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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Hog Creek :
Wind Farm, LLC for a Certificate to site a : Case No. 10-654-EL-BGN
Wind-Powered Electric Generation Facility in :
Hardin County, Ohio. :

**JOINT STIPULATION AND RECOMMENDATION,
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Hog :
Creek Wind Farm, LLC for a Certificate to : Case No. 10-654-EL-BGN
site a Wind-Powered Electric Generation :
Facility in Hardin County, Ohio. :

**JOINT STIPULATION AND RECOMMENDATION,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW**

INTRODUCTION

Applicant Hog Creek Wind Farm, LLC (“Hog Creek” or “Applicant”), the Ohio Farm Bureau Federation, Inc., and the Staff of the Ohio Power Siting Board (“OPSB Staff”), 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”). This Stipulation is intended by the Parties to resolve all matters pertinent to the certification and construction of a wind farm expansion comprised of eight to ten wind turbines for a total generating capacity of 16.0 to 18.4 MW and an expected annual energy production of approximately 53,000 megawatt hours (MWh), and other associated facilities (hereinafter referred to as the “Facility”) located in Washington Township, Hardin County, Ohio. The Facility is an expansion of Hog Creek Wind Farm I and more fully described in Hog Creek’s application filed with the Board on August 25 and 26, 2010 and as thereafter supplemented in the case docket.

This Stipulation results from discussions between the Parties who acknowledge that this joint agreement is amply supported by the record and, thus, is entitled to careful

consideration by the Board. Accordingly, the Parties recommend and respectfully request that the Board issue a Certificate of Environmental Compatibility and Public Need for the Facility subject to the terms and conditions contained herein.

STIPULATION AND RECOMMENDATION

A. Recommended Conditions

Following a thorough Staff review of the Application and supplements thereto filed by Hog Creek, and other information compiled to date in this proceeding, the Staff recommends that a number of conditions become part of any certificate issued for the Facility. The Parties jointly recommend that the following conditions be adopted by the Board and made a part of any certificate issued in this case:

- (1) That the Facility be installed at the Applicant's proposed site as presented in the application filed on August 25, 2010, 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, recommendations in this Staff Report of Investigation and as amended by this Joint Stipulation and Recommendation.
- (4) That any wind turbine site proposed by the Applicant but not built as part of this project shall be available for OPSB Staff review in a future case.
- (5) That if construction has commenced at a turbine location and it is determined that the location is not a viable turbine site, that site shall be restored to its original condition within sixty (60) days.

- (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 three turbine models listed in this application has been selected.
- (7) 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.
- (8) That the Applicant shall conduct a pre-construction conference prior to the start of any construction activities. The pre-construction conference shall be attended by OPSB Staff, the Applicant, and representatives from the prime contractor and all sub-contractors for the project. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all construction-related conditions of the certificate, and discussion of the procedures for on-site investigations by OPSB Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for OPSB Staff review.
- (9) 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.
- (10) That 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 built for construction of the Facility.
- (11) That at least thirty (30) days before the pre-construction conference, the Applicant shall submit to the OPSB Staff, for review and approval, the location on which an O&M facility would be built.
- (12) That the Applicant shall not commence construction of the Facility until it has a signed 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. The Applicant shall provide a letter stating that the Agreement has been signed

or a copy of the signed Interconnection Service Agreement to the OPSB Staff.

- (13) 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.
- (14) The Applicant shall submit a mitigation plan for architectural structures/districts and other landmarks identified as potentially eligible for inclusion on the NRHP. Such plan shall be developed in coordination with the OHPO with input from the Hardin County Historical Society and submitted to Staff for review and acceptance.
- (15) That prior to construction, the Applicant shall conclude its ongoing archaeological Phase I survey work for the Hog Creek Wind Farm II project area. If the resulting survey work discloses a find of cultural or archaeological significance, or a site that could be eligible for inclusion on the NRHP, then the Applicant shall submit an amendment, modification, or mitigation plan for Staff's acceptance. Any such mitigation effort shall be developed in coordination with the OHPO with input from the Hardin County Historical Society and submitted to Staff for review and acceptance.
- (16) 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 within thirty (30) days of discovery or as extended by OPSB Staff for good cause shown, to preserve the aesthetics of the project. Any abatement other than the restoration to pre-vandalism condition is subject to approval by OPSB Staff.
- (17) 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, with the exception of soil excavated during the laying of cables for the collection system, shall be segregated and restored in accordance with the Applicant's lease agreement with the landowner. Severely compacted soils shall be

plowed or otherwise decompacted, if necessary, to restore them to original conditions unless otherwise agreed to by the landowner.

- (18) 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 SWPPP and SPCC procedures, and its erosion and sediment control plan. Any soil issues must be addressed through proper design and adherence to the Ohio EPA BMPs related to erosion and sedimentation control.
- (19) That the Applicant shall employ the following erosion and sedimentation control measures, construction methods, and BMPs 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, except within actively cultivated agricultural fields, within seven (7) days of final grading with a seed 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.
- (20) That the Applicant shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. 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.
- (21) 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.
- (22) That the Applicant shall assure compliance with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
- (23) That the Applicant shall have an environmental specialist on site during construction activities that may affect sensitive areas as mutually-agreed upon between the Applicant and OPSB Staff, and as shown on the Applicant's final approved construction plan, including vegetation clearing, areas such as a designated wetland or stream, and threatened or endangered species or their identified habitat. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction.
- (24) 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 mi²)
 - (b) Exceptional Warmwater Habitat
 - (c) Coldwater Habitat
 - (d) Warmwater Habitat
 - (e) Streams supporting threatened or endangered species
- (25) That sixty (60) days prior to the first turbine becoming commercially operational, the Applicant shall submit a post-construction avian and bat mortality monitoring plan for ODNR and OPSB Staff review and approval. This plan will be based on the turbine layout in conjunction with condition #1 of this report. The Applicant's plan shall be consistent with ODNR's On-Shore Bird and Bat Pre- and Post-Construction Monitoring Protocol for Commercial Wind Energy Facilities in Ohio. The post construction monitoring shall be conducted for a minimum of two seasons (April 1 to November 15), which may be split between calendar years. The second monitoring season may be waived at the discretion of ODNR and OPSB Staff. The monitoring start date and reporting deadlines will be provided in the ODNR approval letter and the OPSB concurrence letter.
- (26) That the Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for removal of suitable Indiana bat habitat trees, if avoidance measures cannot be achieved.
- (27) That OPSB Staff, the ODNR, and the USFWS shall be immediately contacted if state or federal threatened or endangered species are encountered during construction 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 the above referenced notification is required within 24 hours. 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 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.

- (29) That the Applicant shall complete a full detailed geotechnical exploration and evaluation at each turbine site to confirm that there are no issues to preclude development of the wind farm. The geotechnical exploration and evaluation shall include borings at each turbine location to provide subsurface soil properties, static water level, rock quality description (RQD), 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.
- (30) That, should site-specific conditions warrant blasting, the Applicant shall submit a blasting plan to Staff for review and acceptance at least thirty (30) days in advance of blasting.
- (31) That the Applicant shall comply with the turbine manufacturer's most current safety manual and shall maintain a copy of that safety manual 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 proposed emergency and safety plan to be used during construction, to be developed in consultation with the fire department(s) having jurisdiction over the area. Before the first turbine is operational, the Applicant shall submit to the OPSB Staff, for review, a fire protection and medical emergency plan to be used during operation of the Facility, which shall be developed in consultation with the first responders 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 provide the final delivery route plan and the results of any traffic studies to OPSB Staff and to the Hardin County Engineer thirty (30) days prior to the preconstruction conference. 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 shall make all improvements outlined in the final delivery route plan prior to equipment and wind turbine delivery. After the commencement of construction, the Applicant may deviate from the final delivery route as necessary, provided the deviation from the final delivery route is submitted to OPSB Staff and to the County Engineer seven (7) days prior to the use of the alternative delivery route and is approved by the OPSB Staff and the County Engineer. 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 and outline steps to remedy vertical constraints.
 - (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 roads and bridges that are not able to support the projected loads from delivery of the wind turbines and other Facility components and make all necessary upgrades.
 - (d) Identify locations where wide turns would require modifications to the roadway and/or surrounding areas and make all necessary alterations. Any alterations for wide turns shall be removed and the area restored to its pre-construction condition unless otherwise specified by the county engineer(s).
- (37) That the Applicant repair damage to roads and bridges caused by construction activity. 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 shall be removed unless the county engineer(s) request that they remain.

The Applicant shall provide financial assurance to the counties that it will restore the public roads it uses to their pre-construction condition. The Applicant shall also enter into a Road Agreement with the county engineer(s) prior to construction and be subject to OPSB Staff review. The Road Agreement shall contain the following:

- (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.
- (38) 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 Hardin County Engineer, ODOT, local law enforcement, and health and safety officials.
- (39) If turbine locations change from what was previously submitted by Applicant and approved by OPSB then, at least thirty (30) days prior to the pre-construction conference and subject to Staff review and approval, the Applicant shall model the expected project noise contribution at the exterior of all non-participating residences within one mile of the Facility boundary at critical wind speed¹ calculated in accordance with ISO 9613-2 standard day conditions assuming moderate downwind propagation.²
- (40) 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

¹ Critical wind speed is defined as the operational condition when the greatest differential occurs between the ambient and wind turbine sound power level at the corresponding wind speed.

² ISO 9613-2:1996(E), "*Acoustics – Attenuation of Sound during Propagation Outdoors – Part 2: General Method of Calculation*", Clauses 5-9.

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).

- (41) That after start of commercial operation, 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).
- (42) That general construction activity shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. 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 required, 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 noise increases above ambient levels at sensitive receptors are permitted at any time. The Applicant shall notify property owners or affected tenants within the meaning of O.A.C. 4906-5-08(C)(3) of upcoming construction activities including potential for nighttime construction activities.
- (43) That if the Applicant chooses to develop the project utilizing the Vestas V100 technology and layout, Staff shall be provided a 1,000-meter shadow flicker analysis for review and acceptance at least thirty (30) days prior to the pre-construction conference.
- (44) That any turbine forecasted prior to construction to create in excess of thirty (30) hours per year of shadow flicker at a non-participating habitable receptor within 1,000 meters shall be subject to further review and possible mitigation. Mitigation shall be completed before commercial operation commences and consist of either reducing the turbine's forecasted impact to thirty (30) hours per year, or other measures, proposed by the Applicant in consultation with the affected receptor(s), that are acceptable to the OPSB Staff.
- (45) 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. Further, the Applicant shall complete avoidance or mitigation measures prior to construction for impacts that can be predicted in sufficient detail to implement appropriate and reasonable avoidance and mitigation measures. After construction, the Applicant shall mitigate all observed impacts of the project to microwave communication paths and systems within seven (7) days or within a longer time period approved by OPSB Staff. All avoidance and mitigation measures shall consist of either shifting the location of the turbine(s) so as to not affect any known microwave paths and systems, or other measures acceptable to OPSB Staff, the Applicant, and the affected path owner, operator, or licensee(s).

- (46) That the Applicant must meet all 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 a degradation of TV reception due to the Facility operation, the Applicant shall provide, at its own expense, cable or direct broadcast satellite TV service.
- (47) That the Applicant must meet all 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 as required by the FAA or any federal agency.
- (48) 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, which 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.
- (49) That the Applicant must meet all recommended and prescribed 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.
- (50) That ninety (90) days prior to any construction, the Applicant notify, in writing, any owner of an airport located within two miles of the project boundary, whether public or private, whose operations, operating thresholds/minimums, landing/approach procedures and/or vectors are expected to be altered by the siting, operation, maintenance, or decommissioning of the Facility.

- (51) 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.
- (52) 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 Hardin County Engineer 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) Provide a proposed timetable and funding methodology for posting adequate decommissioning funds.
 - (iii) 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 back-filling, soil stabilization, compacting, and grading.
 - (iv) Describe how the Applicant will implement BMPs 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.
 - (v) 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 twelve (12) 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 and the OPSB has

not extended this time period for good cause shown, 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 turbine will be presumed to have reached the end of its useful life.

- (c) That decommissioning 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 thirty-six (36) inches or to the top of the foundation spread footing, whichever depth is greater. Decommissioning shall include the restoration of roads and bridges in a manner as required by the Road Agreement between the Applicant and the county engineer; the removal and transportation of the wind turbines off-site; and removal of buildings, cabling, electrical components, access roads, and any other associated facilities, unless otherwise mutually agreed upon by the Applicant and the landowner. 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 participating 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 decommissioning plan, as amended, with physical construction and demolition costs based on ODOT's Procedure for Budget Estimating and RS Means material and labor cost indices, unless some other publication or guideline is approved by the OPSB Staff; (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.

- (iii) 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 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.
 - (iv) That the Applicant's decommissioning plan shall be subject to full review and amendment should any future state legislation prescribe new wind energy generation Facility decommissioning regulations.
- (53) That the Applicant repair damage to government maintained ("public") roads and bridges caused by decommissioning activity. Any damage shall be repaired promptly to its pre-decommissioning state by the Applicant under the guidance of the appropriate regulatory agency. The Applicant shall provide financial assurance to the counties that it will restore the public roads and bridges it uses to their pre-decommissioning condition. These terms will be defined in a Road Agreement that will be entered into between the Applicant and the County Engineer prior to construction and will be subject to OPSB Staff review. The Road Agreement shall contain the following:
 - (a) A pre-decommissioning survey of the conditions of the public roads and bridges conducted within a reasonable time prior to decommissioning activities.
 - (b) A post-decommissioning survey of the condition of the public roads and bridges to be conducted within a reasonable time after decommissioning activities.

- (c) An objective standard of repair that obligates the Applicant to restore the public roads and bridges to the same or better condition as they were prior to decommissioning.
 - (d) A timetable for the posting of the decommissioning road and bridge bond prior to the advent of any heavy equipment on public roads or bridges.
- (54) 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 wetland 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 wetland crossings that are expected to be completed via HDD. Such contingency plan may be incorporated within the required stream and/or wetland 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.
- (55) 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 outside the environmental survey areas and any changes within environmentally-sensitive areas will be subject to OPSB Staff review and approval prior to construction.
- (56) 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. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire Facility within 60 days after commencement of commercial operation, it 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.
- (57) 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.
- (58) 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 and Recommendation, the Applicant, the Ohio Farm Bureau Federation, Inc. and the 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 be waived thereon:

- (1) Applicant Exhibit No. 1: The Application, as filed with the Board on August 25, 2010 and August 26, 2010;
- (2) Applicant Exhibit No. 2: Financial Information filed on behalf of Applicant;
- (3) Applicant Exhibit No. 3: Supplemental information filed by the Applicant on February 10, 2011 and on March 24, 2011, respectively;
- (4) Applicant Exhibit No. 4: Proofs of publication for the Public Information meetings docketed on June 28, 2010 and June 13, 2011; and for the public hearing docketed on August 4, 2011;
- (5) Staff Exhibit No. 1: Staff Report of Investigation for Hog Creek Wind Farm II docketed on July 8, 2011;
- (6) Applicant Ex. 5: Public Hearing Notifications to Property Owners and Public Officials; and,
- (7) Joint Exhibit No. 1: Joint Stipulation and Recommendation docketed on August 5, 2011.

C. Other Terms and Conditions

1. This Joint Stipulation and Recommendation 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 joint agreement 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.

2. 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 and Recommendation. Upon notice of termination and withdrawal from the Stipulation and Recommendation by any party, pursuant to the above provisions, this joint agreement 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.
3. The Parties agree and recognize that this Stipulation and Recommendation 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 joint agreement, that party's participation in this case as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation and Recommendation 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 joint agreement.
4. The signatory Parties agree that this settlement is a product of serious bargaining among capable, knowledgeable Parties. This agreement is the product of an open process in which the Parties, all of whom support certification of this project, were represented by able counsel and technical consultants. The Stipulation represents a comprehensive compromise of issues and, the Parties believe, presents sufficient information and recommendations to enable the OPSB to make all requisite statutory findings to support certification of the Project. There is no opposition to this Stipulation and Recommendation.
5. The signatory Parties further agree that the settlement, as a package, promotes the public interest. If constructed, the project will benefit the local economy through added jobs and payroll as well as additional tax revenues. In the larger picture, certification and construction of the project will result in creation of a new, in-state renewable energy supply that will assist Ohio electric utilities in meeting statutory renewable energy requirements.
6. The signatory Parties agree that the settlement package does not violate any important regulatory principle or practice. To the contrary,

it promotes development of alternative energy sources in furtherance of Ohio law and important state policies promoting renewable energy resources.

FINDINGS

A. Stipulations as to Findings of Fact

The Parties agree that the record in this case contains sufficient probative evidence for the Board to find and determine, as findings of fact, that:

- (1) Hog Creek Wind Farm, LLC, is an Ohio limited liability company and a “person” as defined in Ohio Revised Code (“R.C.”) § 4906.01;
- (2) The Project is an economically significant wind farm as defined in R.C. 4906.13;
- (3) On June 8, 2010, the Applicant held a public informational meeting at the McIntosh Center at Ohio Northern University in Ada, Ohio, regarding the proposed wind-powered electric generating Facility;
- (4) On August 18, 2010, the Applicant filed a Motion for Waivers and Protective Treatment pursuant to Ohio Admin. Code Section 4906-7-07(H)(1);
- (5) On August 25, 2010, the Applicant filed its application for a certificate to construct the proposed wind-powered electric generating Facility in Hardin County, Ohio;
- (6) On August 27, 2010, the Board’s Staff docketed a memorandum indicating that it did not object to the Applicant’s waiver request;
- (7) On August 31, 2010, the Ohio Farm Bureau Federation filed a motion to intervene in the case;
- (8) The Administrative Law Judge issued an Entry on September 21, 2010 granting Applicant’s motion for waivers, granting Applicant’s request for a protective order for certain information, and granting the Ohio Farm Bureau’s motion to intervene;
- (9) On October 21, 2010, the Applicant provided notice to the Board indicating a change in selection of the turbine model for the project

to allow certain flexibility in the project design, thereby ensuring optimal energy production;

- (10) On October 25, 2010, the Board Chairman issued a letter informing that the application had been found not to comply with Ohio Admin. Code Chapters 4906-01, *et seq.*;
- (11) On February 10, 2011 and March 24, 2011, the Applicant filed additional information to supplement its application;
- (12) On April 8, 2011, the Board Chairman issued a letter to the Applicant stating that the application, as supplemented with subsequent filings on February 10, 2011, had been found to comply with the requirements of Ohio Admin. Code Chapter 4906-01, *et seq.*;
- (13) On May 26, 2011, the Administrative Law Judge issued an Entry scheduling a local public hearing to take place on Monday, July 25, 2011, at 6:00 p.m., at the Ada Depot; and that the adjudicatory hearing commence on Tuesday, August 2, 2011;
- (14) On June 13, 2011, Hog Creek filed proofs of publication (The Kenton Times and The Ada Herald) of the required public informational meetings;
- (15) On July 5, 2011, the Ohio Farm Bureau filed a letter stating that it did not object to amended application;
- (16) On July 7, 2011, Hog Creek filed correspondence regarding public hearing notifications to property owners and local public officials;
- (17) On July 7, 2011, the Administrative Law Judge issued an Entry denying, in part, Applicant's request for a protective order for certain information;
- (18) On July 8, 2011, the Staff Report of Investigation for Hog Creek II was filed;
- (19) On July 21, 2011, information previously designated as confidential by Applicant was released;
- (20) On July 29, 2011, Staff filed a motion to continue the adjudicatory hearing;
- (21) On August 1, 2011, the Administrative Law Judge issued an Entry continuing the adjudicatory hearing to August 8, 2011;

- (22) The basis of need requirement in R.C. 4906.10(A)(1) is inapplicable to the Facility;
- (23) Adequate data on the Facility has been provided to determine the nature of the probable environmental impact as required by R.C. 4906.10(A)(2);
- (24) Adequate data on the Facility 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 R.C. 4906.10(A)(3);
- (25) Adequate data on the Facility 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 R.C. 4906.10(A)(4) are met;
- (26) Adequate data on the Facility 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 wastes, and air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5);
- (27) Adequate data on the Facility has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6);
- (28) Adequate data on the Facility has been provided to determine what the Facility's impact will be on the viability as agricultural 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 R.C. 4906.10(A)(7);
- (29) Adequate data on the Facility 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 R.C. 4906.10(A)(8); and

- (30) The record compiled in this case contains sufficient factual data to enable the Board to make a reasoned and informed decision regarding the Facility.

B. Stipulations as to Recommended Conclusions of Law

Based on the record in this proceeding, the Parties agree and stipulate that the record in this case demonstrates and contains sufficient probative evidence for the Board to make the following findings and determinations, as conclusions of law:

1. Hog Creek Wind Farm, LLC is a “person” under R.C. 4906.01(A).
2. The proposed Facility is an economically significant wind farm under R.C. 4906.13.
3. The Application complies with the requirements of O.A.C. Chapter 4906-17.
4. The requirement for the need for the Facility under R.C. 4906.10(A)(1) is inapplicable.
5. The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the Facility under R.C. 4906.10(A)(2).
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 R.C. 4906.10(A)(3).
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 R.C. 4906.10(A)(4).
8. The record establishes, as required by R.C. 4906.10(A)(5), 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 wastes, and air navigation, and all rules and standards adopted under relevant Chapters of the

Ohio Revised Code.

9. The record establishes that the Facility will serve the public interest, convenience and necessity under R.C. 4906.10(A)(6).
10. The Facility's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. 4906.10(A)(7).
11. The record establishes that the Facility would incorporate maximum feasible water conservation practices under R.C. 4906.10(A)(8).
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.

WHEREFORE, based on the record in this proceeding, the Parties respectfully request that the Board issue to Hog Creek Wind Farm, LLC, a Certificate of Environmental Compatibility and Public Need for construction, operation, and maintenance of the Hog Creek Wind Farm II as set forth in the Application, supplements thereto, and in accordance with the terms of this Joint Stipulation and Recommendation.

The undersigned stipulate and represent that they are authorized to enter into this Joint Stipulation and Recommendation, Findings of Fact, and Conclusions of Law on the 5th day of August, 2011.

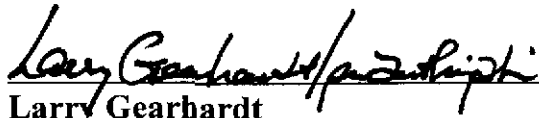
Respectfully and jointly submitted on behalf of the following:

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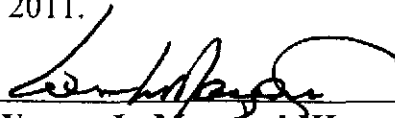
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PROOF OF SERVICE

The foregoing Joint Stipulation and Recommendation, Findings of Facts, and Conclusions of Law, was served by regular U.S. mail and/or via electronic mail upon all parties of record on this 5th day of August, 2011.



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