

FILE

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of NEXTERA) ENERGY HONEY CREEK WIND, LLC for a) Certificate to Site a Wind-Powered Electric) Case No. 11-4886-EL-BGN) Generation Facility in Seneca and Crawford) Counties, Ohio.)

MOTION FOR WAIVERS

Applicant, NextEra Energy Honey Creek Wind, LLC ("Honey Creek"), pursuant to Ohio Administrative Code ("OAC") 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:

- (1) From the one-year notice period as set forth in Ohio Revised Code Section ("R.C.") 4906.06(A)(6);
(2) From providing an extensive site selection study to the extent that Applicant is not able to describe all the specific information listed in the site selection criteria as set forth in OAC Rule 4906-17-04(A);
(3) From providing map of vegetative cover as set forth in OAC Rule 4906-17-05(A)(3)(g), and instead allow the Applicant to provide a general narrative description of the vegetative cover that may be disturbed during construction;
(4) From certain requirements relating to cross-sectional views and test borings and maps set forth in OAC Rule 4906-17-05(A)(4) and (B)(1)(a) respectively, and instead to allow the Applicant to submit representative test boring information and then to submit additional information once it determines the final location of turbines and other structures; and
(5) From providing grade elevations around the turbine pedestals and a map showing modifications in grade elevations during construction as set forth in OAC Rule 4906-17-05(B)(2)(h) and instead to allow Applicant to submit the proposed pedestal grade elevations and contour grade elevations at the time it submits its construction drawings.

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

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MEMORANDUM IN SUPPORT

I. BACKGROUND

Honey Creek is a wholly owned subsidiary of NextEra Energy Resources (“NextEra”) which in turn is wholly owned by Next Energy Inc. NextEra Inc. owns two principal subsidiaries, Florida Power and Light and NextEra. NextEra is a national wind energy company formed to develop, build, own, and operate wind energy facilities. Based in Juno Beach, Florida, NextEra is the largest wind energy producer in North American with 8,467 MW in 17 states and Canada. NextEra has approximately 4,700 employees, 700 professionals of which are specifically dedicated to managing the operations of our wind portfolio.

The proposed Honey Creek project will consist of up to 115 turbines expected to generate up to 185 MW. Applicant has selected the General Electric 1.6 xle turbine. In addition to turbines the project will consist of associated infrastructure (i.e. access roads, electrical collection system, construction staging area, operations and maintenance facilities and substations). The wind turbine array will be spread across approximately 14,000 acres of land located in portions of two counties, Seneca and Crawford counties. The Project area consists primarily of agricultural areas and is situated in portions of the Village of Bloomville, Bloom and Venice townships in Seneca County and Lykens and Chatfield townships in Crawford County.

Based upon the unique nature of wind generation facilities, Honey Creek is seeking waivers from certain requirements of OAC Chapter 4906-17.

II. EXPEDITED RULING – OAC Rule 4906-7-12(C)

An expedited ruling on this Motion is required in order for Applicant to complete an application in conformance with the applicable requirements in OAC Chapter 4906-17.

Applicant plans to file its application the last part of the third quarter or early fourth quarter in 2011. Meeting this filing date is necessary to allow Applicant to begin construction by summer of 2012 so that the project can commence commercial operation by no later than the fourth quarter of 2012.

As set forth in this waiver request, and as will be evident in the application itself, Applicant has conducted the requisite analyses and studies, and obtained the necessary site commitments, so that Applicant can meet its schedule. For these reasons, Applicant asks that the review of its waiver requests be undertaken on an expedited basis and urges the Board or the Administrative Law Judge to decide this Motion on such 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 or 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 “good cause” shown. Applicant requests the Board to waive the one-year requirement between the dates an application is filed and construction is commenced.

Applicant plans to submit an application for this project in the last part of the third quarter or early fourth quarter in 2011. Through this waiver request, Applicant seeks the flexibility to begin construction-related activities prior to the commencement of the one-year milestone date contemplated by the statute. Applicant’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, appears to satisfy the good cause required by the statute.

Furthermore, a waiver from the one year period is authorized by statute and the Board has routinely granted the waiver for at least the last decade, including in all of the wind applications that the Board has accepted.

B. OAC Rule 4906-17-04(A): Waiver of an Extensive Site Selection Study

As part of the application, Honey Creek will be providing a significant amount of information regarding the company's selection of its site in Seneca and Crawford Counties, Ohio. Wind resource is extremely limited in Ohio; there are not many project sites with the wind resource necessary to support a utility scale project. 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 order for Ohio utilities to meet the requirements for renewable energy mandated by the Ohio legislature, all viable Ohio wind sites must be considered as potential wind energy project sites. Each specific criterion set forth in OAC Rule 4906-17-04 may not apply even though the site is an appropriate one for a wind energy project.

OAC Rule 4906-17-04 contemplates extensive detail in a site selection study. Applicant will be providing a description of the project boundary; the detailed rationale for selecting the site; a map of the general project and surrounding area; a list and description of qualitative siting criteria (i.e. setbacks, noise constraints, etc.); and a constraint map. Applicant is aware that there is no approved form for a site selection study used in OAC Chapter 4906-17. Moreover, as the Board recognized in promulgating its wind application rules, where an applicant limits its study to locations where there are potentially viable wind resources, it would be appropriate for the Board to grant a waiver from filing an extensive site selection study¹. However, in light of the

¹ *In the Matter of the Power Siting Board's Adoption of Chapter 4906-17 of the Ohio Administrative Code*, Opinion and Order in Case No. 08-1024-EL-ORD issued October 28, 2008 at paragraph 56.

recent Ohio Supreme Court decision in *In re Application of Middletown Coke Company*, (2010) 127 Ohio St. 3d 348, Applicant will provide sufficient information to support a finding that the site represents the minimum adverse environmental impact pursuant to R.C. 4906.10 (A)(3). The Board has granted waivers from this requirement in virtually all the wind applications filed to date.

C. OAC Rule 4906-17-05(A)(3)(g): Waiver to Allow Applicant to Provide a General Narrative Description of the Vegetative Cover that May be Disturbed During Construction, Rather than the Required Map.

OAC Rule 4906-13-04(A)(3) requires Honey Creek to submit a map showing, among other things, the vegetative cover that may be removed during construction. Applicant will provide a general description and provide a drawing of the vegetation that would be cleared in the project area (i.e., the disturbed area). However, an attempt to provide this detailed information for the massive acreage that comprises the project area (plus a five-mile buffer) would be cost prohibitive. In light of the fact that Applicant will provide the vegetation information within the limited disturbance area, additional data would serve no useful purpose because the Board and its Staff will have the relevant data for the impacted areas. Therefore Applicant proposes to provide in its application a general narrative description of the vegetative cover within the Project area and will estimate the quantity of specific vegetation that may be disturbed or removed during construction.

A similar waiver from this subsection was granted in *Buckeye Wind LLC*, Case No. 08-666-EL-BGN (Entry dated July 31, 2009) (hereinafter "*Buckeye Wind*"); *Heartland Wind, LLC*, Case No. 09-1066-EL-BGN (Entry dated December 11, 2009) (hereinafter "*Heartland Wind*"); *Glacier Ridge Wind Farm, LLC*, Case No. 11-902-EL-BGN (Entry dated April 6, 2011) (hereinafter "*Glacier Ridge*"); *Leipsic Wind, LLC*, Case No. 11-3676-EL-BGN (Entry dated July

25, 2011) (hereinafter "*Leipsic*") and in *Ashtabula Wind Energy, LLC*, Case No. 11-2400-EL-BGN Entry dated August 24, 2011 (hereinafter "*Ashtabula Wind*").

D. OAC Rule 4906-17-05(A)(4): Waiver to Allow Applicant to Submit Information and a Map Relating to Cross-Sectional Views and Test Borings Once it Determines the Final Location of Turbines and Other Structures.

Honey Creek requests a waiver from the requirement that it provide "maps and corresponding cross-sectional view(s) showing geological features of the proposed project area and the location of test borings" pursuant to Rule 4906-17-05(A)(4). Rule 4906-17-05(B)(1)(a) requires a layout of the test borings. As part of its application, Honey Creek will provide a geological desktop study aid and a generalized cross-sectional view based on available secondary source information. Once the final turbine sites are determined, Applicant proposes to provide appropriate test borings for those final turbine locations for which test borings are appropriate.

In its application Honey Ridge proposes to show representative test boring information based on between 5 and 10 sites which it believes to be representative of the type of areas where turbines, access roads and ancillary wind facilities will be located. Cross sectional views will be provided based upon the results of various tests. Results of this representative geotechnical program will identify general subsurface characteristics, confirm the absence of significant constraints to foundations, and inform the potential foundation design.

Once the final turbine sites are determined, Honey Creek plans to perform geological tests (either bores or Cone Penetration Tests) at each of the final turbine location sites. As part of the final engineering design process, the results of the geological tests and cross sections will be provided to the Board Staff at a reasonable time prior to construction in accordance with Finding No. 66 of the Opinion and Order in Case No. 08-1024-EL-ORD, *In the Matter of the Power Siting Board's Adoption of Chapter 4906-17 of the Ohio Administrative Code*, issued

October 28, 2008. This type of waiver with the proposed deferral was granted in the *Buckeye Wind*, *Heartland Wind*, *Paulding Wind Farm LLC*, Case No. 09-980-EL-BGN (Entry dated February 23, 2010); *Paulding Wind Farm II*, Case No. 10-369-EL-BGN (Entry dated June 21, 2010); and *Black Fork Wind Energy LLC*, Case No. 10-2865-EL-BGN (Entry dated May 3, 2011), *Leipsic and Ashtabula Wind*.

E. OAC Rule 4906-17-05(B)(2)(h): Waiver To Allow the Proposed Contour Grade Elevations and Grade Elevations around Pedestals To Be Submitted at the Time Applicant Submits Construction Drawings Rather Than Providing a Map Showing Modifications in Grade Elevations and Pedestal Elevations During Construction in the Application.

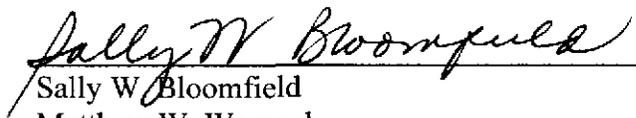
Rule 4906-17-05(B)(2)(h) requires an applicant to describe the layout and construction of the proposed site and a description of proposed major structures power generating site showing the grade elevations where modified during construction. There are several reasons why it is appropriate to delay providing the contour grade elevations with the application. First, the final turbine site locations cannot be known with precision until later in the Board process and will be accurate as the final locations only when the Applicant submits its construction drawings at the preconstruction conference. Thus the grade elevations, if performed on the locations in the application would have to be performed again when the final turbine site locations are known with absolute certainty. In addition, a wind turbine sits on a relatively small base, generally only 50 to 60 feet in diameter that is different from the situation of a large electric generating plant that rests on a large tract of contiguous acreage property. In the instance of turbine grading, the impact of the grading will be minimal and possibly not known until after construction of the pedestal. Thus, the Applicant requests a waiver of the above referenced rule, but proposes to provide the Staff the grading when it submits the final construction drawings. A similar request

for waiver was granted in *Buckeye, Paulding Wind, Paulding Wind II, Glacier Ridge* and *Ashtabula Wind*.

IV. CONCLUSION

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

Respectfully submitted on behalf of
NEXTERA ENERGY HONEY CREEK WIND, LLC



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