

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application by Hardin)
Wind Energy, LLC, for a Certificate of) Case No. 09-479-EL-BGN
Environmental Compatibility and Public)
Need for the Hardin Wind Farm.)

ENTRY ON REHEARING

The Board finds:

- (1) On March 22, 2010, the Ohio Power Siting Board (Board) issued an Opinion, Order, and Certificate (certificate) approving a stipulation entered into by the parties to this case and granting to Hardin Wind Energy, LLC (Hardin) a certificate to construct, operate, and maintain a 300 megawatt (MW) wind-powered electric generation facility in Hardin County, Ohio.
- (2) On April 21, 2010, Mid-Ohio Energy Cooperative, Inc. (Mid-Ohio) filed a motion for leave to file an application for rehearing, as it had not previously filed an appearance in the proceeding. On the same day, Mid-Ohio filed an application for rehearing stating that, while it does not object to the Hardin wind project, Mid-Ohio seeks to ensure that the data transmitted between its control center and substations will not be adversely affected by Hardin's wind turbines. Mid-Ohio notes that one of the conditions agreed to in the stipulation in this case required Hardin to shift or eliminate two turbines, if a study found that they would cause microwave interference. Therefore, Mid-Ohio requests that it be given comparable treatment with respect to potential interference with its communications systems and asks the Board to require Hardin to do the following: shift or eliminate four turbines having the potential to obstruct Mid-Ohio's microwave paths; avoid interference with Mid-Ohio's 900 megahertz (Mhz) omni-directional, nonlicensed sites used to control its down line distribution equipment; and work with Mid-Ohio to determine whether Hardin's turbines will cause any additional interference with Mid-Ohio's communications

systems and make any necessary revisions to the turbine layout to avoid such interference. Mid-Ohio acknowledges that it had been working informally with Hardin during the pendency of this case and states that it would have filed a motion to intervene or taken other action had it believed its concerns were not being fully addressed by Hardin. Based upon its communications with Hardin, Mid-Ohio states that it expects Hardin will make the necessary changes to the turbine layout in order to avoid interference with Mid-Ohio's system; however, Mid-Ohio filed this application for rehearing in order to ensure that its concerns are addressed.

- (3) On April 29, 2009, Hardin filed a memorandum contra Mid-Ohio's motion for leave to file an application for rehearing and its application for rehearing. In its memorandum contra, Hardin argues that Mid-Ohio failed to satisfy the requirements of Section 4903.10, Revised Code, as it offered no legitimate reason for failing to appear in the proceeding prior to the Board's issuance of the certificate to Hardin. Further, Hardin argues that Mid-Ohio's interests pertaining to its licensed microwave paths were adequately considered in this proceeding. Moreover, Hardin contends that Mid-Ohio's substantive arguments in its application for rehearing lack merit.
- (4) Section 4906.12, Revised Code, states, in relevant part, that Section 4903.10, Revised Code, applies to a proceeding or order of the Board.
- (5) Section 4903.10, Revised Code, and Rule 4906-7-17(D), Ohio Administrative Code (O.A.C.), provide that any party to a proceeding may apply for rehearing with respect to any matter determined by the Board within 30 days after the entry of the order upon the journal.
- (6) Pursuant to the authority set forth in Rule 4906-7-17(I), O.A.C., the administrative law judge issued an entry granting rehearing in this matter on May 18, 2010, to afford the Board more time to consider the issues raised in this matter by Mid-Ohio in its motion for leave to file an application for rehearing and, potentially, its application for rehearing.

- (7) Having fully reviewed the issues raised in this matter by Mid-Ohio, the Board finds that rehearing should be denied on procedural grounds.
- (8) Procedurally, Mid-Ohio is not a party in this proceeding and, thus, pursuant to Section 4903.10, Revised Code, the Board is statutorily prevented from considering the issues it has raised for reconsideration. Section 4906.08, Revised Code, establishes those persons entitled to party status in Board certification proceedings. Section 4906.08, Revised Code, states, in relevant part, that parties in a Board certification proceeding include: (a) the applicant, (b) each person entitled to receive a copy of the application pursuant to Section 4906.06(B), Revised Code, provided the person files a notice of intervention within 30 days of being served a copy of the application, and (c) any person residing in a municipal corporation or county entitled to receive service of a copy of the application pursuant to Section 4906.06(B), Revised Code, and any other person provided such person petitions the Board for leave to intervene as a party within 30 days after publication of the notice required by Section 4906.06(C), Revised Code. Mid-Ohio would have been eligible to petition the Board for leave to intervene under Section 4906.08(A)(3), Revised Code, within 30 days after publication of notice of the application, however, the Board's record of this matter reveals that no petition for intervention was ever made.
- (9) Section 4903.10, Revised Code, governs the rehearing process in Board proceedings. Among other things, Section 4903.10, Revised Code, requires leave to file an application for rehearing from any person, firm, or corporation who did not previously enter an appearance and become a party in a Board proceeding. In order to grant leave to file an application for rehearing, the Board must find: (a) that the applicant's failure to enter an appearance prior to the entry upon the journal of the Board or the order complained of was due to just cause, or (b) that the interests of the applicant were not adequately considered in the proceeding. Mid-Ohio has filed a motion for leave to file an application for rehearing in this matter.

- (10) Despite the fact that it has filed a motion for leave to file an application for rehearing, Mid-Ohio has not established that its failure to enter an appearance prior the Board's issuance of the certificate was due to just cause. Mid-Ohio contends that it was unaware of the Hardin Wind project until after the time for intervention had passed. Hardin published its first notice of the project in *The Kenton Times* on October 17, 2009, and in *The Ada Herald* on October 22, 2009. These published notices should have put Mid-Ohio on, at least, constructive notice of the projects. In spite of having such constructive notice up until the period for intervention had expired, and actual notice thereafter, as explained by Mid-Ohio, Mid-Ohio chose not to file a motion for leave to intervene in the matter at any point up to the issuance of the certificate.
- (11) Mid-Ohio contends that it would have filed a motion to intervene or taken other action prior to issuance of the certificate if it believed its concerns were not being fully addressed by Hardin. Mid-Ohio's own application for rehearing describes the ways in which the Hardin team took significant steps to understand and address Mid-Ohio's concerns. If at any point prior to the Board's issuance of the certificate, Mid-Ohio believed that Hardin was not adequately addressing its concerns, it should have taken action to intervene in the proceeding.
- (12) Given these circumstances, the Board finds that Mid-Ohio's failure to intervene prior to the issuance of the certificate was not due to just cause, and that Mid-Ohio's interests were adequately considered in the proceeding. Accordingly, the Board finds that Mid-Ohio's motion for leave to file an application for rehearing, as well as its application for rehearing, should be denied.

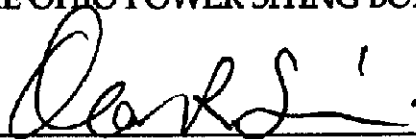
It is, therefore,

ORDERED, That Mid-Ohio's motion for leave to file an application for rehearing be denied. It is, further,

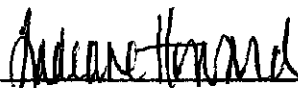
ORDERED, That Mid-Ohio's application for rehearing be denied as set forth herein. It is, further,

ORDERED, That a copy of this order on rehearing be served upon all parties and interested persons of record.

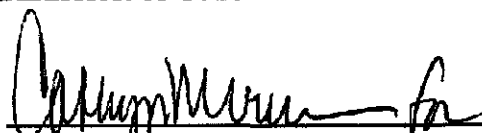
THE OHIO POWER SITING BOARD



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Lisa Patt-McDaniel, Board Member
and Director of the Ohio Department of
Development



Sean Logan, Board Member
and Director of the Ohio Department
of Natural Resources

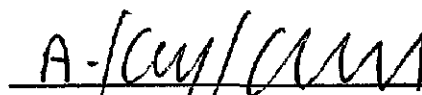


Alvin Jackson M.D., Board Member ^{MT}
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Christopher Korleski, Board Member and
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Environmental Protection Agency

Robert Boggs, Board Member and
Director of the Ohio Department
of Agriculture

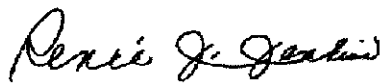


Ali Keyhani, Ph.D., Board
Member and Public Member

RLH/sc

Entered in the Journal

JUL 15 2010



Renee J. Jenkins
Secretary