

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Hardin Wind LLC for a Certificate to)
Construct a Wind-Powered Electric) Case No. 13-1177-EL-BGN
Generation Facility in Hardin and Logan)
Counties, Ohio.)

In the Matter of the Application of)
Hardin Wind LLC for a Certificate of)
Environmental Compatibility and Public) Case No. 13-1767-EL-BSB
Need for a Substation Project in Hardin)
County, Ohio.)

In the Matter of the Application of)
Hardin Wind LLC for a Certificate of)
Environmental Compatibility and Public) Case No. 13-1768-EL-BTX
Need for a 345 kV Transmission Line in)
Hardin County, Ohio.)

ENTRY

The administrative law judge finds:

- (1) On June 28, 2013, Hardin Wind LLC (Hardin) filed in Case No. 13-1177-EL-BGN (13-1177), pursuant to Ohio Admin.Code 4906-5-08, an application to construct a wind generating facility in Hardin and Logan counties (Scioto Ridge Wind Farm).
- (2) On August 27, 2013, Hardin filed, pursuant to Ohio Admin.Code 4906-5-08, its preapplication notification letters regarding its application in Case No. 13-1767-EL-BSB (13-1767) to construct a point of interconnect switchyard to interconnect to the East Lima-Marysville 345 kilovolt (kV) circuit, and its application in Case No. 13-1768-EL-BTX (13-1768) to construct a 345 kV transmission line to interconnect its wind generating facility to the East Lima-Marysville 345 kV circuit.

- (3) By Entry of September 17, 2013, the administrative law judge (ALJ) granted Hardin's motion to consolidate the applications in 13-1177, 13-1767, and 13-1768 for purposes of all public hearings, evidentiary hearings, and public notices.
- (4) Pursuant to Ohio Admin.Code 4906-5-05, within 60 days after receipt of an application for a major utility facility, the Chairman of the Board shall notify an applicant of the acceptance or rejection of the application as complete.
- (5) By letters filed on September 25, 2013, in 13-1177, and on October 17, 2013, in 13-1767 and 13-1768, the Board notified Hardin that the applications were sufficiently complete to permit Staff to commence its review and investigation of the applications. Further, the September 25, 2013, and October 17, 2013 letters directed Hardin to serve appropriate government officials and public agencies with copies of the complete, certified applications.
- (6) On October 25, 2013, Hardin filed certificates of service of its accepted and complete applications, in accordance with the requirements of Ohio Admin.Code 4906-5-07. Hardin also submitted the application fees to the Board, pursuant to Ohio Admin.Code 4906-5-11. The effective date of the filing of the applications shall be October 25, 2013.
- (7) R.C. 4906.07(A), provides that, upon receipt of an application complying with R.C. 4906.06, the Board must promptly fix a date for a public hearing not less than 60 nor more than 90 days after such receipt, and shall conclude the proceeding as expeditiously as practicable.
- (8) Accordingly, the local public hearing in these cases will be held on January 8, 2014, at 6:00 p.m., at the Hardin County Courthouse, Veterans Hall, Ohio Courthouse Square, Kenton, Ohio 43226. The adjudicatory hearing will commence on January 22, 2014, at 10:00 a.m., 11th floor, Hearing Room 11-C, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

- (9) Hardin should issue public notices of the applications and hearings in accordance with Ohio Admin.Code 4906-5-08. As part of the information to be included in the notices, as required by Ohio Admin.Code 4906-5-08, Hardin shall include a statement that the public hearing in these cases shall consist of two parts:
- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person, commencing on January 8, 2014, at 6:00 p.m., at the Hardin County Courthouse, Veterans Hall, Ohio Courthouse Square, Kenton, Ohio 43226.
 - (b) An adjudicatory hearing to commence on January 22, 2014, at 10:00 a.m., 11th floor, Hearing Room C, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.
- (10) Further, regarding the initial public notice required under Ohio Admin.Code 4906-5-08(C)(1), Hardin shall include the following statement as a part of the public notice:
- Petitions to intervene in the adjudicatory hearing will be accepted by the Board up to 30 days following publication of the notice required by Ohio Admin.Code 4906-5-08(C)(1), or later if good cause is shown. However, the Board strongly encourages interested persons who wish to intervene in the adjudicatory hearing to file their petitions as soon as possible but by no later than January 2, 2014. Petitions should be addressed to Docketing Division, the Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215-3793 and cite the above-listed case numbers.
- (11) Ohio Admin.Code 4906-7-01, provides that the ALJ shall regulate the course of the hearing including requiring that expert or factual testimony to be offered in Board

proceedings be reduced to writing and filed with the Board, according to a schedule established by the ALJ. Accordingly, the ALJ finds that the following procedural schedule and process should be implemented:

- (a) Pursuant to Ohio Admin.Code 4906-5-05(D), Staff shall file its report of investigation (Staff Report) on or before December 24, 2013.
 - (b) On or before December 31, 2013, each party shall file a list of issue(s) citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing.
 - (c) All expert and factual testimony to be offered by Hardin shall be filed by January 9, 2014.
 - (d) All expert and factual testimony to be offered by intervenors and Staff shall be filed by January 16, 2014.
 - (e) The parties are encouraged to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJ assigned to these proceedings.
- (12) On September 3, 2013, Joe and Deb Grant filed a motion to intervene in 13-1177. The Grants state that they are nonparticipating property owners on property within the Scioto Ridge Wind Farm project. The Grants also contend that the issues that they are concerned about include the minimum setback of the turbines from houses, harm to migrating birds, noise levels and flicker effect from the turbines, and a reduction in residential property values. On October 3, 2013, Michael and Diana Shepherd filed a motion to intervene in 13-1177. The Shepherds state that they are nonparticipating residents of the area within the Scioto Ridge Wind Farm project. The Shepherds similarly claim that they are concerned about the minimum setback of the

wind turbines, noise and shadow flicker effect generated from the wind turbines, health effects on animals from shadow flicker and turbine noise, and a reduction in residential property values. No memoranda contra were filed in opposition to the motions to intervene.

- (13) Upon review, the ALJ finds that the motions to intervene filed by the Grants and Shepherds meet the requirements for intervention set forth in R.C. 4906.08, and Ohio Admin.Code 4906-7-04, and their motions to intervene are unopposed. Accordingly, the ALJ finds that the Grants and Shepherds should be granted intervention in 13-1177.
- (14) Because the pro se intervenors in these cases may have never previously participated in these types of proceedings, the ALJ believes that it is important to provide some clarification of the procedures as set forth in the findings below.
- (15) This entry directs that all expert and factual testimony to be offered by any intervenor at the evidentiary hearing must be filed by January 16, 2014. This means that any intervenor interested in testifying at the January 22, 2014, evidentiary hearing, and any person who an intervenor may call as an expert witness, must file in these cases by January 16, 2014, a written statement of their testimony. That statement shall comprise the entirety of their testimony. During the January 22, 2014 evidentiary hearing, intervenors and witnesses called by intervenors, who have timely filed their testimony, will be sworn in and be subject to cross-examination by the other parties regarding their filed statement. Any party or witness not filing a written statement by January 16, 2014, will not be permitted to testify at the January 22, 2014 evidentiary hearing.
- (16) As further clarification, the ALJ notes that, in cases involving these types of applications, the Board always conducts a local public hearing and an evidentiary hearing, but each type of hearing has a different purpose. The purpose of the local public hearing is to receive testimony concerning the proposed project from members of the local community who are not parties to the case, which the Board will consider in

its deliberations in these cases. The purpose of the evidentiary hearing is to allow the parties to the cases the opportunity to present sworn testimony subject to cross-examination that will form the evidentiary record that the Board will weigh and consider in arriving at its formal decision on the merits of the applications in these cases. All persons who are granted the right to intervene are parties to the cases and, as such, will not only be allowed to present testimony at the evidentiary hearing (on their own behalf or through the testimony of witnesses that they bring to the hearing, so long as such testimony is timely filed by January 16, 2014), but will also have the right to cross-examine all other parties' witnesses who appear and testify at the evidentiary hearing.

Because each of the two hearings serves a separate function, no person who has been granted intervenor/party status in these cases shall be permitted to provide testimony at the local public hearing. If a person who is granted the right to intervene in these cases decides that he or she would prefer to testify at the local public hearing, rather than at the evidentiary hearing, he or she may do so by informing the ALJ at the local public hearing that he or she no longer wishes to be an intervenor in these cases.

It is, therefore,

ORDERED, That the hearings in these matters be scheduled at the times and places designated in finding (8). It is, further,

ORDERED, That notices of the application and hearings be published by Hardin in accordance with findings (9) and (10). It is, further,

ORDERED, That Staff file its Staff Report pursuant to finding (11). It is, further,

ORDERED, That the parties file their issue lists and testimony in accordance with finding (11). It is, further,

ORDERED, That the motions to intervene in 13-1177 filed by Joe and Deb Grant and Michael and Diana Shepherd are granted. It is, further,

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

THE OHIO POWER SITING BOARD

s/Scott Farkas

By: Scott Farkas
Administrative Law Judge

JRJ/sc

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

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in

Case No(s). 13-1177-EL-BGN, 13-1767-EL-BSB, 13-1768-EL-BTX

Summary: Administrative Law Judge Entry ordered hearings in these matters scheduled at the times and places designated in finding (8). - electronically filed by Sandra Coffey on behalf of Scott Farkas, Attorney Examiner, Public Utilities Commission of Ohio