

**BEFORE
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) Case No: 18-1607-EL-BGN
Wind-Powered Electric Generation Facility in)
Huron and Erie Counties, Ohio.)

**FIRELANDS WIND, LLC’S MEMORANDUM CONTRA
STAFF’S AMENDED MOTION
TO MODIFY FINDING OF COMPLETENESS**

I. INTRODUCTION

Pursuant to Ohio Administrative Code (“O.A.C.”) Rule 4906-2-27(B)(1), Firelands Wind, LLC (“Applicant”) submits this memorandum contra the October 11, 2019 Amended Motion to Modify Finding of Completeness (“Amended Motion”) submitted by the Ohio Power Siting Board (“Board”) staff (“Staff”), requesting an additional 60 days for its review.

As set forth in detail below, Staff’s Amended Motion is prejudicial to Applicant and causes undue and unreasonable delay in this proceeding, especially in light of the extended time period (over 8½ months) that Staff has already received for its completeness review in this case (which does not take into consideration the additional 90 days Staff will have for investigation once the procedural schedule is set). Therefore, Applicant respectfully requests that the Amended Motion be denied and the ALJ move forward with setting the procedural schedule in this proceeding as soon as possible.

II. BACKGROUND

On January 31, 2019, Applicant filed an application (“Application”) with the Board proposing to construct a wind-powered electric generation facility in Huron and Erie Counties,

Ohio. In accordance O.A.C. Rule 4906-3-06, the Board has 60 days following receipt of an Application to either accept or reject the application as complete. However, as detailed and explained below, since the initial Application was filed, Staff has, in fact, already had 8½ months for its review.

For a further understanding of the process and filings, to date, in this matter, as well as Applicant's willingness to provide Staff sufficient time to review the Application, including all supplements, the following documents have been filed in the record:

1. January 31, 2019 – Application filed.
2. March 3, 2019 – Applicant filed the First Supplement to the Application, the Visual Impact Assessment.
3. March 7, 2019 - The Administrative Law Judge (“ALJ”) granted Staff’s request that Applicant hold a second public information meeting (“PIM”).
4. March 29, 2019 – ALJ granted Staff’s request to extend the completeness deadline to April 17, 2019. Applicant filed in support of the extension.
5. April 3, 2019 – The second PIM was held.
6. April 11, 2019 – Applicant filed the Second Supplement to the Application, the information from the second PIM.
7. April 17, 2019 – Staff filed notice of Applicant’s compliance with the application procedures, stating that Applicant should serve copies on the government officials and libraries, and setting forth the application fee amount (“Compliance Letter”).
8. July 10, 2019 – Applicant filed a Third Supplement to the Application consisting of 199 pages supporting updated turbine models and maps.
9. September 12, 2019 – Applicant filed:
 - a. The Fourth Supplement to Application consisting of 871 pages supporting updated turbine models and maps, and an increased hub height.
 - b. The certificate of service of the complete Application on public officials and libraries in accordance with O.A.C. Rule 4906-3-07(A)(1) and (2).
 - c. Notice of payment of the application fee in accordance with O.A.C. Rule 4906-3-07(A)(5).

10. September 27, 2019:
 - a. Staff filed a motion to modify completeness and requested an order finding that the Fourth Supplement be considered an amendment to the pending accepted, complete Application pursuant to O.A.C. Rule 4906-3-11(A), and requesting an additional 60 days for review. In support, Staff pointed to the “voluminous” nature of the 871-page filing and “particularly” the increased hub height.
 - b. Applicant filed to withdraw the September 12, 2019 Fourth Supplement to the Application.
11. October 4, 2019 – Applicant filed a Revised Fourth Supplement to the Application that consisted of 212 pages supporting update turbine models. The Revised Fourth Supplement did not include the increased hub height proposed on September 12, 2019.
12. October 11, 2019 – Staff filed an amended motion to modify completeness and requested that an order be issued finding that:
 - a. The Fourth Supplement be considered an amendment to the pending accepted, complete Application pursuant to O.A.C. Rule 4906-3-11(A).
 - b. Applicant comply with O.A.C. Rule 4906-3-06.
 - c. Completeness be made within 60 days of the filing of the Revised Fourth Supplement, or by December 3, 2019.
13. October 14, 2019 – Applicant filed a second certificate of service that the complete Application, including the Revised Fourth Supplement, was served on public officials and libraries in accordance with O.A.C. Rule 4906-3-07(A)(1) and (2), on October 4, 2019.

As detailed above and supported below, Applicant has gone beyond the requirements set forth in the statute and the rules, and has complied with all directives of the Board to ensure that public input has been obtained, and that notice of the Application and all supplements has been served.

III. ARGUMENT

A. Staff should not be granted additional time for completeness review

Pursuant to O.A.C. Rule 4906-3-06, Staff is given 60 days after the filing of an application to review the application and determine if the application contains all the necessary components

for Staff to move forward with its investigation. Thus, Staff either accepts the application as complete and in compliance with the rule requirements, or rejects the application as incomplete. Staff accepted the Application filed in this proceeding on April 17, 2019, finding that all the necessary components were present in the Application.

It is standard practice by Applicants once Staff gives notice that an application is accepted (as Staff did in this proceeding on April 17, 2019) to immediately serve the application on public officials and libraries, file a certificate that the application was served, pay the required application fee, and file notice that the fee was paid. Once those items are filed, the ALJ, promptly issues an entry setting the procedural schedule. However, in deference to Staff and to allow Staff more time for review, Applicant in this case delayed filing those items for five months until September 12, 2019; at which time, Applicant understood the procedural schedule would be set and Staff's 90-day investigation period would begin.

While Applicant also filed a Fourth Supplement on September 12, 2019, to update turbine models, there was no indication or reason to believe that the filing would be considered as anything other than a supplement – especially given that, on July 10, 2019, Applicant had filed a similar turbine update and Staff did not ask that filing to be considered an amendment and for additional time to review. The only real difference between the Third Supplement and the Fourth Supplement filed in September 12, 2019, was the inclusion of a turbine hub height that was one foot taller than those previously proposed, which required a lengthier filing. Once it became clear that the additional hub height was a concern as far as the review of the information, Applicant voluntarily withdrew the Fourth Supplement filed on September 12, 2019, and replaced it with the Revised Fourth Supplement on October 4, 2019. The Revised Fourth Supplement eliminated the higher hub height and reduced the length of the filing to 212 pages (similar to the July 10, 2019 Third

Supplement that contained 199 pages and proposed updated turbines, which Staff did not view as an amendment). It is also noteworthy that, only approximately 20 pages of the 212-page Revised Fourth Supplement contain narrative, the remainder of the pages are charts, tables, and figures.

As stated previously, the 60-day compliance review that takes place after the application is filed, but before the compliance letter is issued, is intended to ensure that the application contains all the necessary components of an application required by the rules. There is no doubt that the Revised Fourth Supplement merely provides an additional turbine model for consideration and no additional time is needed for the Staff to acknowledge that it has all of the components necessary to complete its investigation. Thus, there is no justifiable reason for Staff to be given additional time to review the Revised Fourth Supplement beyond the 90-day investigation period that takes place after the ALJ sets the procedural schedule.

Finally, Staff's motion requests that Applicant comply with O.A.C Rule 4906-3-06. Applicant is unclear what Staff is requesting, as this rule only applies to the process to be followed by the Board and Staff, including a 60-day completeness review, and the filing of the staff report 15 days before the first hearing. If, by referring to O.A.C. Rule 4906-3-06, it is Staff's intent to assert that the rule gives Staff the ability to extend or re-open the 60-day compliance review period once Staff has already determined that the Application complies with the requirements and all of the necessary components are included in the Application, the rule does not grant Staff this ability.

B. The Revised Fourth Supplement is not an amendment

Applicant notes that there is no statutory provision that applies to a situation where an application has been filed before the Board and is then supplemented. Ohio Revised Code ("R.C.") Sections 4906.06 and 4906.07 contemplate amendments to certificates once they are issued; but there are no statutory provisions addressing an amendment to a pending application. However,

O.A.C. Rule 4906-3-11 provides a process in the event an application that has been considered complete is amended and requires such amendment be served upon the government officials and libraries as required by O.A.C. Rule 4906-3-07(A)(1) and (2). However, other than requiring notice, the O.A.C. procedure for such a filing is left to the ALJ. It should be noted that, while the Revised Fourth Supplement is not an amendment, in order to make sure all government officials and libraries had the most up-to-date information, the Applicant re-served those individuals with the Application, including the Revised Fourth Supplement on October 4, 2019; therefore, any required notice has been issued.

In this case, there is no reasonable basis for Staff to argue that the Revised Fourth Supplement is an amendment to the Application and that it warrants an additional 60-day completeness review by Staff. It is important to note that Staff had the initial 60-day completeness period to review the initial Application that was well over 2,000 pages in length and covered a whole multitude of items from ecological, to socioeconomic, to public interest. Now Staff is arguing it needs the same timeframe, an additional 60 days, to review the Revised Fourth Supplement that is only 212 pages and focuses solely on 2 new turbine types that do not provide additional impacts. Staff has provided no justification in its Amended Motion as to why the significantly reduced Revised Fourth Supplement constitutes “a significant change” from the Application. Thus, Staff’s argument that the Revised Fourth Supplement represents “a significant change” from the initial Application is incorrect and misleading. In addition, Applicant’s position regarding the lack of need for further completeness review is consistent with the Board’s determinations in *In re Application of Republic Wind, LLC*, Case No. 17-2295-EL-BGN, Entry (Feb 15, 2019) and *In re Application of Duke Energy Ohio, Inc.*, Case No. 16-253-GA-BTX, Entry (Dec. 18, 2018).

Moreover, Applicant notes that the Revised Fourth Supplement that Staff is asserting is an amendment and is asking for further time to review for completeness is the same type of filing as the July 10, 2019 Third Supplement filed by Applicant – an update to the proposed turbine models. However, Staff did not allege the 199-page Third Supplement was an amendment and did not request more time to review – even though that filing was also made after the Compliance Letter was issued.

Applicant has been cooperative and supportive with Staff's need to have sufficient time to review the Application, as evidenced by Applicant's: March 29, 2019 support for Staff's request for more time; delay until September 12, 2019, for filing the certificate of service and payment notice; and, most notably, by withdrawing the 891-page Fourth Supplement that included a 1-foot taller hub height and filing the Revised Fourth Supplement that eliminated that hub height – thus reducing the document for review to 212 pages. Regardless of these concessions, Staff has continued to assert that the Revised Fourth Supplement is an amendment, as opposed to a supplement, for the purpose of receiving more time to review the Application.

As stated by Staff in the Amended Motion, pursuant to O.A.C. Rule 4906-3-08, once the Application was found to be complete by Staff, the Board or ALJ is to “promptly fix the dates(s) for the public hearing(s).” Staff also correctly notes that R.C. Section 4906.07 requires the Board to “promptly fix a date for a public hearing...not less than [60] not more than [90] days after...” receipt of an accepted application. As noted previously, the ALJ typically issues the entry setting the procedural schedule once the Applicant files two documents: its certificate of service of the Application; and notice that the application fee was submitted. Those two requirements were met by the Applicant on September 12, 2019 – the same day as the Fourth Supplement was filed. However, the procedural entry has not yet been issued.

It is also noteworthy that Staff's September 27, 2019 motion to extend the compliance review for the original Fourth Supplement asked for 60 additional days to review the 891-page filing. The Revised Fourth Supplement is only 212 pages long, less than ¼ of the size of the original Fourth Supplement, and does not include the request for a taller hub height. Even assuming Staff needed more time to review the document to ensure the Revised Fourth Supplement contains a component necessary for Staff to begin its investigation, Staff has already had 11 days to review the document. Considering the length and content of the Revised Fourth Supplement compared to the initial Fourth Supplement and even the initial Application, 11 days should be adequate.

Once the procedural schedule is set by the ALJ, Staff will have an additional 90 days to complete its investigation of the Application. Given the very limited and focused information in the Revised Fourth Supplement, Applicant asserts that the 90-day investigation time frame should be sufficient for Staff's continued review.

As noted previously, irrespective of the fact that the Fourth Supplement is not an amendment and was appropriately filed as a supplement, Applicant wanted to ensure that all interested persons, including all libraries and public officials, received a copy of the full Application, including the Revised Fourth Supplement. Therefore, on October 4, 2019, Applicant served the Application for a second time to an extensive list of government officials and the libraries. Such service of the Application is consistent with O.A.C. Rule 4906-3-11 (A)(1) through (3).

IV. CONCLUSION

For the reasons set forth herein, Applicant respectfully requests that Staff's Amended Motion be denied and that the ALJ issue a procedural entry setting this matter for hearing as soon as possible.

Respectfully submitted,

/s/ Christine M.T. Pirik

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons listed below via electronic mail this 15th day of October, 2019.

/s/ Christine M.T. Pirik

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Summary: Memorandum Contra Staff's Amended Motion to Modify Finding of Completeness electronically filed by Christine M.T. Pirik on behalf of Firelands Wind, LLC