S. § 160.15.