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BEFORE
THE OHIO POWER SITING BOARD

FILE In the Matter of the Application of
HEARTLAND WIND, LLC for a Certificate to
Site a Wind-Powered Electric Generation Facility
in Van Wert County, Ohio and Paulding County,
Ohio)

Case No. 09-1066-EL-BGN

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CLARIFICATION TO
MOTION FOR WAIVERS

On November 6, 2009, Applicant, Heartland Wind, LLC ("Heartland Wind" or "Applicant"), pursuant to Ohio Administrative Code ("OAC") Rule 4906-01-03 and Rule 4906-7-12(C), filed a motion for waiver with the Ohio Power Siting Board ("Board") to grant the following waivers on an expedited basis:

- (1) From the one-year notice period as set forth in Ohio Revised Code Section ("R.C.") 4906.06(A)(6);
- (2) From providing an extensive site selection study to the extent that Applicant is not able to describe all the specific information listed in the site selection criteria as set forth in OAC Rule 4906-17-04(A);
- (3) From providing map of vegetative cover as set forth OAC Rule 4906-17-05(A)(3)(g), and instead allow the Applicant to provide a general narrative description of the vegetative cover that may be disturbed during construction; and
- (4) From certain requirements relating to cross-sectional views and test borings set forth in OAC Rule 4906-17-05(A)(4), and instead allow the Applicant to submit this information once it determines the final location of turbines and other structures.

Representatives of Heartland Wind, having had discussions with Board Staff, believe that two of its waiver requests should be clarified by including additional information: the third and fourth request for waivers, pertaining to OAC Rule 4906-17-05 (A)(3)(g) vegetation cover information and OAC Rule 4906-17-05(A)(4) pertaining to cross sectional view and test borings.

With respect to the third waiver request, OAC Rule 4906-13-04(A)(3) requires Heartland Wind to submit a map showing, among other things, the vegetative cover that may be removed

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during construction. Applicant will also give a general description and provide a drawing of the vegetation that would be cleared in the Project area, (i.e., the disturbed area). However, an attempt to provide this detailed information for the massive acreage that comprises the Project area plus a five-mile buffer would be cost prohibitive. In light of the fact that Applicant will provide the vegetation information within the limited disturbance area, additional data would serve no useful purpose because the Board and Staff will have the relevant data for the impacted areas. Moreover, greater than 95% of the surface vegetation is agricultural land consisting predominantly of soybean, alfalfa and corn. Therefore Heartland Wind proposes to provide in its application a **general** narrative description of the vegetative cover within the Project area and will estimate the quantity of specific vegetation that may be disturbed or removed during construction.

A similar waiver from this subsection was granted in a recent wind case, *In the Matter of the Application of Buckeye Wind LLC for a Certificate to Construct Wind Powered Electric Generating Facilities in Champaign County, Ohio*, Case No. 08-666-EL-BGN, Entry (July 31, 2009).

The fourth waiver request pertained to cross-sectional views and test borings. In reviewing the application instructions for OAC Rule 4906-17-05 (A)(4), Heartland Wind representatives noted that “maps and corresponding cross-sectional view(s) showing geological features of the proposed project area and the location of test borings” are required. Heartland Wind has selected 18 sites which it believes to be representative of the type of areas where turbines, access roads and ancillary wind facilities will be located. It has chosen these sites where six borings were made and twelve Cone Penetration Tests were performed. Cross sectional views will be provided based upon the results of those tests.

Heartland Wind plans to perform geological tests (either bores or Cone Penetration Tests) at each of the final turbine location sites later in the process. As part of the final engineering design process, the results of the geological tests and cross sections will be provided to the Board

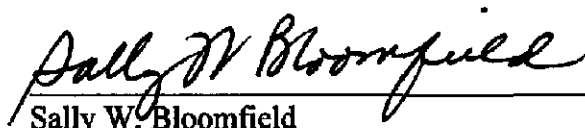
Staff at a reasonable time prior to construction in accordance with Finding No. 66 of the Opinion and Order in Case No. 08-1024-EL-ORD, issued October 28, 2008.

Heartland Wind requested a waiver of this requirement because its representatives were not certain of the scope of the geological tests and cross sectional views the Board Staff expected to be included in the application. As mentioned above, Heartland Wind has made 18 geological tests at locations representative of the wind facility locations and will provide cross sectional views based upon these.

If the 18 test locations and cross sectional views meet the requirements of the rule, Heartland Wind's waiver request on this requirement is unnecessary. However, to the extent that the rule requires more information and more cross sectional views than described above, Heartland Wind requests the waiver from Rule 4906-17- 05(A)(4). This type of boring and cross sectional view waiver with was granted in *In the Matter of the Application of JW Great Lakes, LLC, for a Certificate to Construct a Wind Powered Electric Generating Facility in Hardin County, Ohio*, Case No. 09-277-EL-BGN, Entry (September 18, 2009).

WHEREFORE, Applicant respectfully requests that the Board consider these clarifications to the four waiver requests filed on November 6, 2009 and waive the requirements set forth above and grant such other and further relief to which it may be entitled.

Respectfully submitted on behalf of
HEARTLAND WIND, LLC



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