

PUCO EXHIBIT FILING

Date of Hearing: October 30, 2013Case No. 13-0197-EL-BGNPUCO Case Caption: IMO: Northwest Ohio
Wind Energy, LLC

List of exhibits being filed:

Joint Exhibits 1 + 2

RECEIVED-DOCKETING DIV

2013 NOV -1 PM 2:08

PUCO

Reporter's Signature: Rosemary Anderson
Date Submitted: 11/1/13This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business
Technician [Signature] Date Processed 11/1/13

1999 2000 2001

— — —

before Mr. Jeffrey R. Jones, Administrative Law Judge, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-C, Columbus, Ohio, called at 10:00 a.m. on Wednesday, October 30, 2013.

name	width	color
1	100	red
2	100	blue
3	100	green
4	100	yellow
5	100	purple
6	100	orange
7	100	pink
8	100	brown
9	100	grey
10	100	black

— — —

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **Northwest Ohio**)
Wind Energy, LLC for a Certificate of Environmental)
Compatibility and Public Need for the Northwest Ohio) Case No. 13-0197-EL-BGN
Wind Farm)
)

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Northwest Ohio Wind Energy, LLC (“Northwest” or “Applicant”), the Staff of the Ohio Power Siting Board (“OPSB Staff”), and the Ohio Farm Bureau Federation (“Farm Bureau”)¹, who represent all parties to this proceeding, submit the Joint Stipulation and Recommendation (“Stipulation”) for adoption by the Ohio Power Siting Board (“Board” or “OPSB”). Ohio Administrative Code (“OAC”) Rule 4901-1-30, provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below, (“Parties”) and to recommend that the Board approve and adopt this Stipulation as part of its Opinion and Order in this proceeding, resolving all matters pertinent to the certification and construction of a wind farm comprised of up to 59 turbines, each with a nameplate capacity of 1.7 MW to 2.0 MW and other associated facilities (hereinafter referred to as the “Facility”) and located in Paulding County.²

¹ The Farm Bureau filed the only motion to intervene in this proceeding on June 16, 2013, which was granted on August 22, 2013.

² The Facility is more fully described in Northwest’s Application filed with the Board on May 24, 2013 and Amended Application filed on August 8, 2013 in this proceeding.

This Stipulation meets the standards set forth by the Ohio Supreme Court in *Industrial Energy Consumers of Ohio Power Co. v. Pub. Util Comm.*, 68 Ohio St.3d 559 (1994). It is supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process to resolve all of the issues in this proceeding.

The Parties have engaged in a number of settlement discussions related to the topics raised in the Staff Report issued by the Board Staff on October 7, 2013³ and the Supplement to the Amended Application filed October 1, 2013. This Stipulation represents the culmination of these discussions, and the Parties acknowledge that this agreement is amply supported by the record and thus entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Facility.

II. STIPULATION AND RECOMMENDATION

A. Recommended Conditions

The proposed project area covers 12,750 acres of leased land in Blue Creek and Latty townships in Paulding County, near the villages of Haviland and Grover Hill. The project itself involves the construction of up to 59 turbines with a nameplate capacity of 1.7 MW to 2.0 MW, not to exceed a total net generating capacity of 100 MW. Construction of the Facility will begin in December 2013.

The Parties recommend that the Board issue the Certificate of Environmental Compatibility and Public Need request by Northwest subject to the following conditions:

³ The Staff Report was reissued on October 10, 2013 to correct editing errors.

- (1) The facility shall be installed as presented in the application, and as modified and/or clarified by the Applicant's supplemental filings and further clarified by recommendations in this *Staff Report of Investigation*.
- (2) 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) The Applicant shall implement the mitigation measures 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*.
- (4) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the prime contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may conduct separate preconstruction meetings for each stage of construction.
- (5) The Applicant shall develop a complaint resolution process that shall include procedures for responding to complaints about excessive noise during construction, and excessive noise and excessive shadow flicker caused by operation of the facility. The complaint resolution process shall include procedures by which complaints can be made by the public, how complaints would be tracked by the Applicant, steps that would be taken to interact with the complainant and respond to the complaint, steps that would be taken to verify the merits of the complaint, and steps that would be taken to mitigate valid complaints. Mitigation, if required, shall consist of either reducing the impact so that the project contribution does not exceed the requirements of the certificate, or other means of mitigation reviewed by Staff for confirmation that it complies with this condition.
- (6) At least 30 days prior to the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design, including the facility, temporary and permanent access roads, any crane routes, construction staging areas, and any other associated facilities and access points, so that 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 design shall include all conditions of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate.
- (7) If any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to 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 Staff review and

acceptance, to ensure compliance with all conditions of the certificate, prior to construction in those areas.

- (8) Within 60 days after the commencement of commercial operation, the Applicant shall submit to 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.
- (9) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.
- (10) As the information becomes known, the Applicant shall provide to Staff the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (11) The Applicant shall not commence any 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 Staff.
- (12) Any new transmission line constructed in order to deliver electricity from the generation project will become part of a filing with the Board, and must be approved prior to construction of the generation project.
- (13) At least 60 days before the preconstruction conference, if the Applicant selects the Gamesa G114 turbine model, then the Applicant shall submit a complete copy of the manufacturer's safety manual to Staff for review.
- (14) The Applicant shall maintain a log of all field tile drainage systems damaged resulting from the construction, operation, and/or maintenance of the facility. This log shall include global position system mapping of the damaged tile and descriptions for repair and/or replacement.
- (15) Construction in northern harrier preferred habitat types shall be prohibited during the nesting period of May 15 to August 15.
- (16) Prior to construction within streams with potential mussel habitat, the Applicant shall obtain an ODNR-approved malacologist to conduct a mussel survey. Surveys and assessments should be done in accordance with the Ohio Mussel Survey Protocols. Because there is the potential for Federal mussels to occur within the project area, the USFWS shall

also be contacted for consultation. If mussels that cannot be avoided are found in the project area, an ODNR-approved malacologist shall collect and relocate the mussels to suitable and similar habitat. If mussels must be relocated, the Applicant shall submit a post-relocation monitoring report to OPSB Staff and the DOW for all mussel relocations that occur as a result of this project. Post-relocation monitoring shall be for two consecutive years at the recipient relocation site(s) to determine survivorship. The post-relocation monitoring report shall be submitted to OPSB Staff and the DOW by December 31 of each consecutive year for review. If OPSB Staff and the DOW, in coordination with the USFWS, determine that a significant adverse impact has occurred to mussels, then mitigation measures would be prescribed to the Applicant.

- (17) At the time the first turbine is mechanically completed, the Applicant shall obtain a technical assistance letter from the USFWS. The Applicant may obtain an Incidental Take Permit, and shall initiate the formal consultation process under Section 10 of the Endangered Species Act prior to the start of construction. The Applicant shall comply with the technical assistance letter until any Incidental Take Permit is obtained. This documentation shall be reviewed by Staff to confirm compliance with this condition.
- (18) The Applicant shall restrict public access to the facility with appropriately placed warning signs or other necessary measures.
- (19) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, Ohio Department of Transportation, local law enforcement, and health and safety officials. This coordination shall be detailed as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation that it complies with this condition.
- (20) Should site-specific conditions warrant blasting, the Applicant shall submit a blasting plan, at least 60 days prior to blasting, to Staff for review and confirmation that it complies with this condition. The Applicant shall submit the following information as part of its blasting plan:
 - (a) The name, address, and telephone number of the drilling and blasting company.
 - (b) A detailed blasting plan for dry and/or wet holes for a typical shot. The blasting plan shall address blasting times, blasting signs, warnings, access control, control of adverse effects, and blast records.
 - (c) A plan for liability protection and complaint resolution.
- (21) Prior to the use of explosives, the Applicant or explosive contractor shall obtain all required local, state, and federal licenses/permits. The Applicant shall submit a copy of the license or permit to Staff within seven days of obtaining it from the local authority.

- (22) The blasting contractor shall utilize two blasting seismographs that measure ground vibration and air blast for each blast. One seismograph shall be placed at the nearest dwelling and the other placed at the discretion of the blasting contractor.
- (23) At least 30 days prior to the initiation of blasting operations, the Applicant must notify, in writing, all residents or owners of dwellings or other structures within 1,000 feet of the blasting site. The Applicant or explosive contractor shall offer and conduct a pre-blast survey of each dwelling or structure within 1,000 feet of each blasting site, unless waived by the resident or property owner. The survey must be completed and submitted to Staff at least 10 days before blasting begins.
- (24) The Applicant shall monitor the microwave paths to ensure there are no adverse impacts. At least 30 days prior to the preconstruction conference, the Applicant shall conduct a microwave path study that identifies all existing microwave paths that intersect the selected route, and a worst-case Fresnel zone analysis for each path. A copy of this study shall be provided to the path licensee(s), for review, and to Staff for review and confirmation that the Applicant is complying with this condition. The assessment shall conform to the following requirements:
- (a) An independent and registered surveyor, licensed to survey within the state of Ohio, shall determine the exact locations of the termini and worst-case Fresnel zone dimensions of all known microwave paths or systems operating within the project area, including all paths and systems identified by the electric service providers that operate within the project area. In addition, the surveyor shall determine the center point of all turbines within 1,000 feet of the worst-case Fresnel zone of each system. The surveyor may rely on Comsearch data for the microwave paths.
 - (b) Provide the distance in feet between the nearest rotor blade tip of each surveyed turbine identified within section (a) above and the surveyed worst-case Fresnel zone of each microwave system path.
 - (c) Provide a map of the microwave paths, center points, and boundaries at a legible scale.
 - (d) Describe the specific, expected impacts of the project on all paths and systems considered in the assessment.
- (25) Assuming that such studies are made by Comsearch, the Applicant shall request Comsearch to perform a study of the potential impacts of the project to any known mobile phone carriers. A copy of this study, or Comsearch's opinion as to why such a study is not appropriate for the Northwest Ohio Wind Farm, shall be provided to Staff at least 30 days prior to construction for review and confirmation that it complies with this condition,
- (26) All existing licensed microwave paths and licensed communication systems shall be subject to avoidance or mitigation. The Applicant shall complete avoidance or mitigation measures prior to commencement of construction for impacts that can be predicted in sufficient detail to implement appropriate and reasonable avoidance and mitigation measures. After

safety plan to be used during construction, to be developed in consultation with the fire department(s) having jurisdiction over the area.

- (35) Before the first turbine is operational, the Applicant shall submit to Staff for review and confirmation that it complies with this condition, 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.
- (36) The Applicant shall instruct workers on the potential hazards of ice conditions on wind turbines.
- (37) The Applicant shall install and utilize an ice warning system that may include an ice detector installed on the roof of the nacelle, manufacturer warranted ice detection software for the wind turbine controller, or an ice sensor alarm that triggers an automatic shutdown.
- (38) The facility shall be operated so that the facility noise contribution does not result in noise levels at the exterior of any currently existing non-participating sensitive receptor that exceed the project area ambient nighttime L_{EQ} (42 dBA) by five dBA. During daytime operation only (7:00 a.m. to 10:00 p.m.), the facility may operate at the greater of: (a) the project area ambient nighttime L_{EQ} (42 dBA) plus five dBA; or, (b) the validly measured ambient L_{EQ} plus five dBA at the location of the sensitive receptor. After commencement of commercial operation, the Applicant shall conduct further review of the impact and possible mitigation of all project-related noise complaints through its complaint resolution process.
- (39) The facility shall be operated so that the facility shadow flicker contribution does not result in shadow flicker levels that exceed 30 hours per year for any non-participating sensitive receptor. After commencement of commercial operation, the Applicant shall conduct further review of the impact and possible mitigation of all project-related shadow flicker complaints through its complaint resolution process.
- (40) The Applicant, facility owner, and/or facility operator shall comply with the following conditions regarding decommissioning:
 - (a) The Applicant, facility owner, and/or facility operator shall provide the final decommissioning plan to Staff and the County Engineer for review and confirmation of compliance with this condition, at least 30 days prior to the preconstruction conference. The plan shall:
 - (i) Indicate the intended future use of the land following reclamation.
 - (ii) Describe the following: engineering techniques and major equipment to be used in decommissioning and reclamation; a surface water drainage plan and any proposed impacts that would occur to surface and ground water resources and wetlands; and a plan for backfilling, soil stabilization, compacting, and grading.

- (iii) 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, water, and solid waste laws and regulations and any applicable health and safety standards in effect as of the date of submittal.
- (b) The facility owner and/or facility operator shall file a revised decommissioning plan to the Staff and the County Engineer every five years from the commencement of construction. The revised plan shall reflect advancements in engineering techniques and reclamation equipment and standards. The revised plan shall be applied to each five-year decommissioning cost estimate. Prior to implementation, the decommissioning plan and any revisions shall be reviewed by the Staff to confirm compliance with this condition.
- (c) The facility owner and/or facility operator shall, at its expense, complete decommissioning of the facility, or individual wind turbines, within 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 12 months (assuming no force majeure or impediment beyond the facility owner's and/or facility operator's control) and no payments have been made to landowners during the 12 month period, or if the Board deems the facility or turbine to be in a state of disrepair warranting decommissioning, and the facility owner and/or operator is unable to reasonably restore the facility or specified individual turbine(s) to a normal state of operation, the wind energy facility or individual wind turbines will be presumed to have reached the end of its useful life. The Board may extend the useful life period for the wind energy facility or individual turbines for good cause as shown by the facility owner and/or facility operator. After notice and hearing, the Board may also require decommissioning of individual wind turbines due to health, safety, wildlife impact, or other concerns based on scientifically verifiable information that prevent the turbine from operating within the terms of the Certificate and that the facility owner and/or facility operator have been unable to correct within a reasonable period, not to exceed three (3) months.
- (d) Decommissioning shall include the removal and transportation of the wind turbines off site. Decommissioning shall also include the removal of buildings, cabling, electrical components, access roads, and any other associated facilities, unless otherwise mutually agreed upon by the facility owner and/or facility operator and the landowner. All physical material pertaining to the facility and associated equipment shall be removed to a depth of at least 36 inches beneath the soil surface and transported off site. The disturbed area shall be restored to the similar physical condition that existed before erection of the facility. Damaged field tile systems shall be repaired to pre-decommissioning condition.
- (e) During decommissioning, all recyclable materials, salvaged and non-salvaged, shall be recycled to the furthest extent practicable. All other non-recyclable waste materials shall be disposed of in accordance with state and federal law.

- (f) The facility owner and/or facility operator shall not remove any improvements made to the electrical infrastructure if doing so would disrupt the electric grid, unless otherwise approved by the applicable regional transmission organization and interconnection utility.
- (g) Subject to confirmation of compliance with this condition by Staff, and seven days prior to the preconstruction conference, an independent, registered Professional Engineer, licensed to practice engineering in the state of Ohio, shall be retained by the Applicant, facility owner, and/or facility operator to estimate the total cost of decommissioning in current dollars, without regard to salvage value of the equipment. Said estimate shall include: (1) an identification and analysis of the activities necessary to implement the most recent approved decommissioning plan including, but not limited to, physical construction and demolition costs assuming good industry practice and based on ODOT's *Procedure for Budget Estimating and RS Means* material and labor cost indices or any other publication or guidelines approved by Staff; (2) the cost 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 will be converted to a per-turbine basis (the decommissioning costs), calculated as the total cost of decommissioning of all facilities as estimated by the Professional Engineer divided by the number of turbines in the most recent facility engineering drawings. This estimate shall be conducted every five years by the facility owner and/or facility operator.
- (h) The Applicant, facility owner and/or facility operator shall post and maintain for decommissioning, at its election, funds, a surety bond, or similar financial assurance in an amount equal to the per-turbine decommissioning costs multiplied by the sum of the number of turbines constructed and under construction. The funds, surety bond, or financial assurance need not be posted separately for each turbine so long as the total amount reflects the aggregate of the decommissioning costs for all turbines constructed or under construction. For purposes of this condition, a turbine is considered to be under construction at the commencement of excavation for the turbine foundation. The form of financial assurance or surety bond shall be a financial instrument mutually agreed upon by the Board and the Applicant, the facility owner, and/or the facility operator. The financial assurance shall ensure the faithful performance of all requirements and reclamation conditions of the most recently filed and approved decommissioning and reclamation plan. At least 30 days prior to the preconstruction conference, the Applicant, the facility owner, and/or the facility operator shall provide an estimated timeline for the posting of decommissioning funds based on the construction schedule for each turbine. Prior to commencement of construction of each individual turbine, the Applicant, the facility owner, and/or the facility operator shall provide a statement from the holder of the financial assurance demonstrating that adequate funds have been posted for the scheduled construction of each individual turbine. Once the financial assurance is provided, the Applicant, facility owner and/or facility operator shall maintain such funds or assurance 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.

- (i) The decommissioning funds, surety bond, or financial assurance shall be released by the holder of the funds, bond, or financial assurance when the facility owner and/or facility operator 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.

B. Exhibits

Subject to the terms and conditions of this Stipulation, the Applicant, Farm Bureau, and OPSB Staff agree, stipulate, and recommend that the following exhibits submitted to this docket be marked and admitted into the record of this proceeding, and that cross-examination is waived thereon:

1. Company Exhibit 1, the Amended Application, as filed on August 8, 2013 and certified as complete on August 16, 2013;
2. Company Exhibit 2, the Supplement to Amended Application, filed on October 1, 2013;
3. Company Exhibit 3, a copy of the Proof of Service of the Application on local public officials and libraries along with the list of property owners and adjacent property owners, as filed on August 16, 2013;
4. Company Exhibit 4, Proofs of Publication filed on September 3, 2013 in accordance with OAC Rule 4906-5-09(A) for the publication of the description of the application and the hearing dates, published on August 28, 2013 in the *Paulding County Progress*;
5. Company Exhibit 5, Proofs of Publication filed on October 7, 2013 in accordance to OAC Rule 4906-5-09(B) for the second publication of the description of the application and the hearing dates, published on October 3, 2013 in the *Paulding County Progress*;
6. OPSB Staff Exhibit 1, "Staff Report of Investigation," issued October 7, 2013; and
7. Joint Exhibit 1, this "Joint Stipulation and Recommendation" signed on behalf of the OPSB Staff, Farm Bureau, and Applicant.
8. Joint Exhibit 2, a listing of the conditions in the Staff Report and the commitments in the Supplement to the Amended Application that are applicable to the first phase of construction, pertaining only to specified access roads.

C. Other Terms and Conditions

- (1) This Stipulation 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 Stipulation 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. 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 and withdrawal of the Stipulation by any party, pursuant to the above provisions, the Stipulation 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.
- (2) The Parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in an proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation 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 entering into this Stipulation.*

III. FINDINGS

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

- (1) Northwest Ohio Wind Energy LLC, is the sole owner of Northwest Ohio Wind Energy, LLC and is a wholly-owned subsidiary of Trishe Wind Energy Holdings, Inc.
- (2) The Facility qualifies as a "major utility facility" defined in Section 4906.01(B)(1) of the Ohio Revised Code ("ORC") and as a "wind-powered electric generation facility" defined in OAC Rule 4906-17-01.
- (3) On March 15, 2013, the Applicant filed a motion for waivers of certain filing requirements in OAC Chapter 4906-17, including a waiver of an extensive site selection study, a waiver to allow Applicant to provide a general narrative description of vegetative cover that may be disturbed during construction, a 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.

- (4) Also on March 15, 2013, the Applicant filed a pre-application notice of a public informational meeting.
- (5) On March 22, 2013, the Applicant filed Proof of Publication of the Notice for the Informational Meeting for Proposed Major Utility Facility that was published on March 20, 2013 in the *Paulding County Progress*.
- (6) On April 9, 2013, the Applicant held a public information meeting at the Wayne Trace Junior-Senior High School in Haviland, Ohio.
- (7) The Administrative Law Judge, by Entry dated April 10, 2013, granted the Applicant's waiver requests.
- (8) On September 3, 2013, Applicant filed Proofs of Publication in accordance with OAC Rule 4906-5-09(A) for the publication of the description of the application and the hearing dates that were published on August 28, 2013 in the *Paulding County Progress*.
- (9) The Applicant formally submitted its application for a Certificate of Environmental Compatibility and Public Need on May 24, 2013.
- (10) On June 13, 2013, the Farm Bureau filed a motion to intervene in the proceeding, which was later granted on August 22, 2013.
- (11) The Applicant filed its Amended Application for a Certificate of Environmental Capability and Public Need on August 8, 2013.
- (12) On August 16, 2013, the Application was deemed complete by an ALJ Entry issued August 22, 2013.
- (13) Company Exhibit 5, Proofs of Publication filed on October 7, 2013 in accordance to OAC Rule 4906-5-09(B) for the second publication of the description of the application and the hearing dates, published on October 3, 2013 in the *Paulding County Progress*;
- (14) On October 1, 2013, the Applicant filed a Supplement to Amended Application agreeing to certain commitments.
- (15) The Staff Report was filed on October 7, 2010 and reissued to correct editing errors on October 10, 2013.
- (16) A local public hearing, pursuant to ORC Section 4906.08(C), was held on October 22, 2013 at the Wayne Trace Junior-Senior High School.
- (17) An adjudicatory hearing was held October 30, 2013 in Columbus, Ohio.
- (18) The basis of need as specified under ORC Section 4906.10(A)(1) is not applicable to this generating facility project.

- (19) Adequate data on the project has been provided to determine the nature of the probable environmental impact as required by ORC Section 4906.10(A)(2).
- (20) Adequate data on the project 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 ORC Section 4906.10(A)(3).
- (21) Adequate data on the project 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 ORC Section 4906.10(A)(4) are met.
- (22) Adequate data on the project has been provided to determine that the wind farm project will either comply with, or is not subject to, the requirements in the ORC regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all regulations thereunder, as required by ORC Section 4906.10(A)(5).
- (23) Adequate data on the project has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by ORC Section 4906.10(A)(6).
- (24) Adequate data on the project has been provided to determine what the Facility's impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the ORC that is located within the site of the proposed Facility, as required by ORC Section 4906.10(A)(7).
- (25) Adequate data on the project 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 ORC Section 4906.10(A)(8).
- (26) The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

B. Conclusions of Law

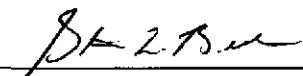
- (1) Northwest Ohio, LLC is a "person" under ORC Section 4906.01(A).
- (2) The proposed Facility is a major utility facility as defined in Section 4906.01(B)(1) ORC.

- (3) Northwest's Amended Application, and Supplement to Amended Application comply with the requirements of OAC Chapter 4906-17.
- (4) The requirement for the need for the Facility under ORC Section 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 ORC Section 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 ORC Section 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 ORC Section 4906.10(A)(4).
- (8) The record establishes, as required by ORC Section 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 ORC regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all rules and standards adopted under the relevant Chapters of the ORC.
- (9) The record establishes that the Facility will serve the public interest, convenience and necessity under ORC Section 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 ORC Section 4906.10(A)(7).
- (11) The record establishes that the Facility would incorporate maximum feasible water conservation practices under ORC Section 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.

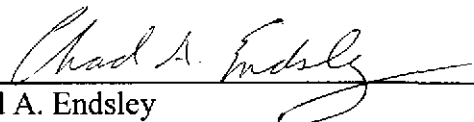
The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this Joint Stipulation and Recommendation.

Respectfully submitted on behalf of,

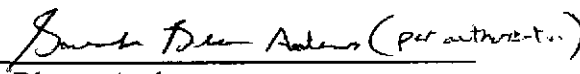
**THE STAFF OF THE OHIO POWER
SITING BOARD**

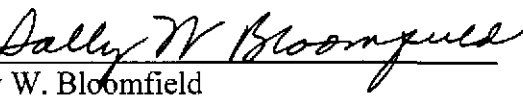
By: 
Steven Beeler
William L. Wright
Assistant Attorneys General
Public Utilities Section
OFFICE OF THE ATTORNEY GENERAL
180 East Broad Street, 9th Floor
Columbus, Ohio 43215-3793

OHIO FARM BUREAU FEDERATION

By: 
Chad A. Endsley
Chief Legal Counsel
OHIO FARM BUREAU FEDERATION
280 North High Street, P.O. Box 182383
Columbus, Ohio 43218-2383

NORTHWEST OHIO WIND ENERGY

By:  (per authoriz-t...)
Sarah Bloom Anderson
Summer J. Koladin Plantz
Assistant Attorneys General
Environmental Enforcement
OFFICE OF THE ATTORNEY GENERAL
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3793

By: 
Sally W. Bloomfield
Dane Stinson
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291

**CONDITIONS AND COMMITMENTS PERTAINING TO SELECTED ACCESS ROADS
TO BE CONSTRUCTED AFTER A FIRST PRE-CONSTRUCTION CONFERENCE**

Northwest Ohio Wind Energy, LLC (“Applicant”), the Staff of the Ohio Power Siting Board, and the Ohio Farm Bureau Federation, who represent all parties to this proceeding, agree to a set of conditions and partial condition found in the Staff Report and commitments found in the Supplement to the Amended Application, that are applicable to the construction of selected access roads by the Applicant (referred to as “Phase 1” in the conditions and commitments below).

The access roads to be constructed after a first pre-construction conference will total approximately three miles and will provide access to Turbines 3, 4, 26, 27, 28, 52, 53, 54, 55, 56, and 57. The conditions and commitments applicable to the construction of these access roads are:

Supplement to Amended Application Commitment #1

Prior to commencement of construction, Applicant will develop a cultural resource avoidance plan in consultation with OPSB Staff and the OHPO, detailing procedures for flagging and avoiding all potentially NRHP-eligible archaeological sites in the [Phase 1] area. The avoidance plan will also contain measures to be taken should previously unidentified archaeological deposits or artifacts be discovered during construction of [Phase 1].

Supplement to Amended Application Commitment #2

Applicant will avoid, where possible, and 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 will be promptly repaired to at least original conditions at Applicant’s expense. If applicable, excavated topsoil will be segregated and restored in accordance with Applicant’s lease agreement with the landowner. Severely compacted soils will be plowed or otherwise de-compacted, if necessary, to restore them to original conditions unless otherwise agreed to by the landowner.

Supplement to Amended Application Commitment #3

Applicant will prepare a construction and maintenance access plan based on final plans for . . . access roads, and types of equipment to be used. Prior to commencement of construction, Applicant will submit the plan to OPSB Staff for review and acceptance. The plan will . . . include . . . a description any long-term stabilization required along permanent access routes. . . .

Supplement to Amended Application Commitment #4

Applicant will have a vegetation management plan. Prior to commencement of construction [of Phase 1], Applicant will submit this plan to OPSB Staff for review and acceptance. The plan will identify all areas of proposed vegetation clearing for the [Phase 1], specifying the extent of the clearing, and describing how such clearing work will be done so as to minimize removal of woody vegetation. The plan will also describe how trees and shrubs . . . along access routes, [and] at construction staging areas . . . will be protected from damage. Priority will be given to protecting mature trees throughout the [Phase 1] area, and all woody vegetation in wetlands and riparian areas, . . . during construction . . .; low-growing trees and shrubs in particular will be protected wherever possible within the proposed right-of-way. The vegetation management plan will also explore various options for disposing of downed trees, brush, and other vegetation during initial clearing for the [Phase 1], and recommend methods that minimize the movement of heavy equipment and other vehicles within the right-of-way that would otherwise be required for removing all trees and other woody debris off site.

Supplement to Amended Application Commitment #6

For both construction and future right-of-way maintenance, Applicant will limit, to the greatest extent possible, the use of herbicides in proximity to surface waters, including wetlands along the right-of-way. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides during initial clearing or future right-of-way maintenance would only be used where no other options exist, and with prior approval from the Ohio EPA. Prior to commencement of construction, Applicant will submit a plan to OPSB Staff for review and acceptance, describing the planned herbicide use for all areas in or near any surface waters during initial [Phase 1] construction and/or future right-of-way maintenance.

Supplement to Amended Application Commitment #7

Applicant will coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction [of Phase 1]. Coordination shall include, but not be limited to, the county engineer, Ohio Department of Transportation, local law enforcement, and health and safety officials. This coordination will be detailed as part of a final traffic plan submitted to OPSB Staff prior to the preconstruction conference for review and acceptance.

Supplement to Amended Application Commitment #8

General construction activities will 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. Impact pile driving, hoe ram, and blasting operations, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. Applicant will notify property owners or affected tenants within the meaning of OAC Rule 4906-5-08(C)(3), of upcoming construction activities including potential for nighttime construction activities.

Supplement to Amended Application Commitment #9

Prior to the commencement of construction activities that require permits or authorizations by federal or state laws and regulations, Applicant will obtain and comply with such permits or authorizations. Applicant will provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. Applicant will provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.

Supplement to Amended Application Commitment #10

Applicant will 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.

Supplement to Amended Application Commitment #12

Applicant will contact OPSB Staff, ODNR, and the USFWS within 24 hours if state or federal threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals will be halted until an appropriate course of action has been agreed upon by Applicant, OPSB Staff, and ODNR in coordination with the USFWS. Nothing in this commitment 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.

Supplement to Amended Application Commitment # 15

Applicant will comply with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.

Staff Report Condition #1

The facility shall be installed as presented in the application, and as modified and/or clarified by the Applicant's supplemental filings and further clarified by recommendations in this Staff Report of Investigation.

Staff Report Condition #2

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.

Staff Report Condition #4

The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the prime contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of [Phase 1], and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may conduct separate preconstruction meetings for each stage of construction.

Staff Report Condition #5

The Applicant shall develop a complaint resolution process that shall include procedures for responding to complaints about excessive noise during construction, and excessive noise and excessive shadow flicker caused by operation of the facility. The complaint resolution process shall include procedures by which complaints can be made by the public, how complaints would be tracked by the Applicant, steps that would be taken to interact with the complainant and respond to the complaint, steps that would be taken to verify the merits of the complaint, and steps that would be taken to mitigate valid complaints. Mitigation, if required, shall consist of either reducing the impact so that the project contribution does not exceed the requirements of the certificate, or other means of mitigation reviewed by Staff for confirmation that it complies with this condition.

Staff Report Condition #6

At least 30 days prior to the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the . . . permanent access roads. . . so that Staff can determine that the [Phase 1] design is in compliance with the terms of the certificate. The [Phase 1] layout shall be provided in hard copy and as geographically-referenced electronic data. The [Phase 1] design shall include all conditions of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate.

Staff Report Condition #7

If any changes are made to the [Phase 1] layout after the submission of [Phase 1] engineering drawings, all changes shall be provided to 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 Staff review and acceptance, to ensure compliance with all conditions of the certificate, prior to construction in those areas.

Staff Report Condition #10

As the information becomes known, the Applicant shall provide to Staff the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.

Staff Report Condition #11

The Applicant shall provide a letter from its CEO providing the status of the Interconnection Service Agreement with PJM.

Staff Report Condition #14

The Applicant shall maintain a log of all field tile drainage systems damaged resulting from the construction, operation, and/or maintenance of the facility. This log shall include global position system mapping of the damaged tile and descriptions for repair and/or replacement.

Staff Report Condition #15

Construction in northern harrier preferred habitat types shall be prohibited during the nesting period of May 15 to August 15.

Staff Report Condition #17

Prior to the commissioning of the first turbine, the Applicant shall obtain a technical assistance letter from the USFWS. The Applicant may obtain an Incidental Take Permit, and shall initiate the formal consultation process under Section 10 of the ESA prior to the start of construction. The Applicant shall comply with the technical assistance letter until any Incidental Take Permit is obtained. This documentation shall be reviewed by Staff to confirm compliance with this condition.

Staff Report Condition #19

Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, Ohio Department of Transportation, local law enforcement, and health and safety officials. This coordination shall be detailed as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation that it complies with this condition.

Staff Report Condition #27

At least seven days prior to the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, a copy of all NPDES permits including its approved SWPPP, approved 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.

Staff Report Condition #30

The Applicant shall provide a copy of any floodplain permit required for construction of this project, or a copy of correspondence with the floodplain administrator showing that no permit is required, to Staff within seven days of issuance or receipt by the Applicant.