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BEFORE  
THE OHIO POWER SITING BOARD

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

JOINT STIPULATION AND RECOMMENDATION

**I. INTRODUCTION**

Applicant Heartland Wind, LLC ("Heartland" or "Applicant"), the Staff of the Ohio Power Siting Board ("OPSB Staff"), and the Ohio Farm Bureau Federation ("Farm Bureau")<sup>1</sup> at times collectively referred to as the parties, submit this Joint Stipulation and Recommendation ("Stipulation") for adoption by the Ohio Power Siting Board (the "Board" or "OPSB"). Ohio Administrative Code ("OAC") Rule 4901-1-30, provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below (the "Signatory Parties") and to recommend that the Board approve and adopt this Stipulation and Recommendation ("Stipulation"), as part of its Opinion and Order in this proceeding, resolving all matters pertinent to the certification and construction of a wind farm comprised of approximately 159 wind turbines with a nameplate capacity of approximately 2.0 MW each and other associated facilities (hereinafter referred to as the "Facility") and located in portions of Paulding and Van Wert County.<sup>2</sup>

This Stipulation meets the standards set forth by the Ohio Supreme Court in *Industrial Energy Consumers of Ohio Power Co. v. Pub. Util Comm.* (1994), 68 Ohio St.3d 559. It is

<sup>1</sup> The Ohio Farm Bureau Federation filed the only motion to intervene in this proceeding on January 7, 2010, which was granted by Entry dated March 2, 2010.

<sup>2</sup> The Facility is more fully described in Heartland's Application filed with the Board on December 21, 2009, and Application Supplement on March 31, 2010 (together, "Application"), in this proceeding.

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supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process to resolve all of the issues in this proceeding.

Since the Application was filed with the Board on December 21, 2009, and subsequently supplemented on March 31, 2010, the Parties have engaged in a number of settlement discussions related to the topics raised in the Staff Report issued by the Board Staff on June 23, 2010. This Stipulation represents the culmination of these discussions, and the Parties acknowledge that this agreement is amply supported by the record and thus is entitled to careful consideration by the Board. Accordingly, the parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Facility.

## **II. STIPULATION AND RECOMMENDATION**

### **A. Recommended Conditions**

The proposed project is located in Benton, Blue Creek and Latty townships in Paulding County as well as Tully, Union, and Hoaglin townships in Van Wert County. The entire project area includes approximately 44,500 acres of primarily agricultural land, of which the Applicant has leased about 17,000 acres for the Facility. The project itself involves the construction and operation of a wind farm comprised of approximately 159 wind turbines with a nameplate capacity of 2.0 MW each—thereby providing an aggregate generating capacity of up to 318 MW. Construction of the Facility will begin in the fall of 2010.

The parties recommend that the Board issue the Certificate of Environmental Compatibility and Public Need requested by Heartland subject to the following conditions:

- (1) That the facility be installed at the Applicant's proposed site as presented in the application filed on December 21, 2009, and as modified and/or clarified by the Applicant's supplemental filings.
- (2) That the Applicant shall utilize the equipment and construction practices as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in this Staff Report of Investigation.
- (3) That the Applicant shall implement the mitigative measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in this Staff Report of Investigation.
- (4) That prior to the commencement of construction, the Applicant shall obtain and comply with all applicable permits and authorizations as required by federal and state laws and regulations for any activities where such permit or authorization is required. Copies of permits and authorizations, including all supporting documentation, shall be provided to OPSB Staff within seven (7) days of issuance or receipt by the Applicant.
- (5) That the Applicant shall conduct a pre-construction conference prior to the start of any construction activities except those pertaining to Condition 56 (a), which the OPSB Staff shall attend, to discuss how environmental concerns will be satisfactorily addressed. OPSB Staff shall be notified of any modifications to the final project design at this time.
- (6) That at least thirty (30) days before the pre-construction conference, the Applicant shall file a letter with the Board that identifies which of the turbine models listed in the application has been selected.
- (7) That at least thirty (30) days before the pre-construction conference, the Applicant shall submit to the OPSB Staff, for review and approval, the final turbine foundation design for each turbine location.
- (8) That the concrete batch plant shall be located at the Stoneco quarry site, if available to the Applicant. At least thirty (30) days prior to the pre-construction conference, the Applicant shall submit to the OPSB Staff, for review and approval, the location of any concrete batch plant that will be temporarily built by the Applicant or its general contractor for construction of the facility.
- (9) That the Applicant shall not commence construction of the facility until it has a signed Interconnection Service Agreement or signed Interim Interconnection Service Agreement with PJM, which includes construction, operation, and maintenance of system upgrades necessary to reliably and safely integrate the proposed generating facility into the regional transmission system. Applicant shall provide a copy of the final, executed Interconnection Service Agreement to the OPSB Staff."
- (10) That at least thirty (30) days prior to the pre-construction conference and subject to OPSB Staff review and approval, the Applicant shall create and implement a complaint resolution procedure in order to address potential operational concerns experienced by

the public. The Applicant shall work to resolve any issues with those who file a complaint. Any complaint submitted must be immediately forwarded to the OPSB Staff.

- (11) That prior to construction, the Applicant shall conclude its ongoing archaeological and architectural survey work along with recommendations for avoidance or further study of archaeological and architectural resources in the project area. If the resulting survey work discloses a find of cultural or archaeological significance, or a site that could be eligible for inclusion in the National Register of Historic Places, then the Applicant shall submit an amendment, modification, or mitigation plan. Any such mitigation effort shall be developed in coordination with the Ohio Historic Preservation Office with input from the Paulding and Van Wert county commissioners, and submitted to OPSB Staff for review and acceptance.
- (12) That the Applicant shall develop a screening plan acceptable to OPSB Staff for the substations, O&M building, and potential concrete batch plant site along Fife Road.
- (13) That no commercial signage or advertisements shall be located on any turbine, tower, or related infrastructure. If vandalism should occur, the Applicant shall remove or abate the damage immediately to preserve the aesthetics of the project. Any abatement other than the restoration to pre-vandalism condition is subject to approval by OPSB Staff.
- (14) That the Applicant shall avoid, where possible, or minimize to the maximum extent practicable, any damage to field tile drainage systems and soils resulting from construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems shall be promptly repaired to at least original conditions at the Applicant's expense. Excavated topsoil shall be segregated and restored upon backfilling. Severely compacted soils shall be plowed or otherwise de-compacted, if necessary, to restore them to original conditions.
- (15) That at least seven (7) days before the pre-construction conference, the Applicant shall submit to OPSB Staff a copy of all NPDES permits including its approved Storm Water Pollution Prevention Plan (SWPPP), approved Spill Prevention Containment and Countermeasure (SPCC) procedures, and its erosion and sediment control plan for review and approval. Any soil issues must be addressed through proper design and adherence to the Ohio Environmental Protection Agency best management practices related to erosion and sedimentation control.
- (16) That the Applicant shall employ the following erosion and sedimentation control measures, construction methods, and best management practices when working near environmentally sensitive areas and/or when in close proximity to any watercourses, in accordance with the Ohio NPDES permit(s) and SWPPP obtained for the project:
  - (a) During construction of the facility, seed all disturbed soil, or employ another best management practice as provided for in the SWPPP, except within actively cultivated agricultural fields, within seven (7) days of final grading with a mixture acceptable to the appropriate County Cooperative Extension Service. Denuded areas, including spoils piles, shall be seeded and stabilized within seven (7) days, if they will be undisturbed for more than twenty-one (21) days. Re-seeding shall

be done within seven (7) days of emergence of seedlings as necessary until sufficient vegetation in all areas has been established.

- (b) Inspect and repair all erosion control measures after each rainfall event of one-half of an inch or greater over a twenty-four (24) hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.
  - (c) Delineate all watercourses, including wetlands, by fencing, flagging, or other prominent means.
  - (d) Avoid entry of construction equipment into watercourses, including wetlands, except at specific locations where construction has been approved.
  - (e) Prohibit storage, stockpiling, and/or disposal of equipment and materials in these sensitive areas.
  - (f) Locate structures outside of identified watercourses, including wetlands, except at specific locations where construction has been approved.
  - (g) Divert all storm water runoff away from fill slopes and other exposed surfaces to the greatest extent possible, and direct instead to appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.
- (17) That the Applicant shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities and no later than sixty (60) days after the start of commercial operation, unless otherwise directed by the landowner or unless removal is delayed by weather or the winter season. Impacted areas shall be restored to pre-construction conditions in compliance with the Ohio NPDES permit(s) obtained for the project and the approved SWPPP created for this project.
- (18) That the Applicant shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. All construction debris and all contaminated soil shall be promptly removed and properly disposed of in accordance with Ohio EPA regulations.
- (19) That the Applicant shall assure compliance with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
- (20) That the Applicant shall have (an) environmental specialist(s) on site during construction activities, including vegetation clearing, being performed in sensitive areas such as a designated wetland or stream, or in the vicinity of identified mussels (common or federal/state-listed) and threatened or endangered species or their identified habitat. The environmental specialist shall be familiar with water quality protection issues and able to either field-identify, or employ a qualified specialist to field-identify, mussels (common or federal/state-listed) and potential threatened or endangered species of plants and animals that may be encountered during project construction.

- (21) That, prior to construction, the Applicant shall submit a mussel relocation plan, as part of the frac-out contingency plan, for all HDD locations, to OPSB Staff and the DOW for review and approval. In this plan, the Applicant shall provide relocation methods, details on the relocation site(s), and establish post-relocation monitoring protocols. All mussel relocations shall be conducted by an ODNR-approved malacologist. Additionally, the Applicant shall submit a post-relocation monitoring report to OPSB Staff and the DOW for all mussel relocations that have occurred as a result of this project. Post-relocation monitoring shall be for two consecutive years at the recipient relocation site(s) to determine survivorship. The post-relocation monitoring report shall be submitted to OPSB Staff and the DOW by December 31 of each consecutive year for review. If OPSB Staff and the DOW, in coordination with the USFWS, determine that a significant adverse impact has occurred to mussels, then mitigation measures will be prescribed to the Applicant.
- (22) That the Applicant shall avoid tree cutting in high-quality forested wetlands (identified as WMAINCK and WMAINCF in Appendix V of the application), and will route the overhead line west of the abandoned railroad embankment adjacent to these wetlands.
- (23) That the Applicant shall not work in the types of streams listed below during fish spawning restricted periods (April 15 to June 30), unless a waiver is issued by the ODNR and approved by OPSB Staff releasing the Applicant from a portion of, or the entire restriction period.
- (a) Class 3 primary headwater streams (watershed < one mi<sup>2</sup>)
  - (b) Exceptional Warmwater Habitat (EWH)
  - (c) Coldwater Habitat (CWH)
  - (d) Warmwater Habitat (WWH)
  - (e) Streams potentially supporting threatened or endangered species
- (24) That prior to construction, the Applicant shall develop a post-construction avian and bat mortality survey plan for OPSB Staff and the ODNR in coordination with the USFWS for review and approval. The plan shall be implemented at the commencement of operation of the facility. The Applicant shall adhere to all avoidance, minimization, and mitigation measures approved by the OPSB Staff and the ODNR on coordination with the USFWS, as a result of review of the final post construction avian and bat mortality surveys.
- (25) That the Applicant shall place a 0.50-mile non-development buffer around the great blue heron rookery, located within the northwest corner of the project area, to minimize direct and indirect impacts. Additionally, the Applicant shall avoid staging or operating machinery within the 0.50-mile buffer during the great blue heron breeding season (February 1 to July 1).
- (26) That the Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for removal of suitable Indiana bat habitat, if avoidance measures cannot be achieved.

- (27) That OPSB Staff, the ODNR, and the USFWS shall be immediately contacted if threatened or endangered species are encountered during construction and operation activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the Applicant, OPSB Staff, and the ODNR in coordination with the USFWS. If threatened or endangered species are encountered during operation activities, then only the above referenced notification is required. Nothing in this provision shall preclude agencies having jurisdiction over the facility with respect to threatened or endangered species from exercising their legal authority over the facility consistent with law.
- (28) That the Applicant shall not place permanent fill material within the 100-year floodplain in association with any turbine. The Applicant will place the following plan note in the final engineering drawings: "No permanent fill material will be placed within the limits of the 100-year floodplain."
- (29) That the Applicant shall conform to any drinking water source protection plan, if it exists, for any part of the facility that is located within drinking water source protection areas of the local villages and cities.
- (30) That the Applicant shall complete a full geotechnical investigation to confirm that there are no issues to preclude development of the wind farm. The geotechnical investigation shall include borings at each turbine location to provide subsurface soil properties, static water level, rock quality description (RQD) for 45 of the 159 turbines, percent recovery, and depth and description of the bedrock contact and recommendations needed for the final design and construction of each wind turbine foundation, as well as the final location of the transformer substation and interconnection substation. The Applicant must fill all boreholes, and borehole abandonment must comply with state and local regulations. The Applicant shall provide copies of all geotechnical boring logs to the OPSB Staff and to the ODNR Division of Geological Survey prior to construction.
- (31) That the Applicant shall comply with the turbine manufacturer's most current safety manual and standards, and shall maintain a copy of those safety manuals and standards in the O&M building of the facility.
- (32) That the Applicant shall become a member of the Ohio Utilities Protection Service prior to commencement of operation of the facility. Notification of membership shall be provided to OPSB Staff.
- (33) That at least thirty (30) days before the pre-construction conference, the Applicant shall submit to the OPSB Staff, for review, a fire protection and medical emergency plan, to be developed in consultation with the fire department(s) having jurisdiction over the area.
- (34) That the Applicant shall restrict public access to the site with appropriately placed warning signs or other necessary measures.
- (35) That the Applicant shall instruct workers on the potential hazards of ice conditions on wind turbines.

- (36) That the Applicant shall install and utilize an ice warning system that may include an ice detector installed on the roof of the nacelle, ice detection software for the wind turbine controller, or an ice sensor alarm that triggers an automatic shutdown.
- (37) That the Applicant shall relocate and/or resize turbines E4, 19, 30, 48, 128, 135, 137, and 147 to conform to a setback distance that equals 150 percent of the sum of the hub height and rotor diameter from roads and structures. At least thirty (30) days in advance of the preconstruction meeting that will be held with respect to Conditions 38 and 56(a), Applicant will submit for OPSB Staff review and approval, any required studies that changed due to resized turbines and/or turbine that are relocated elsewhere on the same parcels as proposed in the Application or Application Supplement.
- (38) That the Applicant shall provide the final delivery route plan and the results of any traffic studies to OPSB Staff, the Ohio Department of Transportation District 1 Office, and to the county engineers seventy-five (75) days prior to the delivery of any turbines. A pre-construction meeting shall be held sixty (60) days prior to the delivery of any turbines. The Applicant shall complete a study on the final equipment delivery route to determine what improvements will be needed in order to transport equipment to the wind turbine construction sites. The Applicant's study and delivery route plan shall consider, but not be limited to, the following:
- (a) Perform a survey of the final delivery routes to determine the exact locations of vertical constraints where the roadway profile will exceed the allowable bump and dip specifications.
  - (b) Identify locations along the final delivery routes where overhead utility lines may not be high enough for over-height permit loads and coordinate with the appropriate utility company if lines must be raised.
  - (c) Identify upgrades to any roads and bridges that are not able to support the projected loads from delivery of the wind turbines and other facility components.
  - (d) Describe the restoration of locations where wide turns may impact the road facilities and surrounding areas, and where any roads or bridges are damaged, to their original condition.
- (39) That the Applicant coordinate with both county engineers to optimize construction traffic routes and minimize impacts to local roads and bridges. The Applicant shall coordinate road needs and potential impacts to the county engineers on a daily basis during construction.
- (40) That the Applicant shall obtain all required county and township transportation permits and all necessary permits from ODOT. Any temporary or permanent road closures necessary for construction and operation of the proposed facility shall be coordinated with the appropriate entities including, but not limited to, the Van Wert and Paulding county engineers, ODOT, local law enforcement, and health and safety officials.

- (41) That the Applicant comply with all of the requirements of the county engineers on upgrading and/or repairing damage to roads and bridges caused by construction activity. Any roads and bridges that are not adequate for construction traffic must be improved to handle those loads. Any damage will be repaired promptly to its pre-construction state by the Applicant, under the guidance of the appropriate regulatory agency. Any temporary improvements will be removed unless the county engineer(s) request that they remain. The Applicant will provide financial assurance to the counties that it will restore the public roads it uses to their pre-construction condition. The Applicant will, in conjunction with the County Engineers, develop a compliance strategy that will contain three main components:
- (a) A pre-construction survey of the conditions of the roads.
  - (b) A post-construction survey of the condition of the roads.
  - (c) An objective standard of repair that obligates the Applicant to restore the roads to the same or better condition as they were prior to construction.
- (42) That any turbine forecasted prior to construction to exceed the ambient LEQ by greater than five dBA under any operating conditions at the exterior of any non-participating residence within one mile of the project area shall be subject to further study of potential impact and possible mitigation prior to construction. If required, the Applicant shall propose mitigation consisting of either reducing the impact so that the ambient LEQ is not exceeded by greater than five dBA, or other measures acceptable to OPSB Staff in consultation with the affected receptor(s).
- (43) That after construction, any turbine validly measured to exceed the ambient LEQ by greater than five dBA under any operating conditions at the exterior of any non-participating residence within one mile of the project area shall be subject to further review of the impact and possible mitigation. If required, the Applicant shall propose mitigation consisting of either reducing the impact so that the ambient LEQ is not exceeded by greater than five dBA, or other measures acceptable to OPSB Staff in consultation with the affected receptor(s).
- (44) That if the Applicant develops the project with any turbine other than the Gamesa G90-2.0 MW, it shall provide OPSB Staff an updated acoustic analysis at least thirty (30) days prior to the pre-construction conference and subject to OPSB Staff approval.
- (45) That construction activities shall generally be limited to daylight hours. This limitation shall not apply to nacelle, tower, and rotor erection activities which may need to be carried out during low wind, nighttime hours for safety reasons. Impact pile driving and blasting operations, if needed, shall be limited to the hours between 7:00 a.m. to 7:00 p.m., Monday through Friday. Construction activities that do not involve significant noise or light increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants of upcoming construction activities including potential for nighttime construction activities.

- (46) That any turbine forecasted prior to construction to create in excess of 30 hours per year of shadow flicker at a non-participating receptor within 1,000 meters shall be subject to mitigation prior to construction. Mitigation shall consist of either reducing the turbine's forecasted impact to 30 hours per year, or other measures acceptable to OPSB Staff in consultation with the affected receptor(s).
- (47) That, prior to construction, the Applicant shall submit the final layout and turbine locations to the National Telecommunications and Information Administration for review and approval.
- (48) That the Applicant must meet all recommended and prescribed Federal Communications Commission and other federal agency requirements to construct an object that may affect communications and, subject to OPSB Staff approval, mitigate any effects or degradation caused by wind turbine operation. For any residence that is shown to experience degradation of TV reception due to the facility operation, the Applicant shall provide, at its own expense, cable or direct broadcast satellite TV service.
- (49) That any turbine observed to create microwave communication interference to existing paths shall be subject to mitigation. If required, the Applicant shall propose mitigation consisting of either reducing the impact so as to not affect the path, or other measures acceptable to both the affected path's owner/operator and OPSB Staff.
- (50) That the Applicant must meet all recommended and prescribed FAA and federal agency requirements to construct an object that may affect existing local and/or long-range radar, and mitigate any effects or degradation caused by wind turbine operation, up to and including removal of afflicting turbine(s).
- (51) That if any turbine is determined to cause NEXRAD interference, the Applicant shall propose a technical or administrative work plan, protecting proprietary interests in wind speed data that provides for the release of real-time meteorological data to the National Weather Service office in Wilmington, Ohio. If an uncontrollable event should render this data temporarily unavailable, the Applicant shall exert reasonable effort to restore connectivity in a timely manner.
- (52) That the Applicant must meet all recommended and prescribed Federal Aviation Administration (FAA) and ODOT Office of Aviation requirements to construct an object that may affect navigable airspace. This includes submitting all final turbine locations for ODOT Office of Aviation and FAA review prior to construction, and the non-penetration of any FAA *Part 77* surfaces.
- (53) That ninety (90) days prior to any construction, the Applicant notify, in writing, any airport owner, whether public or private, whose operations, operating thresholds/minimums, or landing/approach procedures and/or vectors are expected to be altered by the siting, operation, maintenance, or decommissioning of the facility.
- (54) That all applicable structures be lit in accordance with FAA circular 70/7460-1 K Change 2, *Obstruction Marking and Lighting*; Chapters 4, 12, and 13 (Turbines); or as otherwise prescribed by the FAA.

(55) That the Applicant shall comply with the following conditions regarding decommissioning:

- (a) That the Applicant shall provide a final draft of the decommissioning plan to OPSB Staff and the Paulding and Van Wert county engineers for review, and for OPSB Staff approval, at least thirty (30) days prior to the pre-construction conference. In this plan, the Applicant shall:
  - (i) Indicate the future use that is proposed to be made of the land following reclamation.
  - (ii) Describe the following: engineering techniques proposed to be used in decommissioning and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; and a plan, where appropriate, for backfilling, soil stabilization, compacting, and grading.
  - (iii) Describe how the Applicant will implement best management practices to control impacts to surface or ground water resources. If necessary, the Applicant will obtain permits from the Ohio EPA and/or the U.S. Army Corps of Engineers.
  - (iv) Provide a detailed timetable for the accomplishment of each major step in the decommissioning plan, including the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards.
- (b) That the facility owner and/or operator shall, at its expense, complete decommissioning of the wind-powered electric generating facility or individual wind turbines, within (12) twelve months after the end of the useful life of the facility or individual wind turbines. If no electricity is generated for a continuous period of twelve (12) months, or if the OPSB deems the facility or turbine to be in a state of disrepair warranting decommissioning, the wind energy facility or individual wind turbines will be presumed to have reached the end of its useful life.
- (c) That decommissioning of the proposed wind farm and all associated facilities shall include the removal of all physical material pertaining to the wind energy facility to a depth of at least thirty-six (36) inches beneath the soil surface and restoration of the disturbed area to substantially the same physical condition that existed before erection of the facility. The foundation for each wind turbine shall be removed to the depth of sixty (60) inches. Decommissioning shall include the restoration of roads and bridges to substantially the same physical condition that existed immediately before decommissioning; the removal and transportation of the wind turbines off-site; and removal of buildings, cabling, electrical components, access roads, and any other associated facilities. Disturbed earth shall be re-graded, re-seeded, and restored to substantially the same physical

condition that existed immediately before erection of the facility. Damaged field tile systems shall be repaired to at least original conditions.

- (d) That if the owner of the proposed wind-powered electric generating facility does not complete decommissioning within the period prescribed in these conditions, the OPSB may take action as necessary to complete decommissioning, including requiring forfeiture of financial securities. The entry into a landowner agreement constitutes agreement and consent of the parties to the agreement, their respective heirs, successors and assigns, that the Board may take action that may be necessary to implement the decommissioning plan, including the exercise by the Board, OPSB Staff, and contractors, of the right of ingress and egress for the purpose of decommissioning the wind-powered electric generating facility.
- (e) That the decommissioning funds or financial assurance shall be released by the holder of the funds or financial assurance when the facility owner has demonstrated, and the Board concurs, that decommissioning has been satisfactorily completed, or upon written approval of the Board in order to implement the decommissioning plan.
- (f) That during decommissioning, all recyclable materials, salvaged and non-salvaged, shall be recycled to the furthest extent possible. All other non-recyclable waste materials shall be disposed of in accordance with state and federal law.
- (g) That the Applicant shall leave intact any improvements made to the electrical infrastructure, pending approval by the applicable regional transmission organization and interconnection utility.
- (h) That subject to approval by OPSB Staff, and within five years after the start date of commercial operation, an independent and registered Professional Engineer, licensed to practice engineering in the state of Ohio, shall be retained by the wind generation facility owner to estimate the total cost of decommissioning in current dollars, without regard to salvage value of the equipment (*Decommissioning Costs*), and the cost of decommissioning net salvage value of the equipment (*Net Decommissioning Costs*). Said estimate shall include: (1) an analysis of the physical activities necessary to implement the approved reclamation plan, with physical construction and demolition costs based on ODOT's *Procedure for Budget Estimating and RS Means* material and labor cost indices; (2) the number of units required to perform each of the activities; (3) an amount to cover contingency costs, not to exceed 10 percent of the above calculated reclamation cost. Said estimate should be on a per-turbine basis and shall be submitted for OPSB Staff review and approval within the first five years of facility operation and every fifth year thereafter. The owner shall post and maintain decommissioning funds or financial assurance in an amount equal to the following schedule:
  - (i) From years one through five, five thousand dollars (\$5,000) per constructed wind turbine.

- (ii) From year six through the end of the life of the project, the greater of
    - (a) ten thousand dollars (\$10,000) per constructed wind turbine,
    - (b) fifteen (15) percent of the Decommissioning Costs, or (c) one hundred twenty (120) percent of the Net Decommissioning Costs.
  - (i) The form of financial assurance will be a financial instrument mutually agreed upon by OPSB Staff and the Applicant and conditioned on the faithful performance of all requirements and conditions of this application's approved decommissioning and reclamation plan. Once the financial assurance is provided, the Applicant shall maintain such funds or assurance throughout the remainder of the applicable term and shall adjust the amount of the assurance, if necessary, to offset any increase or decrease in the decommissioning costs at the end of the applicable term. The value of salvaged steel and copper, at the end of the five-year term and for any other revisions of this report thereafter, shall be calculated based on the five-year annual average for the years preceding the anniversary of such reports.
- (56) That at least thirty (30) days before the pre-construction conference, the Applicant shall submit to the OPSB Staff, for review and approval, the following documents:
- (a) One set of detailed engineering drawings of the final project design, including all turbine locations, collection lines, access roads, the crane route, permanent meteorological towers, substations, construction staging areas, and any other associated facilities and access points, so that the OPSB Staff can determine that the final project design is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically-referenced electronic data. The final plan shall include both temporary and permanent access routes, as well as the measures to be used for restoring the area around all temporary sections, and a description of any long-term stabilization required along permanent access routes. The plan shall consider the location of streams, wetlands, wooded areas, and sensitive plant species as identified by the ODNr Division of Natural Areas and Preserves, and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance.
  - (b) A stream and/or ditch crossing plan including details on specific streams and/or ditches to be crossed, either by construction vehicles and/or facility components (e.g., access roads, electric collection lines), as well as specific discussion of proposed crossing methodology for each stream crossing and post-construction site restoration. The stream crossing plan shall be based on final plans for the access roads and electric collection system.
  - (c) A detailed frac-out contingency plan for stream and ditch crossings that are expected to be completed via HDD. Such contingency plan may be incorporated within the required stream and/or ditch crossing plan.

- (d) A tree clearing plan describing how trees and shrubs around turbines, along access routes, in electric collection line corridors, at construction staging areas, and in proximity to any other project facilities will be protected from damage during construction, and, where clearing cannot be avoided, how such clearing work will be done so as to minimize removal of woody vegetation. Priority should be given to protecting mature trees throughout the project area, and all woody vegetation in wetlands and riparian areas, both during construction and during subsequent operation and maintenance of all facilities.
- (57) That if any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to OPSB Staff in hard copy and as geographically referenced electronic data. All changes will be subject to OPSB Staff review and approval prior to construction.
- (58) That if the Applicant proposes to install additional turbine units beyond the 159 proposed locations, then the Applicant shall file an amendment to the application with the Board.
- (59) That within sixty (60) days after the commencement of commercial operation, the Applicant shall submit to the OPSB Staff a copy of the as-built specifications for the entire facility. The Applicant may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (60) That the certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five (5) years of the date of journalization of the certificate.
- (61) That the Applicant shall provide to the OPSB Staff the following information as it becomes known:
  - (a) The date on which construction will begin;
  - (b) The date on which construction was completed;
  - (c) The date on which the facility began commercial operation.

**B. Exhibits**

Subject to the terms and conditions of this Stipulation, the Applicant, Farm Bureau, and OPSB Staff agree, stipulate and recommend that the following exhibits submitted in this docket be marked and admitted into the record in this proceeding, and that cross-examination is waived thereon:

1. Company Exhibit 1, the Application as filed on December 21, 2009, and certified as complete as of February 19, 2010;
2. Company Exhibit 2, the Application Supplement as filed on March 31, 2010;
3. Company Exhibit 3, a copy of the Proof of Service of the Application on local public officials and libraries along with the list of property owners and adjacent property owners, filed on February 19, 2010;
4. Company Exhibit 4, a copy of the Proof of Service of the Application Supplement on local public officials and libraries along with the list of property owners and adjacent property owners filed on March 31, 2010;
5. Company Exhibit 5, Proofs of Publication filed on November 16, 2009 for the notice of the informal public meeting held in accordance with OAC Rule 4906-05-08 as published on November 7, 2009 in *The Lima News*, and published on November 9, 2009 in the *Van Wert Times Bulletin* and *Paulding County Progress*.
6. Company Exhibit 6, Proofs of Publication filed on June 16, 2010 for the first corrected publication of the description of the application and hearing dates published on May 12, 2010 in *The Lima News* and the *Paulding County Progress*, and on May 13, 2010 in the *Van Wert Times Bulletin*.
7. Company Exhibit 7, Proofs of Publication filed on July 8, 2010 for the second publication of the description of the application and hearing dates published on June 29, 2010 in *The Lima News*, on June 30, 2010 in *Paulding County Progress*, and on June 28, 2010 in the *Van Wert Times Bulletin*.
8. Staff Exhibit 1, "Staff Report of Investigation," issued June 23, 2010; and
9. Joint Exhibit 1, this "Joint Stipulation and Recommendation" signed on behalf of the Staff, Heartland, and Farm Bureau.

**C. Other Terms and Conditions**

- (1) This Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially modifies all or part of this Stipulation or imposes additional conditions or requirements upon the parties, each party shall have the right, within thirty (30) days of the Board's order, to file an application for rehearing with the Board. Upon rehearing by the Board, each party shall have the right, within ten (10) days of the Board's order on rehearing, to file a notice of termination of, and withdrawal from, the Stipulation. Upon notice of termination and withdrawal of the Stipulation by any party, pursuant to the above provisions, the Stipulation shall immediately become null and void. In such an event, a hearing shall go forward, and the parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

- (2) The parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation as factual or legal precedent on any issue. The parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the parties in entering into this Stipulation.

### **III. FINDINGS**

The parties agree that the record in this case, provided the Board approves the conditions in this Stipulation, contains sufficient probative evidence for the Board to find and determine, as findings of fact and conclusions of law, that:

#### **A. Findings of Fact**

- (1) Heartland Wind, LLC is a limited liability company whose sole member and manager is Iberdrola Renewables, Inc.
- (2) The Facility qualifies as a major utility facility defined in Section 4906.01(B)(1) of the Ohio Revised Code and as a wind powered generation facility defined in OAC Rule 4906-17-01.
- (3) On November 6, 2009, the Applicant filed a motion for waivers of certain filing requirements in OAC Chapter 4906-17, as well as for a waiver of the requirement to file an application two years prior to commencement of construction under Section 4906.06(A)(6) of the Ohio Revised Code.
- (4) Also on November 6, 2009, the Applicant filed a pre-application notice of a public informational meeting.
- (5) The Applicant held the public informational meeting at the Wayne Trace Junior/Senior High School Cafeteria in Haviland, Ohio on November 19, 2009.
- (6) On November 16, 2009, the Applicant filed Proofs of Publication of the notice of the informal public meeting held in accordance with OAC Rule 4906-05-08 that were published on November 7, 2009 in *The Lima News*, and published on November 9, 2009 in the *Van Wert Times Bulletin* and *Paulding County Progress*.
- (7) The Applicant formally submitted its application for a certificate to construct the proposed wind-powered electric generating facility in Paulding and Van Wert County, Ohio on December 21, 2009.

- (8) The Administrative Law Judge, by Entry dated December 11, 2009, granted the Applicant's waiver requests.
- (9) On February 19, 2010, the Chairman of the Board issued a letter to the Applicant stating that the application, as filed on December 21, 2009 was found to comply with OAC Chapter 4906.
- (10) On February 29, 2010, the Applicant filed a copy of the Proof of Service of the Application on local public officials and libraries along with the list of property owners and adjacent property owners.
- (11) On March 25, 2010, the OPSB Staff and Applicant filed a Joint Motion for an extension of time or continuance of hearing dates.
- (12) On March 31, 2010, the Applicant filed an Application Supplement.
- (13) On March 31, 2010, the Applicant filed a copy of the Proof of Service of the Application Supplement on local public officials and libraries along with the list of property owners and adjacent property owners
- (14) On April 1, 2010, the Administrative Law Judge issued an Entry granting the Joint Motion for an extension of time or continuance of hearing dates.
- (15) On April 30, 2010, the OPSB Staff and Applicant filed a Joint Motion for an extension of time or continuance of hearing dates.
- (16) On May 6, 2010, the Administrative Law Judge issued an Entry granting the Joint Motion for an extension of time or continuance of hearing dates and scheduling a local public hearing for this case on July 8, 2010 at the Lincolnview School, 15945 Middle Point Road, in Van Wert, Ohio, and an adjudicatory hearing for July 15, 2010 at the offices of the PUCO.
- (17) On June 16, 2010 Applicant filed proofs of publication for the first corrected publication of the description of the application and hearing dates published on May 12, 2010 in *The Lima News* and the *Paulding County Progress*, and on May 13, 2010 in the *Van Wert Times Bulletin*.
- (18) The Staff Report was filed on June 23, 2010.
- (19) On July 8, 2010, Applicant filed proofs of publication for the second publication of the description of the application and hearing dates published on June 29, 2010 in *The Lima News*, on June 30, 2010 in *Paulding County Progress*, and on June 28, 2010 in the *Van Wert Times Bulletin*.
- (20) A local public hearing was held on July 8, 2010 at the Lincolnview School, 15945 Middle Point Road, in Van Wert, Ohio.

- (21) An adjudicatory hearing was held on July 15, 2010, in Columbus, Ohio.
- (22) The basis of need requirement in Section 4906.10(A)(1) of the Ohio Revised Code is inapplicable to this project.
- (23) Adequate data on the project has been provided to determine the nature of the probable environmental impact as required by Section 4906.10(A)(2) of the Ohio Revised Code.
- (24) Adequate data on the project has been provided to determine that the Facility described in the Amended Application represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by Section 4906.10 (A)(3) of the Ohio Revised Code.
- (25) Adequate data on the project has been provided to determine that, because the project is an electric generation facility, the proposed electric generating facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the State of Ohio and interconnected utility systems, that the Facility will serve the interests of electric system economy and reliability, and the requirements of Section 4906.10(A)(4) of the Ohio Revised Code are met.
- (26) Adequate data on the project has been provided to determine that the wind farm project will either comply with, or is not subject to, the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wasters, and air navigation, and all regulations thereunder, as required by Section 4906.10(A)(5) of the Ohio Revised Code.
- (27) Adequate data on the project has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.
- (28) Adequate data on the project has been provided to determine what the Facility's impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the site of the proposed Facility, as required by Section 4906.10(A)(7) of the Ohio Revised Code.
- (29) Adequate data on the project has been provided to determine that the Facility as proposed incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives as required by Section 4906.10(A)(8) of the Ohio Revised Code.
- (30) The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

**B. Conclusions of Law**

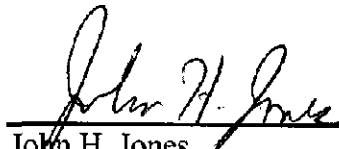
- (1) Heartland Wind, LLC is a “person” under Section 4906.01(A) of the Ohio Revised Code.
- (2) The proposed Facility is a major utility facility as defined in Section 4906.01(B)(1) of the Ohio Revised Code.
- (3) Heartland’s Application and Application Supplement comply with the requirements of OAC Chapter 4906-17.
- (4) The requirement for the need for the Facility under Section 4906.10(A)(1) of the Ohio Revised Code is inapplicable.
- (5) The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the Facility under Section 4906.10(A)(2) of the Ohio Revised Code.
- (6) The record establishes that the Facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under Section 4906.10(A)(3) of the Ohio Revised Code.
- (7) The record establishes that the Facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the State of Ohio and interconnected utility systems, and will serve the interests of electric system economy and reliability as required by Section 4906.10(A)(4) of the Ohio Revised Code.
- (8) The record establishes, as required by Section 4906.10(A)(5) of the Ohio Revised Code, that to the extent that any of them are applicable, construction of the proposed Facility will comply with the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wasters, and air navigation, and all rules and standards adopted under the relevant Chapters of the Ohio Revised Code.
- (9) The record establishes that the Facility will serve the public interest, convenience and necessity under Section 4906.10(A)(6) of the Ohio Revised Code.
- (10) The Facility’s impact on the viability as agricultural land of any land in an existing agricultural district has been determined under Section 4906.10(A)(7) of the Ohio Revised Code.
- (11) The record establishes that the Facility would incorporate maximum feasible water conservation practices under Section 4906.10(A)(8) of the Ohio Revised Code.

- (12) Based on the record, the parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the Facility.


The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this Joint Stipulation and Recommendation on this 15th day of July, 2010.

Respectfully submitted on behalf of,


**THE STAFF OF THE OHIO POWER  
SITING BOARD**

  
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