

OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
FIRELANDS WIND, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A WIND-POWERED
ELECTRIC GENERATION FACILITY IN
HURON AND ERIE COUNTIES, OHIO.

CASE NO. 18-1607-EL-BGN

ENTRY

Entered in the Journal on March 7, 2019

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

{¶ 2} 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).

{¶ 3} On October 26, 2018, Firelands, a wholly-owned subsidiary of Apex Clean Energy Holdings, Inc., filed a pre-application notification letter with the Board regarding its proposed 298.2 megawatt (MW) wind-powered electric generating facility in Huron, Erie, and Seneca counties, Ohio.

{¶ 4} On November 15, 2018, Applicant held a public information meeting at the Bronson-Norwalk Conservation League, in Norwalk, Ohio to discuss the proposed project with interested persons and property owners. Previously, on November 6, 2018, Firelands filed an affidavit of publication demonstrating its compliance with the notice requirements of Ohio Adm.Code 4906-3-03.

{¶ 5} On January 31, 2019, Firelands filed its application with the Board for a certificate of environmental compatibility and public need to construct and operate a wind-powered electric generation facility (Project) in Huron and Erie counties, Ohio. Applicant explains that the information presented in the pre-application notification letter has been revised to reflect that the Project will be located in Huron and Erie counties only and that

no facilities are now proposed for Seneca County. Specifically, Firelands states that the Project will be located within approximately 32,000 acres of leased land in Groton and Oxford townships in Erie County and Lyme, Norwich, Richmond, Ridgefield, and Sherman townships in Huron County. The Project consists of up to 87 turbine generators,¹ each with a nameplate capacity rating of 4.2 to 4.5 MW which results in the Project generating up to 297.66 MW, rather than the 298.2 MW listed in the pre-application notification letter.

{¶ 6} Ohio Adm.Code 4906-3-03 requires that an applicant for a Certificate of Environmental Compatibility and Public Need must conduct a public information program in anticipation of filing an application before the Board. Such public information program must include an informational meeting² which shall be open to the public and held in the area in which the project is located. The information provided at the public information meeting shall address the need for the project, the project schedule, the design of the facility and other pertinent data such as information about the equipment size, approximate areal extent, general location, schedule, and purpose of the project. Moreover, at the informational meeting, applicant shall present maps showing the proposed facility at a scale that allows affected property owners to identify the location of their property in relation to the facility and applicant shall solicit written comments from attendees.

{¶ 7} Ohio Adm.Code 4906-3-03(B) provides that “[I]f substantial changes are made to the application after the informational meeting, the executive director of the board shall have the authority to require another informational meeting at his/her discretion.” By letter docketed on March 6, 2019, the Executive Director found that substantial changes have been made in the January 31, 2019 application after the informational meeting and, therefore, recommended that another public informational meeting be held by the Applicant.

¹ Although the application evaluates 87 proposed turbine sites, Firelands asserts that only 66-71 turbines will actually be constructed depending on the model of turbine selected. However, to allow for flexibility on final site selection, Applicant seeks approval for 87 turbine sites.

² The public information meeting is to be conducted prior to and in addition of a public hearing.

{¶ 8} Having reviewed the October 26, 2018 pre-application notification letter, the January 31, 2019 application, and the Executive Director's March 6, 2019 letter, the administrative law judge (ALJ) determines that sufficient differences exist between the pre-application notification letter, which was the subject of the public informational meeting, and the application as filed to qualify as "substantial changes," thus warranting another public informational meeting to be held by the Applicant. Such changes include the elimination of turbines in Seneca County and the alteration of associated facilities so as to maintain a nearly equivalent generating capacity. Additionally, the application as filed provides much greater detail regarding the number of acres under lease and the specific townships affected. Given these changes and acknowledging the number of public comments filed in the docket regarding this Project thus far, the ALJ determines that another public informational meeting will enhance the local residents' understanding of the proposed wind project.

{¶ 9} In making the determination outlined above, the ALJ points out the purpose of the additional informational meeting is for the public to obtain information about the Project as set forth in Ohio Adm.Code 4906-3-03 and to provide written comments for the Applicant's consideration. The Board's rules also contemplate the scheduling of a local public hearing once Firelands complies with the requirements of Ohio Adm.Code 4903-06 (completeness review) and 4906-3-07 (service and publication of accepted, complete applications). The purpose of the local public hearing, to be scheduled by ALJ entry at a later date and time subsequent to the informational meeting and held within or near the project area, will be to afford local residents the opportunity to provide the Board with comments/testimony on the record concerning the proposed Project.

{¶ 10} It is of note that on November 20, 2018, the Board received a public comment filed by Deborah Hay of Seneca County. Ms. Hay alleges that Apex employees requested sheriff deputies make her leave from the premises of the public informational meeting held on November 15, 2018. Ms. Hay further states that sheriff deputies were polite and

explained that because this was a private venue, Apex had the authority to make her leave.³ A video of the alleged incident has been provided as part of public comments, and the video appears to corroborate Ms. Hay's public comment. Ohio Adm.Code 4906-3-06(B) states the "applicant shall conduct at least one informational meeting **open to the public.**" [Emphasis added]. Therefore, the Applicant is directed to ensure that the additional public informational meeting held pursuant to Paragraph 8 of this Entry is compliant with Ohio Adm.Code 4906-3-06(B) and open to the public.

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That Firelands schedule and hold another public informational meeting in accordance with Paragraph 8. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Jeffrey R. Jones

By: Jeffrey R. Jones
Administrative Law Judge

NJW/mef

³ Additional public comments were received on this issue, including comments from several state legislators.

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Summary: Administrative Law Judge Entry ordering Firelands Wind, LLC to schedule and hold another public informational meeting electronically filed by Ms. Mary E Fischer on behalf of Jeffrey R. Jones, Administrative Law Judge, Ohio Power Siting Board