BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Ohio Power Siting Board's Review of Rules 4906-4-08 and 4906-4-09 of the Ohio Administrative Code	)))	Case No. 16-1109-GE-BRO

COMMENTS OF 6011 GREENWICH WINDPARK, LLC TO PROPOSED RULES

I. INTRODUCTION

These Comments are filed on behalf of 6011 Greenwich Windpark, LLC ("Greenwich"). Greenwich, a wholly owned subsidiary of Windlab Developments USA, Ltd., received a certificate to construct, own

After an informal stakeholder workshop and formal workshop, the Ohio Power Siting Board ("OPSB" or "Board") issued proposed rule changes to Ohio Administrative Code ("OAC") Rule 4906-4-08 and a new rule applicable only to wind farms, Rule 4906-4-09, as recommended by its Staff and provided that interested persons could file comments on the proposed rule changes and the business impact analysis ("BIA") to be submitted to the Common Sense Initiative ("CSI") office by no later than October 24, 2016. Greenwich appreciates the opportunity to comment on these proposed rules which will have a profound impact on wind farms.

II. COMMENTS

A. AMENDED RULE 4906-4-08: Health and safety, and use and ecological information

Subsection (A)(3)(b)(i) Operational noise

The proposed rule references "cumulative operational noise," however no definition is given. In the past, there have been informal discussions with the OPSB Staff about this term, but it

is not a universally understood concept. Therefore it is recommended that this subsection include a definition.

In addition, noise standards are more appropriately applied at the receptor, not at a property line; at the very least the allowable sound levels should be higher at a property line than at a receptor.

Subsection (A)(6) High winds

This subsection speaks to an analysis of the prospect of high winds. However, "high winds" is not an unambiguous term. Therefore it is recommended that the subsection should include a definition of "high winds."

Subsection (A)(12) Navigable air space interference

The language in this subsection about the potential navigable air space interference is vague and subjective. It is recommended that this subsection be clarified to state that an applicant should comply with applicable FAA requirements. If an applicant receives FAA approval for its turbine locations, the requirement should be met.

Subsection (C)(2)(b) Windfarm distance from state, federal highways

This subsection adds a setback to state and federal highways. However, inserting the 1,125 feet in horizontal distance from the tip of the nearest turbine blade at 90 degrees eliminates turbines without an increase in safety.

Subsection (C)(3)(a) (iii) Setback waivers

Subparagraph (a)(iii) – This provision requires a "metes and bounds" property description which has become archaic. Many valid and proper legal descriptions are not "metes and bounds" descriptions, for example, descriptions that reference PLSS sections or their aliquot parts or to platted lot or block numbers. It is recommended that the language be changed to "a legally recognized description."

<u>Subsection (D)(1) (3)(4)</u> Landmark mapping, recreation and scenic area, visual impact of facility

In each of three subsections, the OPSB Staff has recommended a change from five miles to 10 miles. There has been no basis given for the change and indeed, this has not been a contested matter in the wind cases to date. Five miles from a wind farm is already a substantial distance. Without a scientific or compelling policy reason, the existing five mile requirement should not be changed.

<u>Subsection (D)(4) (a) and (b)</u> Visual impact

The last line of subparagraph (a) uses the term "atmospheric conditions," but the term is not defined. At first blush, the project would appear to be most visible during clear, daytime conditions; however, this standard is not explicitly stated in the rule. This lack of definition may introduce unnecessary differences of opinion as to meaning of "most visible."

In subparagraph (b), the proposal requires the applicant to list all indications of the visual preference of the community. This is a wholly subjective standard that invites disputes. Greenwich urges the OPSB to strike "or other indications of the visual preferences of the community."

B. NEW RULE 4906-4-09 Regulations Associated with Wind Farms

<u>Subsection (A)(2)(b)(ii)</u> Geological features

Subpart (ii) requires an applicant to provide the "depth and description of the bedrock." Typically boring is conducted until bedrock is reached, without the need to further characterize (describe) the bedrock.

Rather than setting such a requirement, Greenwich suggests that the boring be "conducted in accordance with instructions issued by the project geological experts."

<u>Subsections (A)(2)(c)(iii) and (iv)</u> Blasting

As a general matter, sometimes the need for blasting is determined only when unanticipated subsurface bedrock intrusions are discovered/encountered. Unless the OPSB Staff is empowered to

waive the 60-day notice, the time period is unreasonable and may cause significant construction delays which have a negative cumulative impact on the project schedule. An applicant needs latitude to conduct blasting as required within a reasonable time period.

There should also be some leeway in subpart (iii) where the resident of the nearest dwelling is not a project participant and does not consent to the placement of the seismograph, the seismograph would have to be placed elsewhere.

Subpart (iv) requires 30-day written notification to residents/owners within 1,000 feet of the blasting site. It also requires an applicant to offer to conduct a pre-blast survey of each dwelling/structure, unless waived by resident or property owner. The survey is to be submitted to Board 10 days prior to blasting. However, the rule does not provide for the circumstance where unanticipated blasting is required. Provision should be made in the rule for such an event. Otherwise, adhering to the provision as written has material construction schedule implications.

Subsections (A)(4)(b) and (c) Maintenance and use

Subpart (b) requires that the plan is consistent with sensitive resources identified by the Ohio Department of Natural Resources. It contains specific instructions which are redundant to the wetland permit that would have to be obtained if the conditions described by the rule are present, including restoration. Much of this language can be deleted and instead the rule should read: "A wetland permit, if required, shall be obtained prior to constructing in such areas."

In subpart (c) the term "throughout project area" should be deleted. Subpart (c) describes the vegetative management plan for disturbed areas, not the entire project area.

Subsection (A)(5)(b) Change, reconstruction, alteration or enlargement

Greenwich appreciates that the rule provides a way to address changes that do not merit the amendment process. This rule will clarify the current "gray" area where changes are required, but they have no real significance to the overall certification. However, there is a term in subpart (b)

that is problematic. In describing the minimal nature of the modifications, the rule states that the modifications "would not create additional adverse impacts for any property owner." The implication and intent of "and would not create additional adverse impacts for any property owner" are unclear, too broad and invite disputes. The rule would have the intended meaning if this term was eliminated.

Subsection (B)(1). Erosion control

As written, this rule requires seeding and stabilization within seven days. However, the time to re-seed will be specified in the Stormwater Pollution Prevention Plan ("SWPP"). To avoid inconsistency, Greenwich suggests eliminating the references to the 7-day re-seeding time and replacing with "re-seeding will be conducted in accordance with the approved SWPP."

Subsections (C)(1), (3), and (6) Aesthetics and recreational land use

In subpart (1), the rule requires that damage caused by vandalism, be "immediately" removed or abated. This term is too restrictive and invites subjectivity. A better approach would be to revise the rule to require removal "within a commercially reasonable period."

Subpart (3) uses the term "reasonably shielded" with respect to associated structures and access roads. Adding the term "downward facing would clarify the rule so that the phrase would state:

> Lighting of other parts of the wind farm, such as associated structures and access roads, shall be limited to that required for safety and operational purposes and shall be downward facing or reasonably shielded from adjacent properties.

There is no apparent basis for requiring one vantage point for every three square miles of project area as required by subpart (6). Having so many vantage points that are slightly different adds little to understanding any potential visual impacts of the project. Greenwich recommends at least a five mile distance around the entire project area.

<u>Subsections (D)(1), and (6) – (9</u> Wildlife protection

In subpart (1), Greenwich would recommend replacing "or other species which may be impacted" in the first sentence with "***or other species within USFWS or ODNR-DW jurisdiction.***" This change would clarify the species that are the subject of the provisions. Additionally, providing actual letters may be problematic as many agencies do not provide letters. Instead of "The applicant shall provide coordination letters…" it is suggested that "***The applicant provide evidence of coordination.***" In addition, Greenwich suggests that the term recommendations in the fourth and second line from the end of the provision be replaced with "requirements." If USFWS suggests a take permit for eagles, they cannot require it.

In subpart (6), Greenwich suggests that the last sentence begin with the phrase, "***Unless coordination efforts with the Ohio Department of Natural Resources and the United States Fish and Wildlife Service allows a different course of action***. . ." because the agencies may require another course of action in a given circumstance.

In subpart (8), the rule cries out for definitions of "nearly stationary" and "low wind speed." Typically, the USFWS and applicant will agree to a curtailment strategy during bird and bat migratory seasons which includes an increased cut-in speed. Below the cut-in speed, the turbine blades will be configured to minimize rotor rotation, but rotation will not be eliminated. In addition, "bird and bat migratory seasons" should be changed to be more precise: "***state or federally-listed*** bird and bat migratory seasons."

The same type of change is recommended for subsection (9): "wildlife species" should be changed to "***state or federally-listed wildlife species***" to be more precise.

<u>Subsections (E)(2) and (3)</u> Ice Throw

Subpart (c) appears that the rule requires the installation of an "ice detection system" on every turbine. This "ice detection system" requirement assumes all turbine vendors offer such a

system, and that all systems operate as described by the proposed regulation (detectors mounted on nacelle roof). Actually, many ***turbines*** do not have an "ice detection system" per se; however through a combination of sensors (vibration, pitch monitoring, power curve deration, and anemometer) they can detect when there is ice buildup on the blades. Thus the rule should be modified to delete the phrase "ice detector installed on the roof of the nacelle."

Subsection (F)(2) Noise

This requirement references properties as the place to measure noise. However, noise standards are more appropriately applied at the receptor not at the property line. Greenwich urges that at the very least, the allowable sound levels should be higher at a property line than at a receptor."

Subsection (H)(1) Shadow flicker

Typically, shadow flicker is measured at the receptor (residence), not a property boundary. Measuring shadow flicker at a property boundary rather a receptor (residence) is very restrictive. This will result in loss of turbine locations and the resultant economic opportunities with no material decrease in impacts. Thus Greenwich recommends that the provision be modified to state that the shadow flicker levels do not exceed thirty hours per year at any non-participating property ***residence***.

Subsections (I) (4), (7) and (8) Decommissioning and removal

Subpart (4) states that damaged field tile systems should be repaired to the "satisfaction" of the property owner, an open ended and dispute ridden standard. Rather a more precise standard would be "***reasonable***" satisfaction of the property owner.

Greenwich believes that subpart (7) should permit decommissioning studies to consider the salvage value of equipment, which can be material.

Subpart (8) pertaining to the surety bond to be posted for decommissioning, in the view of Greenwich, the Board should consider other types of financial security, such as a parental guarantee, and cash. Performance bonds, if one can obtain them, are very expensive.

III. CONCLUSION

It is hoped that by incorporating the modifications suggested in these Comments, the proposed rules will be better for all who are subject to them as well as to the Board Staff who work with them. Greenwich again expresses its appreciation for the opportunity to comment. For the reasons given in these Comments, Greenwich respectfully requests that the Board adopt its recommendations in this proceeding.

Respectfully submitted on behalf of
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Summary: Comments of 6011 Greenwich Windpark, LLC electronically filed by Teresa Orahood on behalf of Sally W. Bloomfield