

THE 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 June 25, 2019

I. SUMMARY

{¶ 1} The administrative law judge grants the motions to intervene filed by: Rosemary Clifford, Thomas and Lori Collins, Patricia and Alvin Didion, John and Missy Eberle, Keith and Jane Fox, Jeff and Jenny Geary, Marvin and Theresa Hay, Joseph and Pam Jenkins, Randall and Della Ladd, Jim and Catherine Limbird, Sally Norman, Patricia Olsen, Walt and Sheila Poffenbaugh, John and Christina Popa, Daniel and Lori Riedy, Cindy Riley, Charles Rogers, Kevin Rospert, Patrick and Julie Ruffing, Dennis and Sharon Schreiner, William and Donna Seaman, Matthew Sostakowski, John Wagner, Mark Weber, Kenneth and Deborah Weisenauer, and Gerard Wensink.

II. DISCUSSION

A. *Procedural History*

{¶ 2} Firelands Wind, LLC (Firelands 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 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 windfarm with up to 298.2 megawatt (MW) wind-powered electric generating capacity in Huron, Erie, and Seneca counties, Ohio.

{¶ 5} On November 15, 2018, Applicant held a public informational meeting at the Bronson-Norwalk Conservation League, in Norwalk, Ohio to discuss the proposed project with interested persons and property owners.

{¶ 6} On January 31, 2019, as supplemented on March 18, 2019, and April 11, 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 explained that the information presented in the pre-application notification letter had 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 will consist 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.

{¶ 7} By letter docketed on March 6, 2019, the Board's Executive Director found that substantial changes had been made in the January 31, 2019 application after the initial informational meeting and, therefore, recommended that another public informational meeting be held by the Applicant.

{¶ 8} By Entry issued March 7, 2019, the administrative law judge (ALJ) agreed that substantial changes, as outlined in Ohio Adm.Code 4906-3-03(B), had occurred in the Project

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.

from the time of the public informational meeting to when the application had been filed to require another public informational meeting.

{¶ 9} Pursuant to the Entry of March 29, 2019, the ALJ determined the completeness deadline would be extended until April 17, 2019. The completeness letter was filed by the Executive Director on April 17, 2019.

B. *Motions to Intervene*

{¶ 10} An 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 May 17, 2019, the following individuals filed a joint motion to intervene in this proceeding: Chris and Amy Bauer, Krista Beck, Rosemary Clifford, Thomas and Lori Collins, Patricia and Alvin Didion, John and Missy Eberle, Scott and Heather Eisenhauer, Terry and Bertha Eisenhauer, Keith and Jane Fox, Jeff and Jenny Geary, Marvin and Theresa Hay, Joseph and Pam Jenkins, Randall and Della Ladd, Jim and Catherine Limbird, Jane and Mark Motley, Sally Norman, Patricia Olsen, Walt and Sheila Poffenbaugh, John and Christina Popa, Daniel and Julie Riedy, Cindy Riley, Jesse Roeder, Charles Rogers, Kenneth

Rospert, Patrick and Julie Ruffing, Dan and Renee Schoen, Dennis and Sharon Schreiner, William and Donna Seaman, Tim and Vicki Smythe, Matthew Sostakowski, John Wagner, Kevin and Beth Wagner, Mark Weber, Kenneth and Deborah Weisenauer, and Gerard and Denise Wensink (collectively, “Local Residents”).

{¶ 12} Local Residents state that they are long-time residents of Erie, Huron, and Seneca counties and that they each own property and live in either Erie, Huron, or Seneca County. Further, Local Residents represent that they pay Erie, Huron, or Seneca County property taxes and that they are consumers of electricity. Local Residents submit that their property is either located in, abuts, or is in close proximity to the project area and that none of them are participating property owners who have entered into leases for the project or have entered into agreements waiving the statutory setbacks with respect to their property.

{¶ 13} Local Residents contend to have a real and substantial interest in this proceeding and that their interests are not already adequately represented by existing parties in this proceeding. According to Local Residents, 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 existing parties.

{¶ 14} Local Residents seek to intervene in this proceeding in order to protect their personal interests that they allege will be detrimentally affected if Firelands is permitted to construct its proposed project in close proximity to their homes. Specifically, Local Residents contend that their homes will be subjected to excessive noise and shadow flicker caused by Firelands’ wind turbines. They also assert that birds, bats, and bald eagles will be harmed and killed as a result of the wind turbines. Further, Local Residents opine that the proposed project will negatively impact the local viewshed and diminish the value of their homes. Finally, Local Residents state that they are interested in preserving affordable and reliable electricity supplies for consumers in Erie, Huron, and Seneca counties.

{¶ 15} On June 3, 2019, Firelands filed a memorandum contra the joint motion to intervene. While Firelands states that it does not object to the motion for intervention in its

entirety, it does object to the following 21 individuals: Chris and Amy Bauer, Tom and Vicki Smythe, Jane and Mark Motley, Scott and Heather Eisenhauer, Krista Beck, Jesse Roeder, Terry and Bertha Eisenhauer, Dan and Renee Schoen, Gerard and Denise Wensink, Kevin and Beth Wagner, John Wagner, and Jim and Catherine Limbird.

{¶ 16} Specific to Tom and Vicki Smythe, Jane and Mark Motley, Scott and Heather Eisenhauer, Krista Beck, Jesse Roeder, Terry and Bertha Eisenhauer, Dan and Renee Schoen, Gerard and Denise Wensink, Kevin and Beth Wagner, John Wagner, and Jim and Catherine Limbird, Firelands asserts that these individuals are not within or do not abut the project area. Specifically, Firelands states that these individuals are between 0.4 and 1.9 miles away from the nearest turbine. Therefore, Firelands contends that the motions to intervene of these individuals should be denied for lack of good cause.

{¶ 17} Firelands avers that the 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. Additionally, Firelands believes that many of their concerns can be addressed by other parties in this proceeding or through the Board Staff's investigation of the environmental impacts of the project.

{¶ 18} Specific to Chris and Amy Bauer, Firelands states that they are "participating property owners" as they reside on property that is obligated pursuant to a 2014 contract filed with the Huron County Recorder's Office that "runs with the land."

{¶ 19} On June 10, 2019, Local Residents filed their reply memorandum. Specifically, Local Residents assert that although the residence of Jim and Catherine Limbird is neither in nor abutting the project area, they do own three additional properties that do abut the project site. Similarly, with respect to Gerard and Denise Wensink, Local Residents state that although their residence is neither in nor abutting the project area, Gerard is part owner of three additional properties in Erie County, all of which abut the project site.

{¶ 20} 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).

{¶ 21} In this case, this nexus has been established by Rosemary Clifford, Thomas and Lori Collins, Patricia and Alvin Didion, John and Missy Eberle, Keith and Jane Fox, Jeff and Jenny Geary, Marvin and Theresa Hay, Joseph and Pam Jenkins, Randall and Della Ladd, Jim and Catherine Limbird, Sally Norman, Patricia Olsen, Walt and Sheila Poffenbaugh, John and Christina Popa, Daniel and Lori Riedy, Cindy Riley, Charles Rogers, Kevin Rospert, Patrick and Julie Ruffing, Dennis and Sharon Schreiner, William and Donna Seaman, Matthew Sostakowski, John Wagner, Mark Weber, Kenneth and Deborah Weisenauer, and Gerard Wensink. All of these individuals either reside or own property 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.

{¶ 22} Specific to Krista Beck, Scott and Heather Eisenhauer, Jim and Catherine Limbird, Jane and Mark Motley, Jesse Roeder, Dan and Renee Schoen, Tom and Vicki Smythe, Kevin and Beth Wagner, and Denise Wensink, 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. Therefore, the ALJ finds that their requests to intervene should be

denied. The ALJ further notes that the interests of those residents denied intervention may be raised during the local public hearing to be scheduled in this matter.

{¶ 23} Specific to Chris and Amy Bauer, the motion to intervene should be denied. In reaching this determination, the ALJ finds that the Bauers are participating property owners as a result of the lease agreement entered into by the prior landowner in 2014. Pursuant to such agreement, the landowners and their respective successors and assigns, which includes the Bauers, agreed to participate in the project for a 30-year term.

III. ORDER

{¶ 24} It is, therefore,

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

{¶ 26} 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/mef

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/25/2019 2:55:25 PM

in

Case No(s). 18-1607-EL-BGN

Summary: Administrative Law Judge Entry granting in part and denying in part the motions for intervention electronically filed by Ms. Mary E Fischer on behalf of Jay S. Agranoff, Administrative Law Judge, Ohio Power Siting Board