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 201900004

PUD'S PROPOSED EMERGENCY RULES AMENDING CHAPTER 35

(Changes since August 5, 2019 are highlighted in yellow)

TITLE 165. 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 TOU.

Notes: No changes proposed in this Subsection.

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

On or before March 1 of each year, each wind energy facility owner or operator shall submit information required by PUD. This submission shall provide to 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 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, and an attestation indicating that setback and notice requirements have been complied with.
(5) For those wind energy facility components that are otherwise subject to the rules applicable to the annual reports of TOUs, this Subchapter does not require duplicative reporting.
(6) Electronic submission is preferred; however, all forms of submission will be accepted.

Notes: No changes proposed in this Subsection.

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.

(c) 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.

(h) 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.

(i) 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.

(j) 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.

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 in wind energy facility causes.
(b) The Commission shall make a determination of the estimated costs of 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.

Notes: No changes proposed in this Subsection.

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, 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.

Notes: No changes proposed in this Subsection.