

## THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF  
REPUBLIC WIND, LLC FOR A  
CERTIFICATE TO SITE WIND-POWERED  
ELECTRIC GENERATION FACILITIES IN  
SENECA AND SANDUSKY COUNTIES,  
OHIO.

CASE NO. 17-2295-EL-BGN

### ENTRY

Entered in the Journal on February 15, 2019

#### I. SUMMARY

{¶ 1} The administrative law judge grants the motions to intervene filed by: Joseph and Diane Anderson, Denise Bell, Aaron and Carrie Boes, Richard and Linda Bollenbacher, Rob and Mary Chappell, Thomas and Kathleen Fries, Leslie and Denise Hackenburg, Jeffrey and DeeAnne Hamilton, Allen and Mary Hassellbach, Ethan and Crystal Hoepf, Jason and Michelle Hoepf, Taylor Hoepf, Kenneth and Debra Hossler, Leonard and Beverly Kubitz, Gary and Michelle Miller, Steven and Kelley Miller, Kim Mitchell, Charles and Linda Morsher, Patricia Motry, Steven and Linda Mulligan, Linda Niederkohr, Nicholas and Michelle Reiter, Elaine Schultz, James and Victoria Seliga, Eugene and JoAnn Smith, James and Elaine Steinmetz, Herman and Patricia Studer, Christine Vogt, Mark Weber and Cindra Riley, Charles and Rhonda Weyer, and Ann Wright; the Ohio Environmental Council and Environmental Defense Fund; the Board of County Commissioners of Seneca County, Ohio; and, The Seneca County Park District.

#### II. DISCUSSION

##### A. *Procedural History*

{¶ 2} Republic Wind, LLC (Republic or Applicant) is a person as defined in R.C. 4906.01.

{¶ 3} R.C. 4906.04 provides that no person shall construct a major utility facility in the state without obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 4} On November 13, 2017, Republic filed a pre-application notification letter with the Board regarding its proposed windfarm with up to 200 megawatt (MW) electric generating capacity in Seneca and Sandusky counties, Ohio. According to the letter, the proposed site will consist of approximately 35,000 acres of leased land in Adams, Pleasant, Reed, Scipio, and Thompson townships in Seneca County and York Township in Sandusky County.

{¶ 5} On February 2, 2018, as amended on March 27, 2018, Republic filed an application with the Board for a certificate of environmental compatibility and public need to construct between 55 and 58 wind turbine generators, each with a nameplate capacity rating of 3.3 MW to 3.63 MW, depending on the final turbine model selected. The total generating capacity of the facility will not exceed 200 MW.

{¶ 6} On May 30, 2018, Republic filed its certificate of service of its accepted and complete application, in accordance with the requirements of Ohio Adm.Code 4906-3-07. On June 25, 2018, Republic submitted the application fee to the Board, pursuant to Ohio Adm.Code 4906-3-12.

{¶ 7} By Entry issued on July 18, 2018, a procedural schedule was established for this matter including an intervention deadline of 30 days following publication of the notice required by Ohio Adm.Code 4906-3-09.

{¶ 8} By Entry issued on September 4, 2018, the procedural schedule was tolled at the request of Republic.

{¶ 9} On December 26 and 27, 2018, Republic filed an amended application. According to Republic, its amended application reduces the size of the project area, which involves no new parcels outside of the existing project area. The Applicant represents that the majority of the turbine shifts involve minor distances and remain on the same parcels. Additionally, Republic states that the new turbine model being proposed will reduce the

number of turbine sites and the total amount of access roads, meteorological towers, and collector lines.

**B. *Motions to Intervene***

{¶ 10} An administrative law judge (ALJ) may grant intervention, pursuant to Ohio Adm.Code 4906-2-12, upon a showing of good cause, which the Board has historically held is shown when the person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties. *In re Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010). Further, R.C. 4906.08(A) and Ohio Adm.Code 4906-2-12(B) provide that, in deciding whether to permit timely intervention, the following factors may be considered: the nature and extent of the prospective intervenor's interest; the extent to which the prospective intervenor's interest is represented by existing parties; the prospective intervenor's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; the legal position advanced by the prospective intervenor and its probable relation to the merits of the case; and, whether the intervention by the prospective intervenor will unduly delay the proceeding or unjustly prejudice an existing party.

{¶ 11} On June 19, 2018, as amended on June 22, 2018, the following Seneca County residents filed a motion to intervene in this proceeding: Chris and Danielle Zeman, Carol Burkholder, Duane and Deb Hay, Gary and Dawn Hoepf, David Hoover, Jeff Hoover, Greg and Laura Jess, Mike and Tiffany Kessler, Doug and Jenifer Myers, Kevin and Jennifer Oney, Duane Robinson, John and Lisa Wilson, Rita and Jerry Cantu, and Tom and Lori Scheele (collectively, Seneca County Residents). These motions to intervene were filed prior to Republic's amended application filing on December 26 and 27, 2018.

{¶ 12} On June 19, 2018, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene in this proceeding.

{¶ 13} On June 20 and 21, 2018, Adams Township, Pleasant Township, Reed Township, and Scipio Township, Seneca County, each filed notices of intervention in this case.

{¶ 14} On June 28, 2018, as amended on August 14 and 17, 2018, York Township filed a petition to intervene as a party to this proceeding.

{¶ 15} Pursuant to the Entry of August 21, 2018, the ALJ granted intervention to Duane and Deb Hay, Gary and Dawn Hoepf, Greg and Laura Jess, Mike and Tiffany Kessler, Kevin and Jennifer Oney, and Tom and Lori Scheele due to the fact that they live inside the project area. Additionally, the ALJ granted intervention to David P. Hoover, Jeffrey A. Hoover, Doug and Jennifer Myers, and Chris and Daniele Zeman due to the fact that their property abuts the project area. Further, the ALJ granted intervention to OFBF, Adams Township, Pleasant Township, Reed Township, Scipio Township, and York Township.

{¶ 16} On January 25, 2019, Pleasant Township filed a notice indicating that it was withdrawing its notice of intervention due to the fact that, as a result of Republic's amended application, the Applicant was no longer seeking to site turbine locations in Pleasant Township.

**1. ADDITIONAL SENECA COUNTY AND SANDUSKY RESIDENTS' MOTION TO INTERVENE**

{¶ 17} On August 17, 2018, prior to the filing of Republic's amended application, the following additional Seneca and Sandusky County residents filed a motion to intervene in this proceeding: Joseph and Diane Anderson, Denise Bell, Aaron and Carrie Boes, Richard and Linda Bollenbacher, Rob and Mary Chappell, Keith and Jane Fox, Thomas and Kathleen Fries, Leslie and Denise Hackenburg, Jeffrey and DeeAnne Hamilton, Allen and Mary Hassellbach, Ethan and Crystal Hoepf, Jason and Michelle Hoepf, Taylor Hoepf, Kenneth and Debra Hossler, Leonard and Beverly Kubitz, Randall and Louise Ladd, Gary and Michelle Miller, Steven and Kelley Miller, Kim Mitchell, Charles and Linda Morsher, Patricia Motry, Steven and Linda Mulligan, Linda Niederkohr, Nicholas and Michelle

Reiter, Elaine Schultz, James and Victoria Seliga, Jason Smith, Eugene and JoAnn Smith, James and Elaine Steinmetz, Herman and Patricia Studer, Christine Vogt, Robert Voska, Mark Weber and Cindra Riley, J. Dian West Executor of the Estate of Ellen A. Gibson, Charles and Rhonda Weyer, and Ann Wright (collectively, “Additional Local Residents”).

{¶ 18} Additional Local Residents contend that they have a real and substantial interest in this proceeding and that their interests are not already adequately represented by existing parties in this proceeding. They submit that their intervention will contribute to a just and expeditious resolution of issues raised in this proceeding and that their intervention will neither delay this proceeding nor prejudice parties.

{¶ 19} According to Additional Local Residents, they seek to intervene in this proceeding in order to protect their personal interests that they allege will be detrimentally affected if Republic is permitted to construct its proposed project in close proximity to their homes. Specifically, Additional Local Residents represent that they are long-time residents who own property and live in Seneca and Sandusky counties near the vicinity of Republic’s proposed wind turbines. They contend that their homes will be subjected to excessive noise and shadow flicker caused by Republic’s wind turbines. They also assert that birds, bats, and bald eagles will be harmed and killed as a result of the wind turbines. Further, Additional Local Residents opine that the proposed project will negatively impact the local viewshed and diminish the value of their homes. Finally, Additional Local Residents state that they are interested in preserving affordable and reliable electricity supplies for consumers in Seneca and Sandusky counties.

{¶ 20} Specific to the Fox and Ladd families, Additional Local Residents state that the families live on the west side of State Route 269, adjacent to the project site. Specifically, Additional Local Residents submit that the Fox’s property abuts a parcel that is leased to Republic for its project. Further, they assert that the Fox and Ladd families satisfy the intervention standards set forth in R.C. 4906.08(A) and Ohio Adm.Code 4906-2-12(B)(1), as well as the standards set forth in the Entry of August 21, 2018. Further, Additional Local

Residents aver that, as a result of the proposed windfarm, the Fox and Ladd families will be subjected to excessive, continuous noise and shadow flicker during the afternoon and evening hours.

{¶ 21} On September 4, 2018, Republic filed its memorandum contra Additional Local Residents' motion to intervene. Republic states that it does not oppose Additional Local Residents' motion to intervene with the exception of Keith and Jane Fox, Randall and Louise Ladd, Jason Smith, Robert Voska, and J. Dian West, Executor of the Estate of Ellen A. Gibson.

{¶ 22} Consistent with the ALJ's Entry of August 21, 2018, Republic states that these particular residents should be denied intervention. In support of its position, Republic submits that, except for adding new local residents, the current motion to intervene is the same as the motion to intervene filed by Seneca County Residents on June 19, 2018, as amended on June 22, 2018. Republic notes that the prior motion to intervene was addressed in the ALJ Entry of August 21, 2018. Specifically, Republic references the previous determination that intervention should not be extended to those individuals who either reside outside the project area or do not have property that abuts the project area.

{¶ 23} Based on the map of the project area attached to its memorandum contra, Republic contends that Keith and Jane Fox, Randall and Louise Ladd, Jason Smith, Robert Voska, and J. Dian West, Executor of the Estate of Ellen A. Gibson, neither live in the project area nor do their properties abut the project boundary. Further, Republic states that these Additional Local Residents live a substantial distance away from any of the proposed turbine locations. Specifically, Republic states that Jason Smith lives more than two miles and Robert Voska lives over one mile away from any proposed turbine location. Additionally, Republic states that J. Dian West, Executor of the Estate of Ellen A. Gibson, also lives more than a mile away from any proposed turbine location and that both the Fox and Ladd families live approximately half a mile from any proposed turbine location. Due

to these distances, Republic contends that these residents do not have a direct interest in this proceeding.

{¶ 24} Republic contends that the Additional Local Residents who do not live in the project area will not contribute to a just and expeditious resolution of the issues involved in the proceeding and will result in irrelevant, duplicative evidence, which will only serve to delay the proceeding

{¶ 25} Republic submits that, to the extent that residents who reside outside the project area have concerns regarding the project, these residents can voice their concerns at the local public hearing. Additionally, Republic opines that these concerns can be addressed by other parties (e.g., governmental entities) in this proceeding or through the Board Staff's investigation of the environmental impacts of the project.

{¶ 26} The Board has previously found that living in the county of a proposed project is not enough, on its own, to warrant intervention. *In re South Field Energy LLC*, Case No. 15-1716-EL-BGN, Opinion, Order, and Certificate (Sept. 22, 2016) (where the Board stated that the general concerns as citizens and ratepayers are better represented by the intervening local governments representing their citizens). While the Board's standard is generally construed in favor of intervention, a more defined nexus must be present. *In re Icebreaker Windpower Inc.*, Case No. 16-1871-EL-BGN, Entry (May 23, 2018). The Board has granted petitions to intervene when the petitioner can demonstrate an individual, direct interest is at stake in the outcome of a proceeding. *In re Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010) (where the Board granted intervention to individuals with property that abuts directly with the proposed project site). Based on this standard, the Commission, in its Entry of August 21, 2018, granted intervention to the individuals as denoted in paragraph 15.

{¶ 27} In this case, this nexus has been established by Joseph and Diane Anderson, Denise Bell, Aaron and Carrie Boes, Richard and Linda Bollenbacher, Rob and Mary Chappell, Thomas and Kathleen Fries, Leslie and Denise Hackenburg, Jeffrey and DeeAnne

Hamilton, Allen and Mary Hassellbach, Ethan and Crystal Hoepf, Jason and Michelle Hoepf, Taylor Hoepf, Kenneth and Debra Hossler, Leonard and Beverly Kubitz, Gary and Michelle Miller, Steven and Kelley Miller, Kim Mitchell, Charles and Linda Morsher, Patricia Motry, Steven and Linda Mulligan, Linda Niederkohr, Nicholas and Michelle Reiter, Elaine Schultz, James and Victoria Seliga, Eugene and JoAnn Smith, James and Elaine Steinmetz, Herman and Patricia Studer, Christine Vogt, Mark Weber and Cindra Riley, Charles and Rhonda Weyer, and Ann Wright. All of which either reside inside the project area or their property abuts the project area, which results in them being directly impacted by the proposed project. Therefore, the motions to intervene shall be granted for these individuals.

{¶ 28} Specific to Keith and Jane Fox, Randall and Louise Ladd, Jason Smith, Robert Voska, and J. Dian West, Executor of the Estate of Ellen A. Gibson, based on the record, these individuals reside outside of the project area and do not have property that abuts the project area. Therefore, they have failed to demonstrate a sufficient direct interest at stake in the outcome of this case, and the ALJ finds that their requests to intervene should be denied. The ALJ further notes that the interests of these Seneca County residents may be raised during the local public hearing to be scheduled in this matter.

**2. MOTIONS TO INTERVENE FILED BY THE OHIO ENVIRONMENTAL COUNCIL AND ENVIRONMENTAL DEFENSE FUND; THE BOARD OF COUNTY COMMISSIONERS OF SENECA COUNTY, OHIO; AND THE SENECA COUNTY PARK DISTRICT.**

{¶ 29} On August 23, 2018, the Ohio Environmental Council (OEC) and the Environmental Defense Fund (EDF) jointly filed a motion to intervene in this proceeding. OEC explains that it is a not-for-profit organization devoted to ensuring Ohioans have access to clean water, clean air, and a healthy environment. EDF is a not-for-profit organization whose purpose is to link science, economics, and law to create innovative, equitable, and cost-effective solutions to society's most urgent environmental problems. The EDF is headquartered in New York with 9,590 members located in Ohio.



{¶ 30} In support of its motion, OEC and EDF believe that this case is significant, inasmuch as the proposed facility is the first major onshore wind project proposed in Ohio since 2014, and represents the reemergence of wind power as an expanding clean energy technology in the state of Ohio. OEC and EDF state that they have a long involvement in cases related to Ohio's electricity generation mix, and have been actively involved in numerous past cases pertaining to the implementation of Ohio's renewable energy and energy efficiency standards, electric security plans, and other cases related to electric generation.

{¶ 31} OEC and EDF submit that the organizations and its members have a substantial interest in the outcome of this case, and that they represent interests separate from those of existing parties. Specifically, OEC and EDF represent that they have a responsibility to ensure that the clean energy benefit from the proposed Republic project is not outweighed by any potential detriment to the ecosystems of Seneca and Sandusky counties. According to OEC and EDF, their contribution will lead to a just and expeditious resolution of the issues involved in this proceeding and a full development and equitable resolution of the factual issues in this case without causing undue delay.

{¶ 32} On September 10, 2018, as amended on September 19, 2018, and January 25, 2019, the Board of County Commissioners of Seneca County (Seneca County Commission) filed a motion for intervention. In support of its motion, Seneca County Commission states that it is a duly elected body authorized to represent Seneca County, a county where part of the proposed wind farm will be sited. Seneca County Commission submits that it has unique interests that are directly affected by the proposed project and that no other parties can represent its interests. Further, Seneca County Commission states that the granting of intervention will contribute to a just and expeditious resolution of the issues involved in the proceeding and will not unduly delay the proceeding or unjustly prejudice an existing party.

{¶ 33} Seneca County Commission explains that although the August 27, 2018 intervention deadline has passed, its filing should be considered as timely filed due to the delayed notice from its statutory counsel, the Seneca County Prosecutor, stating that they would be unable to represent the Seneca County Commission in this proceeding and that outside counsel would need to be retained.

{¶ 34} On January 29, 2019, the Seneca County Park District (Park District) filed a motion to intervene. In support of its motion, the Park District states that it has extensive interest in the proposed facility, inasmuch as the proposed project will be located near nature preserves maintained by the Park District. According to the Park District, its interest cannot be represented by any other party, that its participation is essential to a just and expeditious resolution of the issues involved in the proceeding, and that its involvement will not unduly delay the proceeding or unjustly prejudice an existing party.

{¶ 35} No memoranda contra were filed in response to the motions to intervene of OEC and EDF, the Seneca County Commission, and the Park District.

{¶ 36} The ALJ finds that the unopposed motions to intervene filed by OEC and EDF, the Seneca County Commission, and the Park District demonstrate good cause for permitting intervention and, therefore, should be granted.

### III. ORDER

{¶ 37} It is, therefore,

{¶ 38} ORDERED, That the motions for intervention be granted in part and denied in part as set forth in this Entry. It is, further,

{¶ 39} ORDERED, That, consistent with paragraph 16, Pleasant Township be removed as an intervenor in this proceeding. It is, further,

{¶ 40} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE OHIO POWER SITING BOARD

/s/ Jay S. Agranoff

By: Jay S. Agranoff  
Administrative Law Judge

JRJ/hac/mef

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Summary: Administrative Law Judge Entry granting in part and denying in part motions for intervention and removing Pleasant Township as an intervenor electronically filed by Heather A Chilcote on behalf of Jay S. Agranoff, Administrative Law Judge, Ohio Power Siting Board