

**BEFORE THE OHIO POWER SITING BOARD**

<b>In the Matter of the Application of Ashtabula Wind, LLC for a Certificate to Install Electricity Generating Wind Turbines in Ashtabula County, Ohio</b>	) ) ) ) )	<b>Case No. 11-2400-EL-BGN</b>
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**MOTION FOR WAIVERS**

Pursuant to Section 4906.06(A)(6) of the Ohio Revised Code, Ashtabula Wind Energy LLC ("Ashtabula Wind" or "the Applicant"), moves the Ohio Power Siting Board ("OPSB") to grant a waiver from Section 4906.06(A)(6) of the Ohio Revised Code for the reasons detailed in the following Memorandum in Support.

Ashtabula Wind will be filing an application for a wind-powered electric generation facility of more than 5 MW in the above-styled docket. Ashtabula Wind seeks a waiver from the one-year notice provision of Section 4906.06(A)(6) based on the established lack of public financial risk for independent power producers such as the Applicant and the State of Ohio's need to meet renewable energy goals established by its General Assembly. The requested waiver will positively impact the OPSB's review and analysis of the proposed generation facility.

WHEREFORE, Ashtabula Wind respectfully requests that the OPSB grant a waiver from the one-year notice provision of Section 4906.06(A)(6) of the Ohio Revised Code.

Respectfully submitted,



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Mark Goodwin, President  
APEX WIND ENERGY HOLDINGS, LLC  
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## **MEMORANDUM IN SUPPORT**

### **I. Introduction**

Ashtabula Wind Energy LLC, a wholly owned subsidiary of Apex Wind Energy Holdings, LLC (hereafter referred to as "Ashtabula Wind" or "the Applicant"), is proposing to construct a wind-powered electric generation facility located in Ashtabula County. The energy generated at this facility, hereafter referred to as the "Project" or the "Facility," will collect to a transmission line and substation operated by the Ohio Power Company. The proposed Project consists of up to 28 wind turbines capable of generating no more than 50 MW and associated infrastructure including a new interconnection switch yard and internal substation. The electricity generated by the Facility will be transferred to the transmission grid operated by PJM Interconnection LLC for sale at wholesale or under a purchase power agreement.

Through this motion, Ashtabula Wind is seeking a waiver from the one-year notice requirement of Section 4906.06(A)(6) of the Ohio Revised Code (the "Code"). As more fully set forth below, this waiver is necessary given that (i) unlike public utilities, Ashtabula Wind does not pose financial risk to the public, (ii) the waiver will help ensure that Ashtabula Wind files a complete application without delaying construction of the Project, and (iii) the Project would further fulfill renewable energy goals established by the Ohio General Assembly.

### **II. Code Section 4906.06(A)(6)**

Section 4906.06(A)(6) of the Code indicates that an application filed with the Ohio Power Siting Board (the "OPSB") must be filed not less than one year nor more than five years prior to the planned date of commencement of construction. Either period may be waived by the OPSB for good cause shown. The one-year requirement is associated with electric generation facilities of public utilities. The financial risk of such facilities rests with the general public who

are served in the franchised service area, under Code Section 4909.18 and the monopoly franchise provision of Code Section 4933.81. By contrast, the financial risk of generation facilities owned by independent power producers lies with a non-utility owner, and for that reason, the one-year time frame to assess the public need for the facility is unnecessary. The OPSB has routinely waived the one-year requirement for such generation facilities over the past decade for that reason.<sup>1</sup>

The Applicant intends to begin construction of the Facility in May of 2012. Without a waiver of the one-year notice provision, Ashtabula Wind must file an application for the Facility with OPSB in May of this year to begin construction of the Facility on schedule. The Applicant is currently engaged in technical and ecological studies, however, which will be completed in July and August of this year. Once complete, these studies are expected to provide detailed information that would further inform and complete Ashtabula Wind's application materials and, in turn, aid the OPSB's review of the application. Thus, failure to grant a waiver of the one-year minimum for this Project will require Ashtabula Wind either to delay filing an application or to submit an application without helpful information in order to begin construction on schedule.

The Ohio General Assembly has set a yearly goal of renewable energy, totaling 12.5% by 2025 of which half is to be sited in Ohio. To the extent failure to grant a waiver of the one-year minimum may delay construction of this project and others, it could impair reaching the statutory goal of 6.25% Ohio based renewable generation.

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<sup>1</sup> See In re: Rolling Hills Generating, LLC, a Subsidiary of Dvnegv Power, Case No. 00-1616-EL-BGN, Entry, December 8, 2000; In re: Sun Coke Company, a Division of Sunoco, Case No. 04-1254-EL-BGN, Entry, April 26, 2005; In re: Middletown Coke Company, a Subsidiary of Sun Coke Energy, Case No. 08-281-EL-BGN, Entry, May 28, 2008; In re: Buckeye Wind LLC, Case No. 08-0666-EL-BGN, Entry dated July 31, 2009; In re: Hardin Energy LLC, Case No. 09-479-EL-BGN, Entry dated July 17, 2009; In re: Paulding Wind Farm LLC, Case No. 09-980-EL-BGN, Entry dated February 23, 2010; and In re: Paulding Wind Farm II LLC, Case No. 10-1616-EL-BGN, Entry, June 21, 2010.

**IX. Conclusion**

For the reasons stated above, good cause exists for granting the waiver. Ashtabula Wind respectfully requests that the OPSB grant a waiver from the one-year notice provision of Code Section 4906.06(A)(6).

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 11-2400-EL-BGN**

Summary: Motion for waiver and memorandum in support electronically filed by Mr. John W Moorman on behalf of Ashtabula Wind Energy LLC