

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Hardin)
Wind LLC for a Certificate to Construct a) Case No. 13-1177-EL-BGN
Wind-Powered Electric 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 ON REHEARING

The Board finds:

- (1) On June 28, 2013, as supplemented on July 1, 2013, Hardin Wind LLC (Hardin Wind) filed an application in Case No. 13-1177-EL-BGN (*Wind Turbine Case*) to construct a wind-powered electric generating facility in Hardin and Logan counties. On September 30, 2013, as supplemented on October 1, 2013, Hardin Wind filed an application in Case No. 13-1767-EL-BSB to construct a substation (*Substation Case*) and filed an application in Case No. 13-1768-EL-BTX to construct a transmission line (*Transmission Line Case*).
- (2) On March 17, 2014, the Board issued its Opinion, Order, and Certificates (Order) that approved a stipulation entered into between Hardin Wind, Staff, and the Ohio Farm Bureau Federation, and granted the applications in the above cases, subject to 28 conditions.
- (3) R.C. 4906.12 states, in pertinent part, that R.C. 4903.02 to 4903.16 and R.C. 4903.20 to 4903.23 apply to a proceeding or order of the Board as if the Board were the Public Utilities Commission of Ohio (Commission).

- (4) R.C. 4903.10 provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission. Further, R.C. 4903.10 provides that leave to file an application for rehearing shall not be granted to any person who did not enter an appearance in the proceeding, unless the Commission finds that: (1) the applicant's failure to enter an appearance prior to the Commission's order complained of was due to just cause; and (2) the interests of the applicant were not adequately considered in the proceeding.
- (5) Ohio Adm.Code 4906-7-17(D) states, in relevant part, that any party or affected person may file an application for rehearing within 30 days after the issuance of a Board order in the manner and form and circumstances set forth in R.C. 4903.10.
- (6) On April 16, 2014, Joe Grant, an intervenor party in the *Wind Turbine Case*, filed an application for rehearing of the Order in which he raises five assignments of error. Also on April 16, 2014, James Rudolph, Rich Rudolph, Susan Cornell, Ron Brown, and Charles Ruma (collectively, the Indian Lake Residents), filed a petition to intervene, as well as a request for leave to file an application for rehearing and an application for rehearing, in which they raise two assignments of error.
- (7) On April 28, 2014, Hardin Wind filed a memorandum contra the applications for rehearing filed by Mr. Grant and the Indian Lake Residents. Hardin Wind notes that Mr. Grant sought and was only granted intervention in the *Wind Turbine Case*, that his and the Indian Lake Residents' applications for rehearing do not raise issues related to the *Substation Case* or the *Transmission Line Case*, and, therefore, should not be considered as applications for rehearing of portions of the Order that involve the *Substation Case* or the *Transmission Line Case*. On May 1, 2014, Hardin Wind filed a memorandum contra the Indian Lake Residents' petition to intervene. On May 8, 2014, the Indian Lake Residents filed a reply to Hardin Wind's memorandum contra.

- (8) By Entry issued May 12, 2014, in accordance with Ohio Adm.Code 4906-7-17(I), the administrative law judge (ALJ) granted the applications for rehearing filed by Mr. Grant and the Indian Lake Residents solely for the purpose of affording the Board additional time to consider the issues raised in the applications for rehearing. We first address the application for rehearing filed by Mr. Grant in which he raises five assignments of error.
- (9) In his first assignment of error, Mr. Grant asserts the Order is unlawful and unreasonable because the primary threat to the Indiana bat was not addressed. Mr. Grant maintains that the Order states that the primary threat to the Indiana bat would be during operation of the wind turbine facility due to the risk of collision and barotrauma from coming in close proximity to operational wind turbines; however, the preservation countermeasure of the Order was not to cut trees the bats use for roosting between April and September. According to Mr. Grant, this countermeasure may save the trees that the bats are roosting in, but will not save the bats, who still face the threat of collision and barotrauma from the wind turbines.
- (10) In its memorandum contra, Hardin Wind contends the Order addressed the threat to the Indiana bat and the application for rehearing on this issue should be denied. Hardin Wind notes that, in the application, it thoroughly studied the surrounding habitat and the potential impacts that the wind project would have on the Indian bat. In addition, it conducted mist-netting surveys to determine whether the location of the project was appropriate. It also explained that, under the Order, it must submit a post-construction avian and bat monitoring plan for Staff's and the Ohio Department of Natural Resource's review and it must commit to seasonal tree cutting to protect the bat's habitat during the non-winter months.
- (11) We find no merit to Mr. Grant's first assignment of error. The Board considered the evidence regarding the Indiana bat. This evidence included studies and analysis of the Indiana bat that were discussed in Application Exhibit I (Bat Netting Report) and Application Exhibit J (Summer/Fall 2010 Acoustic Bat Survey Report), as well as in the discussion and analysis of the Indiana bat and other

threatened or endangered species on pages 27, 30-31, 47, 63, and 70 of the Staff Report of Investigation (Staff Report). Mr. Grant failed to present any evidence at hearing that disputed Hardin Wind's studies or Staff's findings regarding these studies. As we indicated in the Order, the Indiana bat is a federally-listed threatened and endangered species, and the threats to the Indiana bat occur during the winter months, by tree clearing associated with construction and maintenance of the facility. In order to address that threat, we required Hardin Wind, as a condition to the certificate, to commit to seasonal cutting for removal of suitable Indiana bat habitat trees. In addition, as to the threat to the Indiana bat as a result from collision or barotrauma, due to the operation of the facility, we note that, as discussed in the Staff Report, Hardin Wind filed an application with the U. S. Fish and Wildlife Service for an Incidental Take Permit under Section 10(a)(1)(B) of the Endangered Species Act, which allows for incidental take of federally-listed species through implementation of a Habitat Conservation Plan. As such, the operations of the projects will be in compliance with all federally required mandates related to threatened and endangered species, including the Indiana bat. Therefore, this request for rehearing should be denied.

- (12) In his second assignment of error, Mr. Grant claims the Order is unlawful and unreasonable because wind turbine setbacks are located too close to property lines. Mr. Grant insists that, while nonparticipating property owners may be safe from ice throw while in their dwellings, they may be in danger if they leave their structures and this limits the full use of their property. Mr. Grant argues that setbacks should be based on the property lines, not residential structures. According to Mr. Grant, this concern also applies to blade shear.
- (13) In its memorandum contra, Hardin Wind argues that the setbacks approved in the *Wind Turbine Case* comply with R.C. 4906.20(B)(2) and Ohio Adm.Code 4906-17-07(C)(1)(c), which require a specific minimum distances for wind turbines in relation to receptors. Hardin Wind notes that the evidence does not support Mr. Grant's claim that setbacks should be from property lines to ensure safety outside of occupied structures. According to Hardin Wind, using 492 feet as the maximum turbine height, as proposed in the

application, the nearest nonparticipating property line must be at least 541 feet. In this case, the property line distances from the turbine bases vary from 549 to 2,367 feet, and average 1,198 feet. Hardin Wind also explains that the setbacks approved by the Board conform to turbine manufacturer setbacks.

- (14) We find no merit to Mr. Grant's second assignment of error. Setback distances have been established by the Ohio General Assembly. R.C. 4906.20 provides that the Board rules shall prescribe a minimum setback for a wind turbine or an economically significant wind farm. "That minimum shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be at least 1,125 feet in horizontal distance from the tip of the turbine's nearest blade at 90 degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the certification application." The setbacks established by the General Assembly and under the Order were established to safeguard the public from potential harm, including, noise, shadow flicker, blade throw, or ice throw, which may result from construction of the wind turbines. In the *Wind Turbine Case*, the Board approved setback distances that exceed the statutory requirements. Also, under the conditions of the certificate, ice detection systems will be used on all turbines that cause the turbines to automatically shutdown in the event of dangerous ice buildup of the turbine blades. More importantly, it would have been contrary to the statutory formula on the part of the Board had it approved setback distances less than setback distances established by the Ohio General Assembly. Therefore, Mr. Grant's request for rehearing on this issue should be denied.
- (15) In his third assignment of error, Mr. Grant asserts the Order is unlawful and unreasonable because there will be excessive shadow flicker. Mr. Grant insists that the shadow flicker analysis identified 48 nonparticipating receptors that would be exposed to more than 30 hours of shadow flicker each year, and he claims that amount is excessive. Mr. Grant argues that shadow flicker causes photosensitive epilepsy and he believes that no nonparticipants have been informed

of this potential problem. Mr. Grant also contends that the method of measuring shadow flicker per receptor is problematic. According to Mr. Grant, a receptor is measured per receptor and, depending on the amount of land a nonparticipant owns, a person could be exposed to flicker in the morning on one side of your home, flicker in the evening on another side of their home, and flicker at other times on other places on their property, which would constitute more than what was simulated in the model.

- (16) In its memorandum contra, Hardin Wind states that it comprehensively analyzed the spatial relationships between the wind turbine locations and receptors, along with weather characteristics, to determine appropriate setbacks. It also worked with Staff to reduce shadow flicker to nonparticipating landowners. As to Mr. Grant's claim that there is a cumulative effect of shadow flicker across his entire property, Hardin Wind points out that its witness, Michael Speerschneider, addressed this point, noting that shadow flicker outside buildings is less distinctive and has generally not caused impacts on human activity.
- (17) We find no merit to Mr. Grant's third assignment of error. Ohio Adm.Code 4906-17-08 requires that an applicant evaluate and describe the potential impact from shadow flicker at adjacent residential structures and primary roads, including its plans to minimize potential impacts if warranted. A review of the evidence in these proceedings demonstrates that Hardin Wind complied with all applicable Board rules related to shadow flicker. As discussed on page 17 of the Order, Hardin Wind conducted studies on the effects of shadow flicker on nonparticipating residents within a specific distance from the turbines. Further, Application Exhibit Q, a 615-page document, describes the shadow flicker analysis conducted by Hardin Wind. Under the rules, receptors were permanent structures upon which shadows from the turbines would be cast. The analysis of the shadow flicker studies contained within the application, determined that each nonparticipating residence would experience 30 hours of shadow flicker per year by the combined facilities and that the 30 hours of shadow flicker per year presents the minimum adverse shadow flicker impact. The 30 hours includes the total hours of shadow flicker that result per year, regardless of the location around

the residence. In addition, under the conditions of the certificate, Hardin Wind is required to develop a complaint resolution process that includes procedures for responding to complaints about excessive shadow flicker caused by operation of the facility. The Board further notes that, while there will be some nonparticipating residences that will experience shadow flicker as a result of the projects, the Order notes that mitigation measures, including periodic shutdown of the turbines, will be used by Hardin Wind to minimize the impacts of shadow flicker. Also, the issue related to the health impacts to health including the possibility of seizures, was discussed on page 41 of the Staff Report and in Application Exhibit Q, and such information was available to any interested person. Lastly, Mr. Grant failed to cite to any evidence of record that would bring into question any of the findings of the Board with regard to this assignment of error. Therefore, the request for rehearing on this issue should be denied.

- (18) In his fourth assignment of error, Mr. Grant asserts that the Order is unlawful and unreasonable because of excessive noise. Mr. Grant claims that it is unreasonable that Hardin Wind's own expert witness stated that there is a possibility that the turbines and turbine motors may be heard inside a home, when they are operating or moving to find optimal wind conditions, even though they are over 1,092 feet from that home.
- (19) In its memorandum contra, Hardin Wind maintains that noise from the wind turbine project will not be excessive. Hardin Wind notes that its witness, Kenneth Kaliski, acknowledged that it might be possible to hear noise from the wind turbines inside a home, but that would depend on various conditions. Hardin Wind also points to Mr. Kaliski's testimony that turbines can be operating in noise reduced operating mode or automatically curtailed if excessive levels of wind turbine noise arise after a project is in operation. Hardin Wind further states that it conducted two acoustic surveys to determine the existing ambient noise level. Hardin Wind notes that it also is required by the Board certificate to operate the facility so that the noise contribution does not result in noise levels exceeding the project area ambient night time and day time noise levels. In addition, Hardin Wind contends that prior Board decisions

have allowed potential increases in noise due to operation of the wind project and have been found to lead to limited complaints.

- (20) We find no merit to Mr. Grant's fourth assignment of error. As noted on page 17 of the Order, based on the evidence, Hardin Wind's proposed turbine layout, with the required turbines operating in noise reduction operation mode, is not likely to generate unacceptable levels of noise for nonparticipating residents. In addition, under the conditions of the certificate, Hardin Wind is required to conduct further review of the impact and possible mitigation of all facility-related noise complaints, as well as 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. Such review was completed and is part of Application Exhibit P (Noise Impact Study). As to Mr. Kaliski's testimony, we note that, while he acknowledged that the projects could cause noise to be heard within a home, he also qualified that the level of noise would depend on a variety of factors, including the sound inside the room, home construction, climate, noises outside the home, masking sounds, whether you have the windows open or closed, the time of day, and the noise level of the home. Mr. Grant also failed to present any evidence that contradicted the noise studies that were part of Hardin Wind's application. Therefore, his request for rehearing on this issued should be denied.
- (21) In his fifth assignment of error, Mr. Grant asserts that the Order is unlawful and unreasonable because he believes the majority of residents within the wind turbine project area are against the project being constructed; yet the Board decided to approve the project. Mr. Grant posits that the determination of whether the project should be approved and constructed should be decided by a vote by all residents living in the townships affected by the wind project. In addition, Mr. Grant hypothesizes that, because of the size and scope of the project, every person within the affected area should have received individual notice of the project, and such notice should have been served in the early stages of the *Wind Turbine Case*.

- (22) In its memorandum contra, Hardin Wind maintains that it properly complied with every notice requirement under the laws for notifying surrounding property owners. According to Hardin Wind, Mr. Grant has identified a problem that he perceives with the laws of Ohio and the rules of the Board, rather than with Hardin Wind's compliance with those laws and rules. Hardin Wind suggests the appropriate forum to voice the concerns raised by Mr. Grant is with the Ohio legislature, rather than in a certificate application proceeding.
- (23) We find no merit to Mr. Grant's fifth assignment of error. Mr. Grant's belief, expressed in his application for rehearing, as well as at the evidentiary hearing, that the decision whether to approve or deny the application in the *Wind Turbine Case* should be made by a vote of the individuals who live in the areas affected by the project, was similarly voiced by several members of the public at the local public hearing. As we noted on page 36 of the Order: "[w]hile we recognize that certain members of the public in the affected areas of these projects wish to have the decisions on granting or denying wind turbine projects based on a secret ballot of registered voters, the Board is bound by the statutory mandates established by the Ohio General Assembly which do not include such suggested procedures." Pursuant to those mandates, the Ohio General Assembly has determined that the Board is the governmental body with the authority to determine whether an application for a major utility facility, including a wind turbine application, should be approved. There is no statutorily mandated procedure whereby the Board could authorize a ballot of registered voters to be undertaken. Pursuant to R.C. 4906.10, the Board is charged with the statutory duty to render a decision, based upon the record evidence, whether to grant or deny the application as filed, or whether to grant it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the Board considers appropriate. In these cases, the Board rendered its decision based on the record evidence in accordance with R.C. 4906.10.
- (24) As to the portion of Mr. Grant's fifth assignment of error regarding notice of the application, the Board determined

that appropriate notice in accordance with the statutory requirements was provided by Hardin Wind. R.C. Chapter 4906 and Ohio Adm.Code 4906-5-06 set forth all requirements for notice of an application for a certificate to construct a wind turbine project. R.C. 4906.06(B) requires that an applicant place a copy of the accepted, complete application or place a notice of the availability of such application in the main public library of each political subdivision as referenced in R.C. 4906.06(B). R.C. 4906.06 and Ohio Adm.Code 4906-5-06 require that each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipal corporation and county, and the head of each public agency charged with the duty of protecting the environment or of planning land use in the area in which any portion of such facility is to be located. Ohio Adm.Code 4906-05-08 provides that an applicant is also required to provide two public notices of the application and the local public hearing and evidentiary hearing through publication in newspapers of general circulation in those municipal corporations and counties in which the chief executive received service of a copy of the application pursuant to Ohio Adm.Code 4906-5-06. Further, an applicant is required to file proof of all required published notices. R.C. 4906.06 provides that an applicant shall give public notice to persons residing in the municipal corporations and counties entitled to receive notice by publication of a summary of the application in newspapers of general circulation in such area. In these cases, Hardin Wind timely complied with all such requisite notices. In addition, there is no statutory requirement that Hardin Wind provide "personal individual notice" as suggested by Mr. Grant. Accordingly, we find no merit to Mr. Grant's fifth assignment of error and his request for rehearing on this issue should be denied.

- (25) We now turn to the Indian Lake Residents' request for leave to file their application for rehearing, the application for rehearing, and the petition to intervene. As stated above, R.C. 4903.10 provides that an application for rehearing may be filed by any party and that leave to file an application for rehearing shall not be granted to any person who did not enter an appearance in the proceeding, unless the Board finds that the movant satisfies both prongs of the following

two-prong test: (1) the applicant's failure to enter an appearance prior to the order complained of was due to just cause; and (2) the interests of the applicant were not adequately considered in the proceeding. The Indian Lake Residents never sought intervention in these cases prior to their April 16, 2014 filings; thus, they were never parties to these cases. Thus, in order to consider the merits of the application for rehearing, the Board must first find that the Indian Lake Residents meet both of the two criteria in R.C. 4903.10 in order to find that they should be granted leave to file their application for rehearing.

- (26) With regard to the first prong of the test in R.C. 4903.10, the Indian Lake Residents set forth one principal reason why their failure to enter an appearance prior to the Order was due to just cause; namely, they were unaware of the projects until after the Order was issued because they are seasonal residents of Indian Lake. They claim that, as seasonal residents, they were not residing in the Indian Lake area when the notices were published, which occurred after Labor Day, and they do not subscribe to the newspapers in which the notices were published.
- (27) Hardin Wind asserts that no just cause exists. Hardin Wind claims that other Indian Lake Residents were aware of the wind turbine project, including a resident who expressed his concerns at the local public hearing about the wind turbine project's impacts on property values and the visual impacts of the turbines. Hardin Wind also contends that notice of the projects was provided in newspapers of general circulation in the project area on May 18, 2013, and that a public information meeting was held on May 29, 2013, both events occurring prior to Labor Day. Hardin Wind further cites to public correspondence in the dockets of the cases that indicate the general public was aware of the projects prior to the public hearing. Hardin Wind notes that the Board has previously determined that just cause is not established when residents, some with earlier knowledge of the project, and others without earlier knowledge, fail to enter an appearance prior to the Order. *In re Columbus Southern Power Company*, Case No. 08-170-EL-BTX, Order of Rehearing (Mar. 22, 2010); and *In re City of Hamilton and American Municipal Power, Inc.*, Case Nos. 10-2439-EL-BSB et al., Entry on Rehearing (Jan. 23, 2012).

- (28) As to the first prong of this test, we initially note that, as discussed previously in finding 24, the evidence shows that Hardin Wind provided copies of the application to the appropriate locations, as well as complied with all requisite publication requirements for notice of the application and notice of the local public and evidentiary hearings, notwithstanding the Indian Lake Residents' assertion that the notice was inadequate and they first learned about the project after the Order was issued. We also note that the Indian Lake Residents' assertion that these notices appeared after Labor Day, traditionally the first Monday in September, belies the fact that another notice requirement, and Hardin Wind's compliance with said requirement, occurred prior to Labor Day. We point out that Ohio Adm.Code 4906-5-08(B), requires that an applicant hold an informational meeting on a project and provide at least one public notice of the informational meeting in newspapers of general circulation in the project area. The rule also requires that public notice shall include a basic description of the project, and the date, time, and location of the public information meeting. The evidence shows that Hardin Wind held an informational meeting on the projects on May 29, 2013, in Belle Center, Ohio, and on June 7, 2013, Hardin Wind filed proof that legal notices of the informational meeting were published in the *Bellefontaine Examiner* and in *The Kenton Times*, newspapers of general circulation in Logan and Hardin counties, respectively. The Indian Lake Residents failed to explain how the informational meeting, and published notice thereof, would not have been sufficient to provide them sufficient notice of the *Wind Turbine Case*, as those events occurred prior to Labor Day, the date the Indian Lake Residents have asserted was the point in time when they were not living in the area. Further, as pointed out by Hardin Wind, other Indian Lake residents were aware of the *Wind Turbine Case*, as evidenced by their comments filed with the Board in the dockets of these cases and the testimony at the local public hearing. Consequently, the Board finds that the Indian Lake Residents have failed to demonstrate, in accordance with the first prong of the test set forth in R.C. 4903.10, that their failure to enter an appearance prior to the Order was due to just cause.

- (29) With regard to the second prong of the test in R.C. 4903.10, the Indian Lake Residents stated that, while the Ohio Farm Bureau Federation and Mr. Grant were parties to these cases, they did not raise the issues regarding conservation of Indian Lake and the devaluation of lake front property as a consequence of the wind farm. According to the Indian Lake Residents, they are the only ones that will be able to explain to the Board their interest in the conservation and preservation of Indian Lake.
- (30) In response, Hardin asserts that the interests of the Indian Lake Residents related to the visual impacts and effect on property values were addressed and considered by the Board. Hardin Wind points to the Order which noted Staff's summary of the impact of the wind turbines on surrounding recreational areas, including Indian Lake State Park, and Staff's finding that the visual impact would be reduced to varying degrees by topographical and vegetative screening. Hardin Wind also notes that there was testimony of a witness at the local hearing, also part of the record in the *Wind Turbine Case*, who was a real estate agent who presented her analysis of the impact of wind turbine projects on real estate property values. In addition, Hardin Wind points to the testimony of its own witness, Mr. Speerschneider, who summarized a study on property values performed by the Lawrence Berkley National Laboratories.
- (31) As to the second prong of the test, the Board finds that, even had the Indian Lake Residents demonstrated that their failure to enter an appearance was due to just cause, the Board cannot find that their interests were not adequately considered in these proceedings. As reflected on the record in these cases, the concerns that the project would depreciate property values of home owners was extensively analyzed by Hardin Wind, and exhibits and testimony concerning this issue were presented at the hearings. In addition, as pointed out by Hardin Wind, several of the comments received by the Board spoke directly to the issue related the impact the projects would have on property values at Indian Lake. Further, at the evidentiary hearing, one of Hardin Wind's witnesses, Mr. Speerschneider presented testimony and was cross-examined by Mr. Grant over this specific issue, and the studies relied upon by Hardin Wind that analyzed the

impact on property values from wind turbine projects. In the Order, the Board found that this issue was investigated during the course of the proceedings and was adequately addressed. Additionally, the Board was fully cognizant and noted on page 9 of the Order that the addition of a new transmission line and substation, as well as the addition of wind turbines, would change the appearance of the rural setting and the new facility would be visible from roads and nearby residences. It was also noted that the wind turbine project's visual and aesthetic impacts will vary depending on the distance between the viewer and the turbines, the number of turbines visible, the amount of screening, atmospheric conditions, and the presence of other vertical elements, such as utility poles and communication towers.

- (32) To the claim that the Board needs to take into account the conservation and preservation of Indian Lake, we note that Indian Lake is specifically discussed, at page 9 of the Order, as the largest recreational area in the vicinity and is 0.5 miles from the nearest turbine. Indian Lake is also identified in many portions of the Application (pages 30, 43, 83-84, 101, 104, 116-117, 132, Exhibit G (Socioeconomic Report), Exhibit M (Cultural Resources), and Exhibit R (Visual Impact Assessment) and in the Staff Report pages 22-23, 30, 58. The Order also noted the nature of the probable environmental impact of the projects, including impacts to cultural resources, land uses, population, archaeological resources, historic resources, recreational areas, including Indian Lake State Park, visual impacts, economic development, natural resources, noise, water, plants and animals, including impacts to threatened and endangered species, private and public water supplies, impacts to public roads, noise, sensitive ecological resources, and agriculture. In addition, the Board was aware of the issue of conservation of land, flora, and fauna that could be impacted by the project, including Indian Lake and the property surrounding Indian Lake. In the Order, there is extensive evidence regarding the environmental effects of the project that was fully considered by the Board. Many of the conditions on the certificate are specifically designed to reduce the impact on wildlife and aesthetics, as well as the conservation and preservation of land in the project area, and other conditions that will occur as a result of the project. Consequently, the

Board cannot find that the Indian Lake Residents satisfied the second prong of the statutory test because their interests were adequately considered in the proceedings.

- (33) Because the Board has found that the interests of the Indian Lake Residents were adequately considered in these proceedings, and that the movants failed to demonstrate that their failure to enter an appearance prior to the Order complained of was due to just cause, the Board finds that the Indian Lake Residents have failed to demonstrate grounds to file an application for rehearing pursuant to R.C. 4903.10. Consequently, the Board declines to grant the Indian Lake Residents leave to file an application for rehearing, and the application will not be considered on its substantive merits.
- (34) We now turn to the Indian Lake Residents' petition to intervene. Ohio Adm.Code 4906-7-04 provides, in pertinent part, that a person desiring to intervene in a Board proceeding should prepare a motion for leave to intervene, setting forth the grounds for proposed intervention and the petitioner's interest in the proceeding, and file the petition within 30 days after the date of publication of the notice required in accordance with Ohio Adm.Code 4906-5-08(C)(1). Further, Ohio Adm.Code 4906-7-04(C) provides that an ALJ may, in extraordinary circumstances and for good cause shown, grant an untimely petition for leave to intervene. In such circumstances, the petition must contain a statement of good cause for failing to timely file and shall be granted only upon a finding that extraordinary circumstances justify granting the petition and that the intervenor agrees to be bound by agreements previously made in the proceeding.
- (35) As discussed previously in finding 24, Hardin Wind filed their proofs of service reflecting that the appropriate legal notices of the local public and adjudicatory hearings were published in newspapers of general circulation, and the notices discussed the deadline for intervention and provided the Board's address. Given the date of publication of the notices, under Ohio Adm.Code 4906-7-04, petitions to intervene were due by January 2, 2014. Here, the petition to intervene filed by the Indian Lake Residents is untimely as it was filed 103 days after the filing deadline for petitions to intervene, and after the Board issued the Order. Thus, we

must turn to the issue as to whether extraordinary circumstances exist in these cases sufficient to warrant granting the motion to intervene.

- (36) The Indian Lake Residents assert that extraordinary circumstances justify their intervention because the proceedings took place in the winter, when they were not residing by Indian Lake. They claim that, even had they had constructive notice of the application, they would not have seen Indian Lake in the photographs of the project area. They also contend that their interests include the conservation of the natural landscape of Indian Lake and the devaluation of their real property in close proximity to the installation of wind turbines and those interests were not a proper part of the consideration by the Board. According to the Indian Lake Residents, only they will be able to explain to the Board their interests in the conservation and preservation of Indian Lake. In addition, they assert that their interests in the conservation and preservation of Indian Lake were not sufficiently addressed during the proceedings and should outweigh any other factor that the Board considers in determining whether to grant intervention. They believe their intervention will contribute to the just and expeditious resolution of the issues in the proceedings and will not unduly delay the proceedings.
- (37) We find no merit to the claim that extraordinary circumstances exist to warrant granting the motion to intervene. The published notice that was provided by Hardin Wind is the statutorily required and accepted method of notice in Board proceedings involving applications for wind turbine projects, and Hardin Wind timely fulfilled all of the notice requirements as prescribed by Ohio statute and Board rules. Further, there is no statutory obligation on the part of Hardin Wind to provide any additional notice, simply because some potentially affected persons do not see the publication of the legal notice. The purpose of laws regulating the publication of legal notice is to assure that published legal material will come to the attention of persons in the area affected, but it does not guarantee that all persons affected will receive actual notice. Once an applicant has complied with its statutory obligation to publish legal notice, it is then incumbent upon those persons potentially affected by the

project to partake in reasonable due diligence regarding their properties and interests. Personal notice is not required by statute and the Board believes that it would be impossible for companies to personally contact every potential person that might or could be affected by an application filed at the Board and to provide them with personal notice of the proceedings.

- (38) We also find no merit to the claim that the two interests cited by the Indian Lake Residents warrant the Board granting the petition to intervene. As discussed previously in findings 31 and 32, the issue related to the impacts on property values and the conservation and preservation of land, including to Indian Lake, were both parts of the record in these cases and were fully considered by the Board. We further note that Application Exhibit R (Visual Impact Assessment) includes multiple photographs showing Indian Lake, as well as a variety of maps that clearly identify Indian Lake in proximity to some of the wind turbine locations approved in the *Wind Turbine Case*. Consequently, the Board finds that the petition for leave to intervene filed by the Indian Lake Residents fails to comply with Ohio Adm.Code 4906-7-04 and should be denied.

It is, therefore,

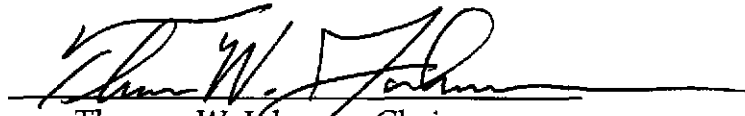
ORDERED, That James Rudolph, Rich Rudolph, Susan Cornell, Ron Brown, and Charles Ruma be denied leave to file applications for rehearing. It is, further,

ORDERED, That the petitions for leave to intervene filed by James Rudolph, Rich Rudolph, Susan Cornell, Ron Brown, and Charles Ruma be denied. It is, further,

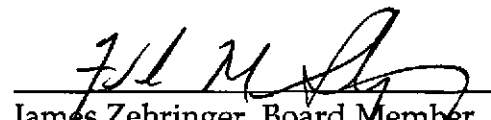
ORDERED, That the application for rehearing filed by Joe Grant be denied. It is, further,

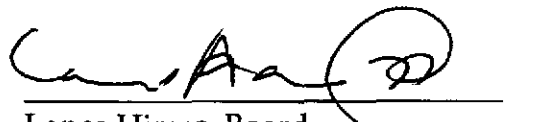
ORDERED, That a copy of this Entry on Rehearing be served upon each party of record and any other interested persons of record.

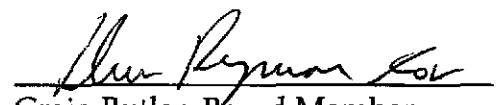
THE OHIO POWER SITING BOARD



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Public Utilities Commission of Ohio

David Goodman, Board Member
and Director of the Ohio
Development Services Agency


James Zehringer, Board Member
and Director of the Ohio
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and Public Member

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Entered in the Journal

MAY 19 2014


Barcy F. McNeal
Secretary