BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Applications of Hog Creek Wind Farm, LLC for Amendments to its Certificates to Install and Operate Wind-Powered Electric Generation Facilities in Hardin County, Ohio and Request to Merge Operating Authority for the Two Certificates.	)	Case No. 16-1422-EL-BGA Case No. 16-1423-EL-BGA

ORDER ON CERTIFICATE

The Ohio Power Siting Board, in considering the above-entitled matters, approves and adopts the joint stipulation and recommendation filed by Hog Creek Wind Farm, LLC, the Ohio Farm Bureau Federation, and Staff, and grants the applications filed by Applicant to amend the respective certificates in the manner proposed in these two cases, subject to the conditions in this Order.

OPINION:

I. Procedural History of this Case

All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906.

On March 22, 2010, in *In re JW Great Lakes Wind, LLC,* Case No. 09-277-EL-BGN (*09-277*), the Ohio Power Siting Board (Board) issued an Opinion, Order, and Certificate granting the application of JW Great Lakes Wind, LLC (JWGL) for a certificate to construct Hog Creek I, a wind-powered electric generating facility in Hardin County, Ohio, consisting of up to 27 turbine sites with a combined generation capacity of 48.6 megawatts (MW). On July 15, 2010, the Board authorized the transfer of the certificate from JWGL to Hog Creek Wind Farm, LLC (Hog Creek or Applicant).

On July 25, 2011, in *In re Hog Creek Wind Farm, LLC,* Case No. 11-757-EL-BGA (*11-757*), the Board issued an Order on Certificate Amendment (Hog Creek I First Amendment) permitting Hog Creek to amend the certificate granted in *09-277* by adding turbine models, thereby increasing the total nameplate capacity to 49.6 MW and increasing the project boundary by approximately 1,000 linear feet to include two additional parcels under lease.

On November 28, 2011, in *In re Hog Creek Wind Farm, LLC,* Case No. 11-5542-EL-BGA (*11-5542*) (Hog Creek I Second Amendment), the Board authorized the use of additional turbine models, thus increasing the nameplate capacity of the project up to 52.5

MW. Subsequently, on March 9, 2015, in *09-277*, the Board extended the term of the Hog Creek I certificate to March 22, 2018.

On August 29, 2011, in *In re Hog Creek Wind Farm, LLC*, Case No. 10-654-EL-BGN (*10-654*), the Board issued an Opinion, Order, and Certificate permitting the Applicant to construct Hog Creek II with a nameplate capacity of 18.4 MW. On October 25, 2016, in *10-654*, the Board extended the term of the certificate for Hog Creek II to March 22, 2018, to match the expiration date of the certificate for Hog Creek I.

On November 28, 2011, in *In re Hog Creek Wind Farm, LLC*, Case No. 11-5543-EL-BGA (*11-5543*), the Board issued an Order on Certificate Amendment (Hog Creek II First Amendment) permitting Hog Creek to amend the certificate granted in *10-654* by adding turbine models and associated infrastructure.

On June 22, 2016, the Applicant filed applications in Case No. 16-1422-EL-BGA (*16-1422*) and Case No. 16-1423-EL-BGA (*16-1423*) seeking authorization to merge the certificate authority first granted for Hog Creek I in *09-277* and Hog Creek II in *10-654* (hereafter, Combined Project). Under the Combined Project, Hog Creek proposes to focus on only one turbine model that reflects updated technology, decrease the total nameplate capacity of the Combined Project, adjust turbine sites, and adjust access road and underground electric connection locations accordingly.

On October 5, 2016, Applicant filed a supplement making slight adjustments to two crane paths, two access roads, and one collection line in order to avoid three historic farmsteads with structural ruins identified through archeology shovel tests conducted in September 2016.

On June 23, 2016, Applicant filed proof of service of the applications. On July 12, 2016, Applicant filed proof of publication of the notice of the applications that was published in *The Kenton Times* and *The Ada Herald*, newspapers of general circulation in Hardin County, Ohio. Staff filed a combined investigative report (Staff Report) for both *16-1422* and *16-1423* on October 18, 2016.

By Entry issued October 19, 2016, the administrative law judge (ALJ) granted the motion to intervene filed by the Ohio Farm Bureau Federation (OFBF). In that same Entry, the ALJ found that none of the proposed changes in the certificate amendment applications in *16-1422* and *16-1423*, would result in any material increase in any environmental impact of the facilities; therefore, a hearing was not required under R.C. 4906.07(B) with regard to any material increase in any environmental impact of the facilities due to the proposals in these applications. However, the ALJ found that the following five proposed changes in the certificate amendment applications in *16-1422* and *16-1423*, would require a hearing

under R.C. 4906.07(B), because they entail a substantial change in the location of all or a portion of the facilities: a) the relocation of all of the turbine locations; b) the proposed modification of access roads; c) the proposed modification of collection lines; d) the addition of acreage to the collector substation; and e) additional acreage to the eastern boundary of the project area.

The October 19, 2016 Entry also scheduled an adjudicatory hearing to commence on November 3, 2016, at the offices of the Board in Columbus, Ohio. On October 31, 2016, Applicant filed the direct testimony of Mason Sorenson. On October 31, 2016, Staff filed the direct testimony of Jon Pawley. On November 1, 2016, Applicant, OFBF, and Staff, (collectively, the Signatory Parties) filed a joint stipulation and recommendation (Stipulation).

The evidentiary hearing was held on November 3, 2016. The following parties made appearances at the hearing: Applicant and Staff. No public witnesses appeared at the hearing. Admitted into evidence at the adjudicatory hearing were: Hog Creek's application and supplement (Applicant's Exs. 1 and 2); the proof of service upon local officials and libraries (Applicant's Ex. 3); the proof of publication (Applicant's Ex. 4); the testimony of Applicant's witness, Mason Sorenson, supporting the applications, the supplement, and the Stipulation (Applicant's Ex. 5); the Staff Report (Staff Ex. 1); the testimony of Staff witness, Jon Pawley, in support of the Staff Report (Staff Ex. 2); and the Stipulation filed by the Signatory Parties to the Stipulation (Joint Ex. 1).

II. Summary of Ohio Revised Code and Ohio Administrative Code

Hog Creek Wind Farm, LLC is a person under R.C. 4906.01(A) and is certificated to construct, operate, and maintain a major utility facility, in the form of a wind-powered electric generation facility, under R.C. 4906.10 in accordance with the Board's Orders in *09-277, 10-654, 11-757, 11-5542,* and *11-5543.*

Pursuant to R.C. 4906.10, the Board's authority applies to major utility facilities and provides that such facilities must be certified by the Board prior to the commencement of construction. In accordance with R.C. Chapter 4906, the Board promulgated rules, which are set forth in Ohio Adm.Code Chapters 4906-3 and 4906-4, prescribing regulations regarding applications for wind-powered electric generation facilities.

R.C. 4906.06(E) provides that an application for an amendment of a certificate shall be in such form and contain such information as the Board prescribes. R.C. 4906.07 requires that, when considering an application for amendment of a certificate, the Board shall hold a hearing "***if the proposed change in the facility would result in any material

increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility***."

Under R.C. 4906.06(E), an applicant is required to provide notice of its application as required by R.C. 4906.06(B) and (C). These sections require an applicant to file proof of service of the application to all public officials in the area where the facility is located and, within 15 days after the date of the filing of the application, give public notice of the application by publishing a summary of the application in newspapers of general circulation in the area.

III. Summary of the Evidence

A. Summary of the Applications in 16-1422 and 16-1423

As previously indicated, the Applicant is seeking, in *16-1422,* to amend the certificate which authorizes Hog Creek I and, in *16-1423,* to amend the certificate which authorizes Hog Creek II and to merge the operating authority of the two separate certificates into a Combined Project. The project areas involved in the Combined Project are both located entirely in Hardin County, Ohio.

Considering both applications together, Hog Creek has proposed the following: (a) combining Hog Creek I and Hog Creek II into a single project; (b) adding approximately 345 acres to the combined eastern boundary of the project area; (c) eliminating turbine options as previously approved and amended in Hog Creek I and Hog Creek II and considering a new model, the Vestas V110 2.2 MW turbine model, as the only approved turbine model thereby reducing the number of turbines from 41 to 30; (d) decreasing the total nameplate capacity of the Combined Project from a maximum of 70.9 MW to a maximum of 66 MW; (e) revising turbine locations; (f) modifying all access roads to address the new project layout, resulting in a net increase of approximately one mile of new access roads; (g) modifying the collection line system to incorporate the new project layout, resulting in a decrease of approximately four miles of collection lines; and (h) increasing from one acre to three acres in size the collector substation in order to handle adequately the Combined Project.

B. Summary of the Staff Report

Staff reviewed both applications and filed a combined Staff Report on October 18, 2016. Noting each of the eight items identified in the above summary of the two applications, the Staff Report reviews Applicant's proposed modifications to the certificates which authorize Hog Creek I and Hog Creek II.

Staff notes that if the proposed Vestas V110 2.2 MW turbine model was selected, the original conditions of the certificates are adequate and that adverse environmental impacts would continue to be minimized for this Combined Project in relation to the addition of the Vestas V110 2.2 MW proposed turbine model. Additionally, Staff notes that the Applicant has chosen to modify the locations of the turbines and associated facilities based upon the requirements of R.C. 4906.20(B)(2)(a). In relation to the proposed relocation and addition of non-turbine associated facilities, Staff asserts that the Applicant introduced substantial changes in the location of these portions of the facilities. Staff further asserts that none of the revisions proposed by the Applicant result in a material increase in environmental impact of the facility compared to the original certificates. Finally, Staff notes that if the proposed modifications to the locations of turbines and non-turbine associated facilities were approved, the conditions of the prior certificates would be adequate to ensure that adverse environmental impacts would continue to be minimized for the Combined Project. Accordingly, Staff recommends that the Board approve the applications as proposed, provided that the certificates include the conditions specified in the opinions, orders, and certificates issued in *09-277, 10-654, 11-757, 11-5542,* and *11-5543,* and subject to conditions of this Staff Report. (Staff Report at 12-13.)

C. Summary of the Stipulation

As previously noted, on November 1, 2016, the Signatory Parties filed a Stipulation purportedly resolving all the issues presented in *16-1422* and *16-1423* (Joint Ex. 1). At the hearing, Hog Creek's witness Sorenson offered testimony in support of the Stipulation. As part of the Stipulation, the Signatory Parties agree and recommend that the Board issue an Order approving both applications, in *16-1422* and *16-1423,* subject to certain conditions. The following is a summary of the conditions in the Stipulation and is not intended to replace or supersede the language of the Stipulation.

(1) The Stipulation results from discussions between the Parties who acknowledge that the Stipulation is amply supported by the record and thus is entitled to careful consideration by the Board. The Stipulation is intended by the Parties to resolve all matters pertinent to the applications of Hog Creek Wind Farm, LLC for amendments to the certificates which authorize Hog Creek I and Hog Creek II.

(2) The Applicant shall continue to adhere to all conditions of the opinions, orders, and certificates issued in *09-277, 10-654, 11-757, 11-5542,* and *11-5543* for the respective cases, with the Vestas V110 2.2 MW turbine model to be identified as the only acceptable turbine model and including decreased facility nameplate

capacity and the modifications of the collector substation, access roads, and collection lines.

(3) In addition, the Parties have agreed that, with respect to noise and shadow flicker, Conditions 40 and 41 (noise) and Condition 44 (shadow flicker), respectively, from *10-654* shall apply for all turbines in the Combined Project area.

(4) Prior to any in-water work, the Applicant shall provide information to Staff and to the Ohio Department of Natural Resources (ODNR) indicating that no mussel impacts would occur at stream crossings or, as a last resort, that a professional malacologist shall collect and relocate mussels to a suitable and similar habitat.

(5) At the time the first turbine is mechanically completed, the Applicant shall obtain and provide to Staff a technical assistance letter from the U.S. Fish and Wildlife Service (USFWS) or obtain an Incidental Take Permit under Section 10 of the Endangered Species Act.

(6) Prior to the commencement of construction, the Applicant shall provide Staff with a detailed frac-out plan for stream crossings that are anticipated to be completed by horizontal directional drilling.

(7) In-water work shall be prohibited from April 15 to June 30 to reduce impacts to aquatic species and their habitat.

(8) Construction in northern harrier and upland sandpiper preferred habitats shall be prohibited during the respective nesting periods of these avians.

(Joint Ex. 1 at 2-3).

IV. Board's Conclusion and Certificate Conditions

Initially, the Board notes that, in our Orders for Hog Creek I (*09-277* as amended by *11-757* and *11-5542*) and Hog Creek II (*10-654* as amended by *11-5543*), we determined that the stipulations entered into between the stipulating parties in those cases satisfied the criteria set forth in R.C. Chapter 4906, promoted the public interest and necessity, and did not violate any important regulatory principle or practice. Therefore, the Board approved the stipulations and granted a certificate in Hog Creek I subject to 44 conditions as

amended by *11-757* and *11-5542* and approved the stipulations and granted a certificate in Hog Creek II subject to 58 conditions as amended by *11-5543*.

In the instant applications, as noted above, Applicant is proposing eight modifications to the certificates which authorize Hog Creek I and Hog Creek II. These eight proposed modifications consist of: (a) combining Hog Creek I and Hog Creek II into a single project; (b) adding approximately 345 acres to the combined eastern boundary of the project area; (c) eliminating turbine options as previously approved and amended in Hog Creek I and Hog Creek II and considering only the Vestas V110 2.2 MW turbine model, thereby reducing the number of turbines from 41 to 30; (d) decreasing the total nameplate capacity of the Combined Project from a maximum of 70.9 MW to a maximum of 66 MW; (e) revising turbine locations; (f) modifying all access roads to address the new project layout, resulting in a net increase of approximately one mile of new access roads; (g) modifying the collection line system to incorporate the new project layout, resulting in a decrease of approximately four miles of collection lines; and (h) increasing from one acre to three acres in size the collector substation in order to handle adequately the Combined Project. The Board finds that the Applicant properly filed this case for our review and consideration in accordance with R.C. 4906.06(E) thereby providing for the necessary notice and due process afforded to applications regarding certificates issued by the Board.

In reviewing an application for an amendment of a certificate, the Board must evaluate whether to hold a hearing on the certificate pursuant to R.C. 4906.07(B) based on whether the proposed change in the facility would result in any material increase in any environmental impact of the facility or whether the proposed change in the facility results in a substantial change in the location of all or a portion of such facility other than as provided in the alternatives set forth in the application. As noted above, the ALJ found that moving the locations of the wind turbines resulted in a substantial change in the location of the facility requiring a hearing pursuant to R.C. 4906.07(B). Moreover, the ALJ found that certain non-turbine related modifications to the proposed Combined Project, such as the proposed modification of access roads, the proposed modification of collection lines, the addition of acreage to the collector substation, and additional acreage to the eastern boundary of the project area, also resulted in a substantial change in the location of the facility that required a hearing pursuant to R.C. 4906.07(B).

At the hearing in this matter, the parties introduced a Stipulation signed by all parties to these cases. The Board notes that Ohio Adm.Code 4906-2-24 authorizes parties to Board proceedings to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-2-24(D), the terms of such an agreement are accorded substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior

Board proceedings. *See, e.g., In re Northwest Ohio Wind Energy, LLC,* Case No. 13-197-EL-BGN, Opinion, Order, and Certificate (Dec. 16, 2013); *In re American Transm. Systems Inc.,* Case No. 12-1727-EL-BSB, Opinion, Order, and Certificate (Mar. 11, 2013); *In re Rolling Hills Generating, LLC,* Case No. 12-1669-EL-BGA, Order on Certificate Amendment (May 1, 2013); *In re AEP Transm. Co., Inc.,* Case No. 12-1361-EL-BSB, Opinion, Order, and Certificate (Sept. 30, 2013); *In re Hardin Wind LLC,* Case No. 13-1177-EL-BGN, et al., Opinion, Order, and Certificates (Mar. 17, 2014). The ultimate issue for the Board's consideration is whether a stipulation, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

At the evidentiary hearing, Applicant's witness Sorenson testified that all the parties to these proceedings engaged in settlement negotiations through an open process that resulted in a revision to Staff-recommended condition 5 which was then incorporated into the Stipulation (Applicant's Ex. 5 at 5).

The Board finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. We further recognize that the counsel for each of the parties to these cases has participated in several other Board proceedings and is, therefore, familiar with Board proceedings and certificate requirements. Consequently, the Board finds that, based upon the record, the first criterion is satisfied.

At the evidentiary hearing, Applicant's witness Sorenson also claimed that the Stipulation, as a package, benefits the public interest. Mr. Sorenson testified that the Combined Project when completed would generate clean energy that can be a hedge against rising fuel, fossil fuel, and energy prices with no adverse impacts to the environment and only minimal impacts to wildlife. The witness further noted that the project will benefit the local economy through the addition of new jobs, payroll, tax revenue, and leasehold payments to participating property owners. (Tr. at 9-12.)

Upon review, the Board finds that, as a package, the Stipulation benefits the public interest by resolving the issues raised in these matters without resulting in lengthy litigation. The Board recognizes that the Stipulation essentially includes Staff's

recommendations, as set forth in the Staff Report. We find that, based on the evidence of record, the Combined Project will contribute safe and reliable electric service in the northwestern Ohio area. Additionally, the project will produce tax revenue for the local community and public services in those areas.

At the evidentiary hearing, Applicant's witness Sorenson testified that the parties believe that all the provisions in the Stipulation are in harmony with regulatory principles and practice (Applicant's Ex. 5 at 5). The Board finds that the Stipulation does not violate any important regulatory principle or practice. Moreover, the conditions contained within the Stipulation in conjunction with the conditions adopted with the certificates issued for Hog Creek I in *09-277* and Hog Creek II in *10-654*, as amended, adequately address all statutory requirements and will help ensure that increased demands for electricity are met in the future and that existing reliability of service is strengthened and enhanced throughout the area.

The Signatory Parties have recommended that the Board should issue an Order approving both applications, in *16-1422* and in *16-1423*, subject to the certificate conditions set forth in the Stipulation. The Board finds, based on the record as a whole, that all of the criteria for doing so, established in R.C. Chapter 4906, are satisfied with regard to the eight proposed modifications to the certificates which authorize Hog Creek I and Hog Creek II. Therefore, based upon the record in these proceedings, the Board concludes that, pursuant to R.C. Chapter 4906, the applications in *16-1422* and *16-1423*, as supplemented and amended, should be approved, subject to the conditions set forth in the Stipulation as well as continued adherence to all conditions of the Orders in *09-277, 10-654, 11-757, 11-5542,* and *11-5543*.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) Hog Creek Wind Farm, LLC is a person under R.C. 4906.01(A).

(2) Hog Creek I and Hog Creek II are electric generation facilities and, as combined, are major utility facilities as defined in R.C. 4906.01(B)(1).

(3) On June 22, 2016, Hog Creek Wind Farm, LLC filed applications seeking to amend the certificates authorizing the operation of Hog Creek I and Hog Creek II wind farm projects. Applicant filed notice of proof of service of the applications on June 23, 2016.

(4) On October 5, 2016, the Applicant filed a supplement to the applications submitted in these matters.

(5) As supplemented, the proposed applications together would: (a) combine Hog Creek I and Hog Creek II into a single project; (b) add approximately 345 acres to the combined eastern boundary of the project area; (c) eliminate turbine options as previously approved and amended in Hog Creek I and Hog Creek II and considering only the Vestas V110 2.2 MW turbine model, thereby reducing the number of turbines from 41 to 30; (d) decrease the total nameplate capacity of the Combined Project from a maximum of 70.9 MW to a maximum of 66 MW; (e) revise turbine locations; (f) modify all access roads to address the new project layout, resulting in a net increase of approximately one mile of new access roads; (g) modify the collection line system to incorporate the new project layout, resulting in a decrease of approximately four miles of collection lines; and (h) increase from one acre to three acres in size the collector substation in order to handle adequately the Combined Project.

(6) On July 12, 2016, Applicant filed an affidavit and a newspaper tear sheet indicating that "Notice of Amendments to Major Utility Facilities" was published on June 27 and June 30, 2016, in *The Kenton Times* and *The Ada Herald,* newspapers of general circulation in Hardin County, Ohio.

(7) On October 18, 2016, the Staff Report of Investigation was filed.

(8) The proposed changes to the certificated facility do not result in any material increase in any social or environmental impact; however, the change in location of certain facilities and the addition of new facilities do result in a substantial change in the location of the facility. Therefore, pursuant to R.C. 4906.07, an evidentiary hearing is necessary only to the extent there is a substantial change in the location of all or a portion of the certified facilities.

(9) By Entry issued October 19, 2016, the ALJ granted the motion to intervene of OFBF, established an October 31, 2016 deadline for the filing of all direct testimony, and scheduled an evidentiary hearing, pursuant to R.C. 4906.07, to commence on November 3, 2016.

(10) An evidentiary hearing was held on November 3, 2016, in Columbus, Ohio.

(11) Based on the record, and in accordance with R.C. Chapter 4906, the applications seeking amendment of the certificates of environmental compatibility and public need for the Hog Creek I and Hog Creek II electric generation facilities, filed by Hog Creek Wind Farm, LLC on June 22, 2016, should be approved, subject to the conditions set forth in the Orders in *09-277* and *10-654* and later amended in *11-757, 11-5542, 11-5543,* and this Order.

ORDER:

It is, therefore,

ORDERED, That the Stipulation be approved and adopted. It is, further,

ORDERED, That, pursuant to R.C. Chapter 4906, the certificate amendment applications in *16-1422* and *16-1423*, subject to the conditions set forth in the Stipulation and subject to the conditions set forth in the Orders in *09-277* and *10-654* and later amended in *11-757, 11-5542, 11-5543,* and this Order, be approved. It is, further,

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

THE OHIO POWER SITING BOARD

Asim Z. Haque, Chairman
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
Department of Natural Resources

Richard Hodges, Board Member
and Director of the Ohio
Department of Health

Craig Butler, Board Member
and Director of the Ohio
Environmental Protection Agency

David Daniels, Board Member
and Director of the Ohio
Department of Agriculture

Jeffrey J. Lechak, Board Member
and Public Member

JRJ/vrm

Entered in the Journal

NOV 29 2016

Barcy F. McNeal
Secretary