

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the
Application of Hardin :
Wind Energy, LLC for a :
Certificate to Site a : Case No. 09-479-EL-BGN
Wind Powered Electric :
Generation Facility in :
Hardin County, Ohio. :

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Rebecca Hussey,
Administrative Law Judges, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-C,
Columbus, Ohio, called at 10:00 a.m. on Tuesday,
January 12, 2010.

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7 On behalf of the Applicant.

8 Richard Cordray, Ohio Attorney General
9 Duane W. Luckey, Section Chief
10 Public Utilities Section
11 By Mr. Werner L. Margard III
12 Mr. John H. Jones
13 Assistant Attorneys General
14 180 East Broad Street, 9th Floor
15 Columbus, Ohio 43215-3793

16 On behalf of the staff of the Public
17 Utilities Commission of Ohio.

18 Richard Cordray, Ohio Attorney General
19 By Ms. Lauren C. Angell
20 Mr. Sam Peterson
21 Assistant Attorneys General
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23 30 East Broad Street, 25th Floor
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25 On behalf of the Ohio Environmental
Protection Agency and the Ohio
Department of Natural Resources.

- - -

INDEX

- - -

WITNESSES

PAGE

Nazre G. Adam

Direct examination by Ms. Bloomfield 9

Tim Burgener

Direct examination by Mr. Jones 19

- - -

JOINT EXHIBIT

ID'D REC'D

1 - Stipulation and Recommendation 9 24

COMPANY EXHIBITS

ID'D REC'D

1 - Application 7 24

2 - Amended application 7 24

3 - Proof of service 7 24

4 - Proof of publication 8 24

5 - Second proof of publication 8 24

STAFF EXHIBIT

ID'D REC'D

1 - Staff Report of Investigation 8 24

- - -

1 Tuesday Morning Session,
2 January 12, 2010.

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4 ALJ PRICE: Let's go on the record. Good
5 morning. The Ohio Power Siting Board has set for
6 hearing at this time and this place case number
7 09-479-EL-BGN, being In the Matter of the Application
8 of Hardin Wind Energy, LLC for a Certificate to Site
9 a Wind Powered Electric Generation Facility in Hardin
10 County.

11 My name is Gregory Price. With me is
12 Rebecca Hussey. We are the administrative law judges
13 assigned to preside over today's hearing.

14 Before we take appearances I believe we
15 have a motion from the staff.

16 MR. MARGARD: Yes. Thank you, your
17 Honor. Warner Margard on behalf of the Board staff.
18 I would like to represent to the Bench that the
19 parties have been successful in their discussions in
20 attempting to reach a settlement of this case.
21 Unfortunately, the final details on the stipulation
22 are not quite complete.

23 The parties anticipate that they will be
24 able to reach complete agreement on all terms of the
25 stipulation within the hour and request the Bench's

1 indulgence to permit them to be able to provide a
2 complete and final stipulation at that time.

3 ALJ PRICE: We would be happy to do so,
4 therefore, we will grant a one-hour continuance until
5 11 o'clock. Thank you all.

6 MR. MARGARD: Thank you, your Honor.

7 ALJ PRICE: Off the record.

8 (Recess taken.)

9 ALJ HUSSEY: Let's go back on the record.
10 We will begin by taking appearances on behalf of the
11 parties. Let's begin with the company.

12 MS. BLOOMFIELD: On behalf of Hardin Wind
13 Energy, LLC the law firm of Bricker & Eckler, LLP,
14 Sally W. Bloomfield and Matthew W. Warnock, 100 South
15 Third Street, Columbus, Ohio 43215.

16 ALJ HUSSEY: Thank you very much.

17 MR. JONES: Your Honor, on behalf of the
18 staff of the Ohio Power Siting Board, Ohio Attorney
19 General Richard Cordray, Assistant Attorneys General
20 Werner Margard III and John Jones, 180 East Broad
21 Street Columbus, Ohio, and;

22 MS. ANGELL: On behalf of the staff of
23 the Ohio Environmental Protection Agency, Lauren
24 Angell, Assistant Attorney General, and Sam Peterson,
25 Assistant Attorney General, 30 East Broad Street,

1 25th floor, Columbus, Ohio 43215.

2 ALJ HUSSEY: Thank you very much.

3 MS. BLOOMFIELD: Your Honor, the attorney
4 for the Ohio Farm Bureau Federation was not able to
5 be here but he did authorize my signature on the
6 stipulation which we will submit later in this
7 proceeding.

8 ALJ HUSSEY: Okay. Thank you very much.

9 Additionally, prior to this date we
10 hadn't ruled on the intervention of the Ohio Farm
11 Bureau, and I just wanted to formally grant that
12 intervention at this point.

13 MS. BLOOMFIELD: Thank you, your Honor.

14 ALJ HUSSEY: I believe there's some
15 procedural matters to address at this point, so if
16 you would like to present them, Hardin Wind Energy.

17 MS. BLOOMFIELD: Yes, your Honor.

18 Your Honor, we have some exhibits. If we
19 could have Company Exhibit 1, which is the
20 application that was previously -- actually, it's the
21 amended application and it was filed on September
22 18th.

23 ALJ HUSSEY: And that's the September
24 18th amended application?

25 MS. BLOOMFIELD: Yes, your Honor.

1 ALJ HUSSEY: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MS. BLOOMFIELD: And then Exhibit 2, this
4 was the proof of service showing that the application
5 was served on the local public officials and the
6 libraries, and this was file stamped -- actually, if
7 this could be Company Exhibit 3 so 2 will match the
8 stipulation. This was file stamped on June 23rd,
9 2009. And I do have several copies of those.

10 ALJ HUSSEY: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. BLOOMFIELD: And then the proof of
13 service as Company Exhibit 2 of the amended
14 application, service on the local public officials
15 and the libraries.

16 ALJ HUSSEY: And what is the date on
17 that? Do you have a date?

18 MS. BLOOMFIELD: Yes, October 9th.

19 ALJ HUSSEY: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MS. BLOOMFIELD: And the proofs of
22 publication for the publications filed on October
23 26th in the two newspapers, that would be Company
24 Exhibit 4, that was filed on October 26th.

25 ALJ HUSSEY: 2009?

1 MS. BLOOMFIELD: 2009.

2 ALJ HUSSEY: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MS. BLOOMFIELD: And on January 4th the
5 second proof of publication was filed and we would
6 like to mark that as Company Exhibit 5.

7 ALJ HUSSEY: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. BLOOMFIELD: That's it, your Honor.

10 ALJ HUSSEY: Okay. Staff.

11 MR. JONES: Yes, your Honor. I'd like to
12 have marked as the Staff Report of Investigation that
13 was filed in the docket on December 21st, 2009, in
14 this case, we'd like to mark it as Staff Exhibit 1.

15 ALJ HUSSEY: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. JONES: And we would like to also
18 have marked the Joint Stipulation and Recommendation
19 as Joint Exhibit 1.

20 ALJ HUSSEY: That was filed today?

21 MR. JONES: Yes, your Honor, that was
22 filed today.

23 ALJ HUSSEY: Okay, January 12th, 2010.
24 It will be so marked.

25 MR. JONES: Thank you.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 ALJ HUSSEY: Company, would you like to
3 call your first witness?

4 MS. BLOOMFIELD: Yes, your Honor. To
5 support the stipulation we would like to call Nazre
6 Adum to the stand.

7 ALJ HUSSEY: Please raise your right
8 hand.

9 (Witness sworn.)

10 ALJ HUSSEY: Thank you. Please be seated
11 and state your name and business address.

12 THE WITNESS: My name is Nazre G. Adum,
13 51 Monroe Street, Suite 1604, Rockville, Maryland.

14 - - -

15 NAZRE G. ADUM

16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Ms. Bloomfield:

20 Q. By whom are you employed?

21 A. I'm employed by Invenergy, LLC. Hardin
22 Wind Energy is an affiliate of Invenergy, LLC.

23 Q. What is your position?

24 A. I'm a director of Business Development.

25 Q. And what is your role with respect to the

1 application before the Ohio Power Siting Board?

2 A. I'm responsible for managing the
3 preparation of the application, including retaining
4 consultants and coordinating their work, as well as
5 for the design of the project and for the overall
6 development budget of the Hardin Wind Farm located in
7 Hardin County, Ohio.

8 Q. Mr. Adum, were you present at the local
9 public hearing set by the Ohio Power Siting Board for
10 this application held in Kenton, Ohio, on the evening
11 of January 5th?

12 A. Yes, I was.

13 Q. And please indicate the purpose of your
14 testimony today.

15 A. I would like to provide summary
16 background for the proposed project which is the
17 subject of the application, but more importantly to
18 respond to several comments that were made at the
19 Kenton, Ohio, local public hearing on January 5th,
20 2010.

21 Q. Would you provide the general background
22 first, please.

23 A. The project is located in Hardin County,
24 west of the city of Kenton, and encompasses portions
25 of Cessna, Marion, Lynn, McDonald, Roundhead, and

1 Taylor Creek townships. The project area consists of
2 approximately 36,000 acres of primarily agricultural
3 land, of which about 20,000 acres have been leased
4 for the wind farm.

5 The wind farm will have up to 200 wind
6 turbines, each with a nameplate capacity of
7 1.5 megawatts or 1.6 megawatts. We will generate up
8 to 300 megawatts of electricity. Construction will
9 involve at least two separate phases. Once
10 construction has begun, there may be occasional
11 stoppages in between separate phases.

12 Q. Were you present at the Kenton hearing
13 when Mr. Michael Smith, the Hardin County Engineer,
14 testified?

15 A. Yes, I was.

16 Q. And would you briefly describe the
17 discussions that representatives of Hardin Wind
18 Energy, LLC have had with representatives of
19 Mr. Smith's office?

20 A. Yes. There have been many discussions
21 about road issues with representatives of the Hardin
22 County Engineer's office and the company beginning in
23 2008 in which Mr. Smith and the assistant county
24 engineer, Luke Underwood, were present. Our
25 representative initiated the discussion about the

1 traffic and load weights involved with our
2 construction activities, the effect they will have on
3 Hardin County roads.

4 We suggested an agreement that will lay
5 out the process for establishing the conditions of
6 the roads prior to construction so that after
7 construction the company could restore the roads to
8 the same conditions as we found them.

9 Hardin Wind and the county engineer's
10 office have been mutually working on a road
11 agreement. This road agreement, amongst other
12 conditions, includes the following ten items:

13 One, preconstruction road conditions and
14 evaluations such as road coring plan;

15 Two, use of public right-of-ways;

16 Three, delivery routes;

17 Four, interface with ODOT and township
18 officials;

19 Five, liability insurance;

20 Six, financial assurance to be posted
21 with Hardin County Engineer's office;

22 Seven, interface with local emergency
23 management services;

24 Eight, protection of all public utilities
25 and county infrastructure;

1 Nine, traffic monitoring during
2 construction;

3 And ten, enforcement.

4 The agreement has not yet been signed,
5 but we expect to reach agreement within the next 90
6 days, before the commencement of construction. Some
7 of the matters mentioned by Mr. Smith, Mike Smith,
8 such as increasing road capacity for our
9 construction, are included in the proposed agreement.

10 In our discussions we have agreed to many
11 recommendations brought to our attention by
12 Mr. Smith's representatives. Of course, we recognize
13 that we must meet our obligation with respect to any
14 agreement we reach. We will also be complying with
15 all regulations of the county engineer's office with
16 respect to the use of the county roads.

17 We agree with Mr. Smith's comments that
18 Hardin Wind's relationship with his office has been
19 very cooperative and forthcoming, and we will
20 continue making positive progress with our host
21 community as part of our good neighbors effort.

22 Q. Do you have any response to the matter or
23 concerns mentioned by Mr. Ed Rogers at the Kenton
24 hearing?

25 A. Yes. First of all, Mr. Rogers and his

1 wife are the owners of about 7 acres near the planned
2 wind farm. Mr. Rogers' statements gave the
3 impression that there's some open questions that
4 property owners had. While we have made ourself
5 available to answer any questions from property
6 owners, we have not had any question from Mr. Rogers
7 about the wind farm. In fact, since the January
8 5th hearing we have been trying to contact
9 Mr. Rogers via telephone and by mail to discuss his
10 concerns about the project.

11 Mr. Rogers raised noise issues to
12 nonparticipating property owners. The stipulation
13 conditions 36 and 37 presented today addresses
14 maximum noise level for adjacent landowners.

15 Mr. Rogers mentioned interference with
16 microwave, radio, and television coverage as
17 potential concerns. In response to a staff data
18 request No. 48 the company provided detailed studies
19 prepared by Comsearch potential effects of the
20 proposed wind farm on microwave, AM, FM, and
21 television coverage in the project area.

22 Those studies show that with respect to
23 microwave there are eight microwave path. It
24 identified two potential obstructions with respect to
25 one of the microwave path. Whether obstructions

1 actually exist will have to be confirmed in a further
2 detailed study which the company will undertake prior
3 to developing the final turbine layout and
4 construction. To the extent that there was
5 interference, they could be cleared by adjustment to
6 the turbines, moving the turbine, and other
7 mitigation.

8 Comsearch also performed a study
9 regarding television reception interference, noting
10 that there were 17 television stations providing
11 programming to the project area. The study concluded
12 that in no case should any community lose all of its
13 now available TV channels, and in the case that there
14 will be a loss of certain channels, there are
15 mitigation measures such as cable hookups of direct
16 broadcast satellite that are available to cure the
17 issues.

18 In the event of an alleged coverage loss,
19 after verifying the loss the company will take
20 mitigative actions. The Comsearch report on AM and
21 FM potential interference concluded no impacts were
22 expected.

23 Mr. Rogers also expressed concerns about
24 the airport in the vicinity. Both the application
25 and the Staff Report addresses potential impacts on

1 aviation. The company sent its preliminary turbine
2 locations to the Federal Aviation Administration and
3 to the Ohio Department of Transportation Office of
4 Aviation and agreed that, once finalized, turbine
5 locations that changes will be sent to those agencies
6 for their review and approval prior to any
7 construction.

8 In addition, the company have agreed to
9 stipulation condition 43 that it will meet all
10 recommended and prescribed FAA and federal agency
11 requirements to construct an object that may affect
12 local and/or long-range radar and mitigate any
13 effects or degradation caused by wind turbines up to
14 and including removal of afflicting turbines.

15 We believe that we have considered all
16 the potential concerns raised by Mr. Rogers and
17 addressed them completely.

18 Q. Why do you believe the stipulation should
19 be accepted?

20 A. The stipulation essentially incorporates
21 the conditions recommended by the staff in its Staff
22 Report. We have had a number of conversations with
23 the staff about this stipulation including a
24 two-and-a-half hour face-to-face meeting, an hour and
25 a half conference call, and a number of other

1 telephone conversations. These conversations have
2 been candid and respectful of differing viewpoints
3 and the negotiations have been held in good faith.

4 Eventually these conversation have led to
5 some modifications of the initially-proposed
6 conditions. The company believe that the stipulated
7 conditions make our responsibilities more clear and
8 also clarify some of the processes that are to be
9 followed as we move forward to construction and
10 operation.

11 Because of the cooperation of the staff
12 we believe that the conditions set forth in the
13 stipulation represent an improvement of the set of
14 conditions originally presented in the staff report.
15 We think both the project and the public will be
16 better served through the approval of the conditions
17 set forth in the stipulation filed today.

18 Speaking for the company, we have very
19 much appreciated the staff receptivity to our
20 concerns and their willingness to work out solutions
21 satisfactory to the parties. The staff, the Ohio
22 Farm Bureau, and Hardin Wind Energy, LLC have agreed
23 that the conditions in the stipulation are reasonable
24 and jointly recommend the conditions as well as the
25 entire stipulation to the Board for its approval.

1 Q. Does this conclude your testimony?

2 A. Yes, it does.

3 ALJ HUSSEY: Thank you. Does any other
4 party have any questions for the witness?

5 MR. JONES: No questions, your Honor.

6 ALJ HUSSEY: Okay. I have one brief
7 question. Was the Farm Bureau involved in the
8 conversations and negotiations that you referenced
9 earlier?

10 THE WITNESS: Yes, they were.

11 ALJ HUSSEY: Yes, okay. Thank you very
12 much. You're excused.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 ALJ HUSSEY: Any further witnesses from
16 any party?

17 MS. BLOOMFIELD: Not from us, your Honor.

18 MR. JONES: Your Honor, staff would like
19 to call Tim Burgener to the stand, please.

20 ALJ HUSSEY: Please raise your right
21 hand.

22 (Witness sworn.)

23 ALJ HUSSEY: Please be seated and state
24 your name and business address.

25 THE WITNESS: My name is Tim Burgener.

1 Address is 180 East Broad Street, Columbus, Ohio
2 43215.

3 - - -

4 TIM BURGNER

5 being first duly sworn, as prescribed by law, was
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 By Mr. Jones:

9 Q. Mr. Burgener, where are you employed?

10 A. The Public Utilities Commission of Ohio
11 in the Facilities Siting and Environmental Analysis
12 Division of the Department of Energy and Environment.

13 Q. And what are your job duties and
14 responsibilities in that department?

15 A. I primarily deal with land use issues
16 associated with filings before the Ohio Power Siting
17 Board and geographic information systems.

18 Q. How long have you been employed in that
19 position?

20 A. Since August of 2004.

21 Q. And what involvement have you had in this
22 case, the Hardin Wind Farm Energy application?

23 A. I was responsible for coordinating the
24 Power Siting Board's staff review of the application
25 and compiling the staff report.

1 Q. So you took part in the investigation of
2 this case?

3 A. Yes.

4 Q. And as a result of that investigation
5 there was a Staff Report of Investigation that was
6 generated from that investigation?

7 A. Yes.

8 Q. And is that report that you made from
9 that investigation, is that entailed in Staff Exhibit
10 1 before you?

11 A. Correct.

12 Q. And do you have any corrections to make
13 to Staff Exhibit 1?

14 A. I have just one correction. On page 36
15 of the Staff Report under the heading that says
16 "Water," the first line should read "The applicant
17 has indicated that it will apply for the following
18 permits and plan." And we would delete the fourth
19 bullet point under that sentence that says "Ohio EPA
20 Notice of Intent."

21 Q. Any other changes to be made to Staff
22 Exhibit 1?

23 A. No.

24 Q. And now if you would refer to, I believe
25 there's a copy of Joint Exhibit 1, is that before you

1 as well?

2 A. Yes.

3 Q. And would you please describe Joint
4 Exhibit 1 for the record.

5 A. It's the joint stipulation and
6 recommendation.

7 Q. And what involvement did staff have in
8 preparing this joint stipulation and recommendation?

9 A. We were involved in all of the
10 discussions with the applicant and the Ohio Farm
11 Bureau Federation in making changes from the original
12 conditions that were in the Staff Report.

13 Q. So this Joint Exhibit 1, it has modified
14 some of the conditions in Staff Exhibit 1, the Staff
15 Report of Investigation?

16 A. Correct.

17 Q. And is it your opinion, then, that those
18 are approved recommended conditions that are being
19 made to the Board?

20 A. It is.

21 Q. And is it also your opinion that those
22 conditions as modified in Joint Exhibit 1 meet all
23 the statutory criteria under Revised Code 4906.10(A)?

24 A. Yes.

25 Q. And are there any changes to be made to

1 the Stipulation and Recommendation, Joint Exhibit 1?

2 A. There's one change on, I believe it's
3 page 13, it's condition 57, subcondition (a). The
4 first sentence should read "One set of engineering
5 drawings of the final project design, including all
6 turbine locations."

7 Q. Are there any other changes to be made to
8 Joint Exhibit 1?

9 A. No.

10 Q. And is it your opinion that this Joint
11 Exhibit 1 is reasonable and you're asking the Board
12 to approve this Joint Exhibit 1?

13 A. Yes.

14 MR. JONES: No further questions, your
15 Honor.

16 ALJ HUSSEY: Does any other party have
17 questions for the witness at this point?

18 MS. BLOOMFIELD: No.

19 ALJ HUSSEY: I have one question. Just
20 give me a moment to find in the stipulation where the
21 question was located.

22 If you'd refer to page 15, No. 5, it says
23 ". . . in The Ada Herold on December 34th, 2009."
24 I would assume that that isn't the date we want in
25 there. Do you happen to know if it's the 24th?

1 THE WITNESS: I'm not certain if it's the
2 24th or possibly the 14th.

3 ALJ HUSSEY: Okay. I don't have any
4 further questions for you at this time. You're
5 excused.

6 THE WITNESS: Thank you.

7 ALJ HUSSEY: Thank you.

8 (Witness excused.)

9 ALJ HUSSEY: Perhaps one of the attorneys
10 for the parties could speak to my question.

11 MS. BLOOMFIELD: Yes, your Honor. I'm
12 sorry, that was a typo. It should have been the
13 24th.

14 ALJ HUSSEY: The 24th.

15 MS. BLOOMFIELD: Yes, your Honor.

16 ALJ HUSSEY: Okay.

17 MS. BLOOMFIELD: I think that's indicated
18 on the proof of publication on that exhibit.

19 ALJ HUSSEY: Okay. Are there any other
20 exhibits that we need to consider?

21 MS. BLOOMFIELD: Not that I'm aware of,
22 your Honor.

23 MR. JONES: No, your Honor.

24 Your Honor, we would move for the
25 admission of all those exhibits, Staff Exhibit 1 and

1 Joint Exhibit 1.

2 MS. BLOOMFIELD: And I would move for the
3 company exhibits as well, your Honor.

4 ALJ HUSSEY: Any objections to any of the
5 exhibits?

6 MR. JONES: None, your Honor.

7 ALJ HUSSEY: They will all be admitted,
8 then.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 ALJ HUSSEY: Are there any further
11 procedural matters that we need to consider today?

12 MR. JONES: No, your Honor.

13 ALJ HUSSEY: No? Okay. Anything else to
14 come before us today?

15 MR. JONES: No, your Honor.

16 ALJ HUSSEY: Nothing, okay. This case is
17 submitted on the record and we are adjourned. Thank
18 you very much.

19 MR. JONES: Thank you.

20 (The hearing concluded at 1:02 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, January 12, 2010, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3492)

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 09-0479-EL-BGN

Summary: Transcript Transcript for Hardin Wind Energy hearing held on 01/12/10.
electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones,
Maria DiPaolo Mrs.