

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **HARDIN**)
WIND ENERGY LLC for a Certificate to Site a)
 Wind-Powered Electric Generation Facility in)
 Hardin County, Ohio)

Case No. 09-479-EL-BGN

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**SUPPLEMENTAL INFORMATION OF HARDIN WIND ENERGY LLC
 REGARDING
 CONSTRUCTION PHASING FOR HARDING WIND FARM
 AND REQUEST FOR STAFF CONSIDERATION OF TWO-PHASED CONSTRUCTION**

Hardin Wind Energy LLC ("Hardin Wind" or "Applicant"), respectfully provides the information below to the Ohio Power Siting Board ("Board").

In the late summer of 2009 the United States Fish and Wildlife Service ("USFWS") informed a representative of Hardin Wind that a single male Indiana bat had been captured in an area outside the Hardin Wind Farm Project Area boundary, about a mile away from the southwest corner of the project boundary. Hardin Wind offered to perform a formal habitat assessment and risk analysis within the Project Area. The report was provided to both USFWS and Ohio Department of Natural Resources ("ODNR") in September 2009.

Several weeks ago in October 2009, subsequent to the filing of the Amended Application on September 18, 2009, and receipt of the Completeness letter on October 9, 2009, representatives of Hardin Wind met with representatives of the USFWS. In this meeting USFWS representatives stated that they were concerned about potential impact to the Indiana bat from operating wind turbines constructed within a five mile area around the captured male Indiana bat. In response to this concern, USFWS recommended that Hardin Wind pursue either an Incidental Take Statement ("ITS") or an Incidental Take Permit prior to the construction of the few wind turbines that are located within 5 miles of the captured Indiana bat.

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USFWS representatives suggested that an ITS process would be the more efficient administrative route and would offer the least disruption to the project schedule. An ITS is issued as part of Section 7 of the Endangered Species Act ("ESA"): consultation with a federal agency as part of *that agency's* issuance of a permit. The specific federal permit involved for the Hardin Wind Farm is a United States Army Corps of Engineers ("USACE") Nationwide Permit ("NWP") #12 – a permit to install fill associated with culverted access roads in federally regulated streams.

During the meeting, USFWS representatives noted that they had no concerns about impact to Indiana bats outside of this 5 mile buffer – an area representing over 75% of the wind turbines in the Hardin Wind Farm. At that meeting, Hardin Wind agreed to structure construction on the project in two phases, the first being the 156 wind turbines outside of the 5 mile buffer and the second phase consisting of the 47 wind turbines inside of the 5 mile buffer. By delaying construction of the second phase until ESA Section 7 consultation could be completed, Hardin Wind is taking a proactive step to ensure that a proper evaluation of impacts to an endangered species will be performed.

Immediately after these discussions, representatives of the Hardin Wind contacted the Board Staff with a brief explanation of the new development. A meeting was scheduled with Board Staff on November 4, 2009 in order to provide the Board Staff with as many details as available at that time. Following this meeting, a telephone conference attended by representatives of USFWS, USACE, and Board Staff was held on November 12, 2009 with the goal of discussing the process of applying for a NWP and incorporating the comments of the various agencies into the issuance of the NWP and the ITS. During the telephone conference, representatives of USACE agreed that a two-phase approach would be acceptable for its NWP process.

The Indiana bat development was entirely unforeseen since no Indiana bats were found in the Hardin Wind Project Area during the mist net surveys and the additional studies required by USFWS will likely necessitate adjustments only in the project's construction timing. These studies will be costly, and pertinent to the construction schedule, they can only be conducted in the spring and summer of 2010, well after Applicant had expected that the proceedings in this case would have come to conclusion and construction would have begun.

As has been emphasized in other pleadings, Hardin Wind is on an aggressive schedule to complete construction and have this project in operation no later than December 31, 2010. Thus in order to conduct the studies, as requested by USFWS and ODNR, and to complete the USACE NWP process, the originally anticipated construction of the entire project area beginning in the spring of 2010 could not proceed. Instead, a small portion of the wind farm would have to be deferred for a relatively short time.

The second phase of the wind farm comprises only approximately 10,000 acres of the entire Project Area of approximately 39,000 acres and only 47 turbines of the 200 turbines are proposed to be located in the second phase of the wind farm.

In issuing a Certificate, the Board, since its inception, has consistently conditioned construction of a certificated project, to commence within 5 years of the issuance of a certificate. Hardin Wind will meet this requirement. Indeed Hardin Wind intends to begin construction of the first phase in 2010 and of the second phase in 2011 after the consultation has been completed and, as necessitated by the conclusions of any study, any necessary modifications have been made to its current plans. Thus, though the timing of the construction of the entire project changes somewhat by using a two-phase construction commencement, rather than one, the second construction commencement will occur such that there will be a continuous course of construction beginning with the first phase and proceeding to the second phase of construction. Thus the substance of the Amended Application filed by Hardin Wind remains the same.

Recognizing that the ITS process may necessitate some modifications, Hardin Wind proposes that the Board Staff add appropriate conditions to the certificate to take into account the changes that will be requested by USFW and/or ODNR. The details of the NWP permitting process and associated consultation, the ITS and the recommendations for changes, if any, would be shared with the Board Staff. Hardin Wind intends to continue to work cooperatively with USFWS, ODNR, USACE, the Board and its Staff with respect to the ITS conclusions and any modifications to its project that may be required. An appropriate condition to a certificate grant could be framed that would satisfy the Board's responsibility with respect to issuing a certificate.

Therefore, Hardin Wind Energy LLC requests the Board Staff to (1) consider the two-phase construction approach as it makes its investigation and recommendations; (2) continue its investigation of the Amended Application on the time schedule that has been established, that is, that a Staff Report be issued as anticipated, 15 days in advance of the local and evidentiary public hearings set for January 5, 2010 and January 12, 2010, respectively; and (3) maintain the hearings dates as originally set.

Respectfully submitted on behalf of
HARDIN WIND ENERGY LLC



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Supplemental Information of Hardin Wind Energy LLC regarding Construction Phasing for Harding Wind Farm and Request for Staff Consideration of Two-Phased Construction was served upon the following parties of record via regular U.S. Mail this 19th day of November, 2009.


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