RULEMAKING ACTION:
EMERGENCY adoption

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]

AUTHORITY:
Corporation Commission; Article IX, Section 18 of the Oklahoma Constitution; 17 O.S.
§§ 160.11 et seq.

COMMENT PERIOD:
August 6, 2019 through August 20, 2019

PUBLIC HEARING:
August 20, 2019

ADOPTION:
August 20, 2019

EFFECTIVE:
Immediately upon Governor's approval.

EXPIRATION:
Effective through September 14, 2020, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

FINDING OF EMERGENCY:
These rules are needed on an emergency basis 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.

GIST/ANALYSIS:
The purpose of the proposed emergency rules is to address changes to the Oklahoma Wind Energy Development Act, which was amended by House Bill 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.

CONTACT PERSON:
Kyle Vazquez, Assistant General Counsel, by telephone 405-522-2100, e-mail kyle.vazquez@occ.ok.gov, or to Jeff W. Kline, Deputy General Counsel, by telephone at (405) 521-2308, e-mail at jeff.kline@occ.ok.gov, or at Room 400, Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, or Post Office Box 52000, Oklahoma City, Oklahoma 73152-2000.
PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., § 253(F):

SUBCHAPTER 45. WIND ENERGY

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)(e) 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)(d) 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. The proof of publication 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.

(g)(e) 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 fellows:
(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.
ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of amendments to Chapter 35. Electric Utility Rules, which were adopted by the Oklahoma Corporation Commission on August 20, 2019 under emergency rulemaking provisions of the Administrative Procedures Act, 75 O.S., §§ 250 et seq.

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

[Signature]

Travis Weedn
Rules Liaison
OKLAHOMA CORPORATION COMMISSION
August 30, 2019
NAME OF AGENCY: Corporation Commission
TYPE OF DOCUMENT: Adoption of Emergency Rules

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 Weedn
Rules Liaison
OKLAHOMA CORPORATION COMMISSION
August 30, 2019
Administrative Rules

* Indicates a required field.

**Rule Type:** Emergency

**Reason for Emergency:**
These rules are needed on an emergency basis due to the passage of HB 223, which modified the Oklahoma Wind Energy Development Act. Further, PUD believes that the proposed changes are necessary to protect the public health, safety and welfare, avoid serious prejudice to the public interest, and protect our national security.

**Adoption Date:** 08/20/2019

**Title Number:** 165

**Chapter Number:** 35

**Sub Chapters:**

**Agency Name:** Corporation Commission, Oklahoma - OCC

**Mailing Address 1:** 2101 N. Lincoln Blvd

**Mailing Address 2:** Jim Thorpe Bldg

**City:** Oklahoma City

**State:** OK

**Zip:** 73105

**Public Comment:**
Only one set of public comments were filed during this rulemaking process by the Oklahoma Aeronautics commission on August 15, 2019. Those comments were incorporated into the final emergency rules.

**Rule Impact:**

2118 may increase compliance costs for the
Oklahoma Aeronautics Commission and the Military Aviation and Installation Assurance Siting Clearinghouse, these emergency rules are not expected to increase the costs of either the Aeronautics Commission or the Clearinghouse. Further, as stated previously, PUD will incur increased costs due to the requirements in HB 2118 and these emergency rules. The proposed emergency rules do not propose any fee changes.

*Reason for Rule:

The purpose of the proposed emergency rules is to address changes to the Oklahoma Wind Energy Development Act, which was amended by House Bill 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.

*Statutory Authority to promulgate the rules:

Article IX, Section 18 of the Oklahoma Constitution; 17 O.S. Sec. 160.11 et seq.

*Establishes or increases fees?  Yes  No

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