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August 18, 2010

Renee Jenkins  
The Ohio Power Siting Board  
180 East Broad Street  
Columbus, Ohio 43215

*Via hand delivery*

*Re: Hog Creek II Wind Farm Application*

Dear Ms. Jenkins,

Enclosed please find a Motion for Waivers regarding the forthcoming application for Hog Creek II Wind Farm. Should you have any questions or concerns, please feel free to contact me. Thank you for your assistance.

Sincerely,

McMAHON DEGULIS LLP

*Sarah J. Staley*  
Sarah J. Staley

SJS/

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**BEFORE THE OHIO POWER SITING BOARD**

In the Matter of the Application of <b>HOG</b>	)	
<b>CREEK WINDFARM, LLC</b> for a	)	
Certificate to Site a Wind-Powered	)	<b>Case Number 10-0654-EL-BGN</b>
Electric Generation Facility in Hardin	)	
County, Ohio	)	

**MOTION FOR WAIVERS**

**AND FOR**

**PROTECTIVE TREATMENT UNDER RULE 4906-7-07(H)(1)**

Hog Creek Wind Farm, LLC ("Hog Creek"), pursuant to Ohio Administrative Code ("O.A.C.") Rule 4906-01-03 and Rule 4906-7-12(C), respectfully moves the Ohio Power Siting Board ("Board") to grant the following waivers on an expedited basis from certain requirements of the following regulations:

1. From the one-year notice period as set forth in Ohio Revised Code Section ("R.C.") 4906.06(A)(6);
2. From filing the PJM system impact studies simultaneously with the application as is required by O.A.C. Rule 4906-17-05(D)(2)(b), and instead permit Hog Creek to file the PJM system impact studies as soon as they are received.

Further support for these waiver requests is set forth in the Memorandum in Support below.

Hog Creek further moves the Board for an order pursuant to O.A.C. Section 4906-7-07(H)(1)(h) giving confidential treatment to any and all financial information or other proprietary/trade secret information as identified in the application for the Certificate of Authority to be filed in this case.

## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION**

The project is proposed by Hog Creek Wind Farm, LLC, whose sole member is juwi Wind LLC, which is a subsidiary of juwi Holding US, LLC and juwi Holding AG, an international renewable energy developer. Hog Creek plans to submit an application to the Board in the near future for a Certificate to construct and operate a wind farm of approximately 18.4 Megawatts (MW) in nameplate capacity between the unincorporated community of Dola and the Village of Dunkirk, Hardin County, Ohio ("Hog Creek Wind Farm II"). The Hog Creek Wind Farm II will consist of eight (8) 2.3 MW wind turbines and associated access roads, electrical infrastructure, construction staging area, and operations and maintenance facilities. The project will interconnect to the electric utility grid via a 69 kV transmission line that crosses through the project area. The project area covers approximately 1,775 acres of privately leased agricultural land. The project will generate clean, emissions free, electricity that qualifies as a renewable energy resource under Ohio's Alternative Energy Portfolio Standard.

Based upon the unique nature of wind generation facilities, and for good cause shown, Hog Creek seeks waivers from certain requirements of R.C. 4906.06 and O.A.C. Chapter 4906-17 as well as confidential protective treatment of certain information to be submitted.

### **II. EXPEDITED RULING - O.A.C. Rule 4906-7-12(C)**

A ruling on this Motion is required in order for Hog Creek to complete an application in conformance with the applicable requirements in O.A.C. Chapter 4906-17. Hog Creek plans to

file its application in August 2010. The State of Ohio is encouraging development of wind power projects to produce clean energy and to revitalize Ohio's manufacturing and agricultural economy.<sup>1</sup> Governor Strickland has emphasized the need for rapid development of the wind resources in Ohio and has sought to speed the regulatory process to put wind generation on line.<sup>2</sup> Hog Creek is developing the Hog Creek Wind Farm II as an alternative energy resource to be in operation as soon as possible. Hog Creek plans to commit power generated from the Hog Creek Wind Farm II to the grid in 2012. In order to make this commitment, Hog Creek must be assured that the Board process will proceed on an expeditious schedule that supports certification in a six to seven month timeframe.

As stated herein, and as will be shown in the application itself, Hog Creek has conducted the requisite analyses and studies, obtained the necessary site commitments, and is prepared to advance the project on schedule. For these reasons, Hog Creek asks that the review of its waiver requests be undertaken on an expedited basis.

### **III. WAIVER REQUESTS**

#### **A. RC 4906.06(A)(6): Waiver of the One Year Notice Period**

Pursuant to RC 4906.06, an application for the siting of a wind generation facility must be filed "not less than one year nor more than five years prior to the planned date of commencement of construction." The statute also allows the Board to waive these time limits for

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<sup>1</sup> Politicker.com, December 11, 2008 at [www.politicker.com/ohio/1783/stickland-touts-componentpattsmanufacturing-wind-energy-conference](http://www.politicker.com/ohio/1783/stickland-touts-componentpattsmanufacturing-wind-energy-conference).

<sup>2</sup> *Agreement Signed to Speed Wind Power Development, Establish Process to Protect Natural Resources*, May 8, 2009 at <http://www.dnr.state.oh.us/Default.aspx?tabid+18276&EntryID+1093>

"good cause" shown. Hog Creek requests the Board to waive the one-year requirement between the dates an application is filed and construction is commenced. The Board has routinely granted the waiver during the last decade.

Hog Creek plans to submit an application for this project in August 2010. Hog Creek's desire to take full advantage of the longest period possible of construction weather, and shorten the construction period as much as possible so as not to inconvenience affected property owners for more than one construction season. Hog Creek also desires the option to begin construction in 2011 if the project timeline becomes accelerated due to successful negotiations concerning power offtake. These reasons meet the "good cause" criteria of the statute.

**B. RC 4906.17(D)(2)(b): Waiver of the System Impact Study**

As part of Hog Creek's application, it will be providing a significant amount of information regarding the company's selection of its site in Hardin County, Ohio. In Ohio, there are a limited number of areas that possess the wind resource and systematic capability necessary to support economical utility scale wind energy development. The convergence of sufficient wind resources, sufficient transmission capacity and interested landowners willing to lease their land — all are needed for a viable wind energy project. In demonstrating the appropriateness of the site, Hog Creek will necessarily include information in its application on the capabilities of the local power grid to receive the farm's generated power. However, Hog Creek is unable, at this point, to submit a system impact study regarding the project's overall impact on the regional electric power grid.

Hog Creek acknowledges that O.R.C. 2906.17(D)(2)(b) requires the simultaneous filing of the system impact studies with its project application; however, in this instance, adhering to the simultaneous filing requirement would cause extreme delay in the project. At this point, Hog Creek has received its feasibility study from PJM and is in queue to begin its system impact study in late August 2010. Hog Creek anticipates having a completed system impact study from PJM by the end of this year. As the Board stated in its rulemaking Opinion and Order, “[w]here the applicant has made the necessary requests for the studies, is in the queue, and expects to provide the study to the Board within a reasonable period of time after the application is filed, it is appropriate to ask for waiver of this provision, asking to allow the study to be filed later.”<sup>3</sup> Accordingly, Hog Creek asks that the Board waive the simultaneous filing requirement and instead permit the filing of the system impact studies when those studies are finished.

#### **IV. REQUEST FOR PROTECTIVE TREATMENT OF CERTAIN INFORMATION UNDER Rule 4906-7-07(H)**

O.A.C. rule 4906-07(H)(1)(g) allows the Board to provide protective treatment for confidential business information. Specifically, the rule says that in discovery for proceedings before the Board, the Board may issue an order providing that “[a] trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.” In this case Hog Creek’s application will include, as required by O.A.C. Chapter 4096-17, certain information and data subject to protection.

Hog Creek proposes to provide an application that that notes where confidential information has been redacted and to provide confidential information to the Board in a separate

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<sup>3</sup> Opinion and Order in Case. No. 08-1024-EL-ORD issued October 28, 2008 at paragraph 95.

document. As a result, the Board will be able to place the reasonably-redacted application in the public file, but will also have the confidential information available to it in the separate document. The information that is redacted has independent economic value and is the subject of reasonable efforts to maintain its secrecy pursuant to O.R.C. Section 1333.61(D). Moreover, the information meets the six-factor test for determining trade secret information as set forth by the Ohio Supreme Court in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525 (1997).<sup>4</sup> Finally, the nondisclosure of this information is not inconsistent with the purposes of O.R.C. Title 49.

Accordingly, Hog Creek asks the Board to approve this procedure or, in the alternative, to issue an order that will achieve the same objective through a mechanism acceptable to the Board.

WHEREFORE, Hog Creek respectfully requests that the Board waive the requirements set forth above and grant such other and further relief to which it may be entitled.

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<sup>4</sup> The following factors should be examined when analyzing whether information constitutes a trade secret: "(1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information." *Id.* at 524-525. An evaluation of the information redacted by Hog Creek will demonstrate that according to these factors, the information constitutes trade secret information.

Respectfully submitted on behalf of  
**HOG CREEK WIND FARM, LLC**

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