AGENCY RULE REPORT
OKLAHOMA CORPORATION COMMISSION
PERMANENT RULEMAKING
OAC 165:35. ELECTRIC UTILITY RULES
CAUSE NO. RM 202000001

Pursuant to the Oklahoma Administrative Procedures Act requirements in 75 O.C.S. 303.1(A) and 308(A), the Oklahoma Corporation Commission ("Commission") hereby respectfully submits this Agency Rule Report to the Honorable J. Kevin Stitt, Governor of the State of Oklahoma, the Honorable Greg Treat, President Pro Tempore of the State Senate, and the Honorable Charles McCall, Speaker of the House of Representatives.

1. DATE OF THE PUBLICATION OF NOTICE OF PROPOSED RULEMAKING:


B. 75 O.S. § 250.4 exempts the Commission from the requirements of 75 O.S. §§ 255, 303(A), and 303(B) respectively, to publish a Notice of Intended Rulemaking in The Oklahoma Register.

2. NAME AND ADDRESS OF THE AGENCY:

Oklahoma Corporation Commission
P.O. Box 52000
Oklahoma City, Oklahoma 73152-2000

3. TITLE AND NUMBER OF THE RULES:

Subchapter 45. Wind Energy
165:35-45-2. Definitions [AMENDED]
165:35-45-4. Notification of intent to build a wind energy facility and other notices [AMENDED]
165:35-45-5. Commission consideration [AMENDED]

4. STATUTORY AUTHORITY FOR THE RULES:

Corporation Commission; Article IX, Section 18 of the Oklahoma Constitution; 17 O.S. §§ 160.11 et seq.
5. **FEDERAL OR STATE LAW, COURT RULING, OR OTHER AUTHORITY REQUIRING THE RULES:**

17 O.S. § 160.22 provides that the "Commission shall have the authority to promulgate rules as necessary to implement the provisions of the Oklahoma Wind Energy Development Act..."


The purpose of the adopted rules is to make permanent the recently approved emergency rules that address changes to the Oklahoma Wind Energy Development Act, which was amended by House Bill 2118 during the Oklahoma Legislature’s 2019 Regular Session. The adopted changes to OAC 165:35, Subchapter 45 include: removing the definition of "Mitigation plan;" amending the definition of "Project boundary;" general grammatical changes; and modifying the notification of intent to build a wind energy facility section to align with the requirements in HB 2118.

7. **STATEMENT EXPLAINING THE NEED FOR THE ADOPTED RULES:**

These rules are needed due to the passage of House Bill 2118, which modified the Oklahoma Wind Energy Development Act. Further, the Commission believes that the proposed changes are necessary to protect the public health, safety and welfare, avoid serious prejudice to the public interest, and to protect national security.

8. **DATE AND LOCATION OF THE HEARING AT WHICH THE RULES WERE ADOPTED:**

On February 27, 2020, the rules were adopted in a public hearing held in the Third Floor Courtroom, Oklahoma Corporation Commission, Jim Thorpe building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, before the Commission.

9. **SUMMARY OF COMMENTS AND EXPLANATION OF CHANGES OR LACK OF ANY CHANGES MADE IN THE ADOPTED RULES AS A RESULT OF TESTIMONY RECEIVED AT THE PUBLIC HEARINGS OR MEETINGS HELD OR SPONSORED BY THE AGENCY FOR THE PURPOSE OF PROVIDING THE PUBLIC AN OPPORTUNITY TO COMMENT ON THE RULES OR OF ANY COMMENTS RECEIVED PRIOR TO ADOPTION OF THE RULES:**

No written comments were submitted.

A Technical Conference was held on February 20, 2020 at 10:30 a.m. at the Oklahoma Corporation Commission, Jim Thorpe Office Building, Courtroom 301, 2101 North Lincoln
Boulevard, Oklahoma City, Oklahoma, to afford the public an opportunity to appear and comment on, and suggest additions and/or revisions to, the proposed rules. No oral or written comments were provided during the technical conference.

A public hearing took place before the Commission on February 27, 2020, at 9:30 a.m. at the Oklahoma Corporation Commission, Jim Thorpe Office Building, Courtroom 301, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, to afford the public an opportunity to make oral comments concerning the proposed rules.

Oral and written comments were requested; however, none were presented to the Commission prior to submission of the rules for approval. No parties appeared before the Commission to object to the proposed rules.

During the public hearing, Commissioner Murphy inquired as to the purpose of these rules. She was advised by Public Utility Division ("PUD") counsel that the proposed rules simply adopt the current emergency rules as permanent. PUD counsel stated there were no proposed changes to the emergency rules. Additionally, Commissioner Murphy asked about the presence of language regarding fines in the rules. She was advised that the fine language was authorized pursuant to 17 O.S § 160.15(C), and that the language in question had not been modified during the prior emergency rulemaking process.

Commissioner Anthony inquired as to whether or not the proposed rules governed the siting authority of the Commission. Counsel for PUD stated that the proposed rules did not give the Commission siting authority. PUD counsel stated that the proposed rules assist in providing notice to the Federal Aviation Administration, Oklahoma Aeronautics Commission, Military Aviation and Installation Assurance Siting Clearinghouse, PUD, and the public, regarding the proposed site of future wind energy facilities.

The Commission considered the draft rules filed on January 14, 2020. After acknowledging that no written or oral comments were submitted for consideration, the Commission voted to approve the January 14, 2020 version of the rules without further modification.

10. LIST OF PERSONS OR ORGANIZATIONS WHO APPEARED OR REGISTERED FOR OR AGAINST THE ADOPTED RULES AT PUBLIC HEARING HELD BY THE COMMISSION OR THOSE WHO COMMENTED IN WRITING BEFORE OR AFTER SAID HEARINGS:

Appendix "A" is a list of persons or organizations that appeared at the technical conference, or called into the technical conference held on February 20, 2020, in Courtroom 301, Oklahoma Corporation Commission, Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma.

Appendix "B" is a list of persons or organizations who appeared at the public hearing before the Commission, which took place on February 27, 2020, in Courtroom 301, Oklahoma
11. **RULE IMPACT STATEMENT:**

Appendix "C" is a copy of the Rule Impact Statement, filed with the Commission on January 30, 2020.

12. **RULES INCORPORATED FROM A BODY OUTSIDE THE STATE:**

N/A

13. **RECORDED VOTE OF EACH COMMISSIONER REGARDING ADOPTION OF THE RULES:**

On February 27, 2020, Commissioners J. Todd Hiett, Bob Anthony, and Dana L. Murphy voted 3-0 to adopt the rules on a permanent basis and submit such rules to the Governor and the Legislature for their approval, pursuant to the Administrative Procedures Act, 75 O.S. §§ 250-323.

14. **PROPOSED EFFECTIVE DATE OF ADOPTED RULES:**

The rules adopted by the Commission on February 27, 2020, are attached as Appendix "D". The proposed effective date is August 1, 2020.
ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of amendments to OAC 165:35, Electric Utility Rules, which were adopted by the Oklahoma Corporation Commission on February 27, 2020, under permanent rulemaking provisions of the Administrative Procedures Act, 75 O.S. §§ 250 et seq.

I, the undersigned do hereby attest that such rules were finally adopted in substantial compliance with the Administrative Procedures Act.

[Signature]

Travis N. Weedn
Rules Liaison and Attestation Officer
OKLAHOMA CORPORATION COMMISSION
March 6, 2020
Name of Agency: Corporation Commission
Type of Document: Agency Rule Report

LIAISON VERIFICATION:

I verify that I have reviewed the attached document and that it substantially conforms to filing and format requirements of the Administrative Procedures Act and the rules of the Secretary of State. Additional information may be obtained by contacting me at (405) 521-4137.

Travis N. Weedn
Rules Liaison
OKLAHOMA CORPORATION COMMISSION
March 6, 2020
## ATTENDANCE SIGN-IN

**OKLAHOMA CORPORATION COMMISSION**

**Technical Conference**

February 20, 2020 @ 10:30 a.m.

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<td>A. Chase Sneedgrass</td>
<td><a href="mailto:scsneedgrass@oig.ok.gov">scsneedgrass@oig.ok.gov</a></td>
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<td>Attorney General</td>
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<td>Vicki AyersPortman</td>
<td><a href="mailto:vportman@inverenergy.com">vportman@inverenergy.com</a></td>
<td></td>
<td>Inverenergy</td>
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<tr>
<td>Lindsey Power</td>
<td><a href="mailto:lp.anewenergy@gmail.com">lp.anewenergy@gmail.com</a></td>
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<td>A New Energy</td>
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<tr>
<td>Eric Davis</td>
<td><a href="mailto:cedavis@philipsmurrah.com">cedavis@philipsmurrah.com</a></td>
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**FILED**

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COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION OF OKLAHOMA

Appendix "A"
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Appendix "B"
BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

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

CAUSE NO. RM 202000001

RULE IMPACT STATEMENT

Pursuant to 75 O.S. § 303(D) of the Oklahoma Administrative Procedures Act, the Public Utility Division ("PUD") of the Oklahoma Corporation Commission ("Commission") submits the following Rule Impact Statement for its proposed rules regarding Title 165, Chapter 35 of the Oklahoma Administrative Code ("OAC").

I. Brief description of the purpose of the proposed rules:

The purpose of the proposed rules is to address changes to the Oklahoma Wind Energy Development Act ("the Act"), which was amended by House Bill 2118 ("HB 2118"). The proposed changes to OAC 165:35, Subchapter 45 include: removing the definition of "Mitigation plan;" amending the definition of "Project boundary;" general grammatical changes; and modifying the notification of intent to build a wind energy facility section to align with the requirements in HB 2118. This proposal would make permanent the recently adopted emergency wind rules.

II. Description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

Those most likely to be affected by the proposed rules are wind energy developers who are required to submit specific information to the Commission's PUD. The PUD does not expect significant compliance costs for these wind energy developers due to the passage of HB 2118 or these permanent rules, and has not received any cost impact information from any private or public entity. The PUD expects a significant increase in its costs to administer the requirements of HB 2118; however, on August 1, 2019, a new fee in OAC 165:5-3-42 became effective and will be assessed against wind energy developers. The fee will only cover a portion of the PUD's costs.

III. Classes of persons who will benefit from the proposed rules:

The persons benefiting from the proposed rules are wind energy developers, landowners near wind farms, and the general public.

IV. Description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

Appendix "C"
The PUD believes that due to the amendment of the Act by HB 2118 and these rules, wind energy developers will be economically impacted; however, no information regarding economic impact has been provided to the PUD at this time. While HB 2118 may increase compliance costs for the Oklahoma Aeronautics Commission ("Aeronautics Commission") and the Military Aviation and Installation Assurance Siting Clearinghouse ("Clearinghouse"), these rules are not expected to increase the costs of either the Aeronautics Commission or the Clearinghouse. Further, as stated previously, the PUD will incur increased costs due to the requirements in HB 2118 and these rules. The proposed rules do not propose any fee changes.

V. Probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

The PUD expects increased costs to administer the requirements of HB 2118; however, as of August 1, 2019, a new fee in OAC 165:5-3-42 became effective. This new fee is attributable to wind energy developers, and will cover some of PUD's costs. The remaining source of revenue to be used for implementation and enforcement of the proposed permanent rules is the PUD Assessment. There is no anticipated effect on state revenue.

VI. Determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The rules are not expected to have an economic impact on either the Aeronautics Commission or the Clearinghouse. Further, these permanent rules will not require the cooperation of the Aeronautics Commission or the Clearinghouse in implementing or enforcing the rules. It is not anticipated that implementation and enforcement of the proposed rules will have an economic impact on any other political subdivisions or require their cooperation in implementing or enforcing the permanent rules.

VII. Determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The PUD does not believe that the proposed rules will have an adverse economic effect on small business.

VIII. Explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The requirements of HB 2118 require wind energy developers to submit specific information to the PUD. The rules clarify the submission process set forth in the Act as amended by HB 2118, and wind energy developers may incur additional compliance costs as a result. The
PUD has attempted to minimize compliance costs by clarifying, and not expanding, the submission process. The PUD knows of no non-regulatory methods or less intrusive methods of achieving the purpose of HB 2118 or the proposed permanent rules.

IX. Determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rules are designed to reduce significant risks and/or hazards to the public health, safety, and environment and also with regard to landowners, military training operations, economic impacts, national weather service radars, federal and state regulatory agencies, wind energy developers, and national security by ensuring compliance with the updated statutory reporting requirements for wind energy developers in Oklahoma, by requiring the submission of the Federal Aviation Administration Form 7460-1, a Determination of No Hazard, and a Mission Compatibility Certification Letter.

X. Determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

If the proposed rules are not implemented, potential detrimental effects to the public health, safety and environment could result as described above. Extraordinary events having significant effects on military operations, landowners, and national weather service radars could occur if the rules are not implemented.

XI. Date of preparation of Rule Impact Statement:

This Rule Impact Statement was prepared on the 30 day of January, 2020.

Prepared by:

Kyle Vazquez, OBA #31252
Assistant General Counsel
Judicial & Legislative Services Division
Oklahoma Corporation Commission
P.O. Box 52000
Oklahoma City, Oklahoma 73152
Ph: (405) 522-2100; Fax: (405) 521-4150
E-mail: kyle.vazquez@occ.ok.gov
Attorney for the Public Utility Division
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:

"Clearinghouse" means the Military Aviation and Installation Assurance Siting Clearinghouse.

"Determination of No Hazard" means a document issued by the Federal Aviation Administration.

"FAA" means the Federal Aviation Administration.

"Mitigation plan" means a document issued by the Military Aviation and Installation Assurance Siting Clearinghouse.

"Project description-boundary" 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.

165:35-45-4. Notification of intent to build a wind energy facility and other notices
(a) The Within six (6) months of the initial filing with the FAA, the owner of a wind energy facility shall electronically submit notification of intent to build a facility to the Commission within six (6) months of the initial filing pertaining to commencement of construction with the FAA of an FAA Form 7460-1 (Notice of Proposed Construction or Alteration) or any subsequent form required by the FAA. Such notification shall be submitted to the PUD Director, and shall include any and all Notices of Proposed Construction, or Alteration required to be filed with the FAA concerning a specific wind energy facility to the PUD Director all initial 7460-1 forms for all individual wind turbines or any other individual structure that requires a FAA Form 7460-1 that is part of a wind energy facility, an attestation of compliance with the provisions of 17 O.S. § 160.20 (A), and a map of the project boundary. Within thirty (30) days of the initial filing with the FAA, the owner of a wind energy facility shall submit copies of all initial 7460-1 forms for individual wind turbines and other individual structures that require a 7460-1 that are part of a wind energy facility to the Aeronautics Commission.

(b) 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 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. Movement within the original description will not require the notice process to start over. However, subsequent to submissions under (a) above, copies of FAA submissions for individual turbine modifications, additional turbines, or renewals shall be submitted to PUD within thirty (30) calendar days of submission to the FAA. If, during or after construction of an individual turbine, the FAA requires the developer to submit subsequent FAA filings, the developer shall submit all such subsequent submissions at the time the wind energy facility's first annual report is submitted.
(d) The owner of the wind energy facility shall send copies of the notification with 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 submission 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 sent to the governing body of the municipality within twenty-four (24) hours of submission with the Commission.

(e) Within thirty (30) calendar days of submitting the notification, as described above in (a), to the PUD Director, the owner of the wind energy facility shall cause a copy of the notification to be submitted to the Oklahoma Strategic Military Planning Commission. Subsequent 7460-1s required to be filed shall also be submitted to the Oklahoma Strategic Military Planning Commission at the same time as submission to the PUD Director. When the Oklahoma Strategic Military Planning Commission submits its letter to the Clearinghouse, such letter shall be submitted at the same time to the PUD Director and the owner of the wind energy facility.

(f) 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.

(g) Within sixty (60) calendar days of publishing the notification in a newspaper as provided for in subsection (f) 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. 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.

(f) If the owner of a wind energy facility is required to file subsequent 7460-1 forms with the FAA due to changing locations or heights of individual structures from the locations or heights originally proposed in the initial 7460-1 forms submitted to the Oklahoma Aeronautics Commission, the owner shall, within ten (10) calendar days of filing with the FAA, submit such subsequent 7460-1 forms to the Corporation Commission and Aeronautics Commission. A wind energy facility owner shall not be required to start the notification processes over unless the subsequent 7460-1 forms expand the project beyond its original project boundary submitted to the Corporation Commission.

(h) 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 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, per violation, following hearing and issuance of a final order of the Commission.

(i) Subsequent to submitting the notification, as described above in (a), Determinations of No Hazard issued by the FAA, or approved mitigation plans issued by the Clearinghouse shall be submitted to the PUD Director by the owner of a wind energy facility as follows:

1. Within thirty (30) calendar days of receipt of an active Determination of No Hazard issued by the FAA; or
(2) Within thirty (30) calendar days of receipt of an approved mitigation plan from the Clearinghouse.

(3) Any Determination of No Hazard or mitigation plan issued prior to the initial submission of the notification described above in (a) shall be submitted to the PUD Director by the owner of a wind energy facility within thirty (30) calendar days of such initial notification submission.

(h) No individual wind turbine or any other individual structure that requires a FAA 7460-1 form that is part of a wind energy facility may be constructed or expanded unless there is an active Determination of No Hazard from the FAA and adverse impacts to the United States Department of Defense, pursuant to Title 32 of the Code of Federal Regulations, Section 211.6, have been resolved as evidenced by documentation from the Clearinghouse for the individual wind turbine or other individual structure. The Mission Compatibility Certification Letter or successor form may serve as such evidence of adverse impacts being resolved with the Department of Defense or successor agency. Determinations of No Hazard and documentation of the resolution of adverse impacts to the Department of Defense shall be submitted by the owner of a wind energy facility to the Corporation Commission and the Aeronautics Commission.

(i) If an owner of a wind energy facility fails to submit an active Determination of No Hazard and documentation that adverse impacts to the Department of Defense have been resolved by the Clearinghouse for the individual turbine or other individual structure prior to the start of construction, the owner shall be subject to an administrative penalty not to exceed One Thousand Five Hundred Dollars ($1,500.00) per day, per violation from the Corporation Commission.

(j) All notices, notifications, Determinations of No Hazard, mitigation plans, and proof of compliance with all provisions of the Oklahoma Wind Energy Development Act, shall be retained by the wind energy developer, for a period of three (3) years after commercial operation date; and, upon reasonable request, PUD may inspect these documents to ensure compliance.

(k) The owner of a wind energy facility shall electronically provide a notice to the PUD Director indicating that it has commenced the 60-day notice as required by 17 O.S. § 160.21(F). Such notice shall be sent to the PUD Director prior to commencement of construction of the wind energy facility. The notice to the PUD Director shall also include an affirmation that all required notices and notifications have been properly provided, and a list of the recipients of all required notices and notifications shall be retained by the wind energy developer and made available to PUD upon reasonable request.

(l) All submissions shall be submitted electronically to PUD, unless prior approval is granted by the PUD Director.

165:35-45-5. Commission consideration

(a) 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. § 160.20 or 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 regarding notice of intent to construct or in 17 O.S. § 160.20 or 17 O.S. § 160.21, PUD will:

(1) Determine whether the report or submission is compliant with the annual reporting or notice requirements; and
(2) Inform the wind energy facility owner or operator of PUD's determination within thirty (30) calendar days of receipt of the report or submission if it is not in compliance. In the event PUD determines the wind energy facility's report or submission is not in compliance, 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, PUD may reject the report or submission and may open an investigation to inquire further into the reported or submitted information.