

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of :
Republic Wind, LLC, for a Certificate to : Case No. 17-2295-EL-BGN
Site Wind Powered Electric Generating :
Facilities in Seneca and Sandusky :
Counties, Ohio. :

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE OHIO POWER SITING BOARD**

Dave Yost
Ohio Attorney General

John H. Jones
Section Chief

Jodi J. Bair
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215
614.644.8599 (telephone)
614.644.8764 (fax)
jodi.bair@ohioattorneygeneral.gov

**On behalf of the Staff of
The Ohio Power Siting Board**

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INTRODUCTION

The Ohio General Assembly declared renewable energy development to be lawful and important to promote a diversified state energy portfolio. Many farming families welcome the economic and tax opportunities that a renewable energy development, such as Republic Wind, LLC (“Applicant” or “Republic”), can bring to the local community. There are a limited number of locations in Ohio that are suitable for wind powered electric generating facilities. The Applicant proposes to construct up to 50 wind turbines for a total generating capacity of up to 200 MW in Seneca and Sandusky Counties, near the city of Bellevue and the village of Republic. The project area is made up of approximately 24,000 acres of leased private lands involving approximately 440 properties.

The proposed Project is not impact free. It is the Ohio Power Siting Board’s (“Board”) statutory duty to analyze and review the expected impacts and adopt measures

that reasonably address and mitigate those impacts to the Project area and environment. There are conditions proposed by Board Staff to address and mitigate those impacts. The Applicant strongly opposes many of the Staff's recommended conditions and wishes to push its project upon the local area airports and people of Seneca and Sandusky Counties of Ohio without regard to the negative impacts that the project would create. Staff's recommended conditions attempt to balance the interests of the law – to build renewable generation in Ohio, with the interests of the people and the environment in and around the project area – to minimize the project's impact.

BACKGROUND AND PROCEDURAL HISTORY

On February 2, 2018, Republic filed this application to construct and operate a wind farm in Seneca and Sandusky Counties, Ohio. Before filing the application, Applicant engaged in public outreach activities, including filing a project descriptive pre-application letter on November 17, 2017 and holding a public informational meeting on November 29, 2017.

However, the Applicant filed a motion to suspend the procedural schedule on August 29, 2018 and filed an Amended Application on December 26, 2018.

The proposed Project area consists of approximately 24,000 acres of private land in Seneca and Sandusky Counties, Ohio. This acreage represents approximately 440 properties. The project will comprise of up to 50 wind turbine generators with a total capacity of up to 200 MW.

The Staff completed its investigation and issued its Report of Investigation (“Staff Report”) on July 1, 2019. Staff Ex. 1.

After the local public hearing was held and Staff Report was filed, Staff gained new information regarding the Project’s noise and aviation impacts that compelled the Staff to supplement its initial Staff Report. Staff filed a Supplemental Staff Report on October 18, 2019. Staff Ex. 6.

The initial adjudicatory hearings commenced on November 4, 2019 and lasted nine days ending with a hearing on rebuttal testimony on November 25, 2019. Testimony was provided by fourteen (14) Applicant witnesses, seven (7) intervenor witnesses, and eleven (11) Staff witnesses. A rebuttal hearing was held on November 25, 2019 where the Applicant presented rebuttal testimony of one (1) witness in support of the project. All parties received a full and fair opportunity to be heard.

In order for a project to be recommended for approval to the Board, the Board’s Staff must investigate an application and recommend conditions to the Board to mitigate or minimize impacts to the project environment. Staff conducted its investigation and proposed comprehensive recommendations for the Board’s consideration in order to address and reduce Project impacts to reasonably acceptable levels. Staff submits that these conditions will allow this project to lawfully move forward under the requisite statutory criteria. The Staff respectfully requests that any certificate issued by the Board be made subject to such conditions.

DISCUSSION

I. The Board should determine the Project, with conditions as recommended in the Staff Report and supplement satisfies the criteria of R.C. 4906.10.

After a full investigation, Staff determined that the proposed facility can have minimal environmental impacts if the conditions recommended in the Staff Report and Supplement are carried out. Though the proposed project will produce electricity, it will not pollute the air and will not use a considerable amount of water.

Staff's review analyzed the socioeconomic impacts; ecological impacts; and impacts on public services, facilities, and safety to identify the nature of the facility's environmental impacts. Staff considered: demographics, land use, cultural and archaeological resources, aesthetics, economics, surface waters, threatened and endangered species, vegetation, roads and bridges, public and private water supplies, pipeline protection, construction noise, operational noise, communications, and decommissioning. The Staff Report discusses each of the R.C. 4906.10 criteria and explains Staff's recommendations related to each of the criteria.

Staff believes that its recommended conditions will adequately mitigate any impacts and allow the Board to find that the Republic project, with the Staff's suggested conditions, will have an overall minimal adverse environmental impact. The Staff Report provides the Board with an evidentiary basis for determining the project meets all of the R.C. 4906.10 criteria. Staff recommends that the Board issue a certificate containing the conditions in the Staff Report and Supplement to the Staff Report.

A. R.C. 4906.10(A)(1) – Basis of Need

Because the proposed facility is neither an electric transmission line nor a gas pipeline, R.C. 4906.10(A)(1) does not apply to this Project. Staff recommends that the Board find that this requirement is not applicable to this facility.

B. R.C. 4906.10(A)(2) – Nature of Probable Environmental Impact

The Board shall not grant a certificate for construction of a generating facility until it determines the nature of the probable environmental impact. The following are factors that were investigated by Staff as part of its recommendations to the Board regarding the Project's probable environmental impact.

1. Land Use – Agricultural Use, Cultural, Archaeological and Architectural Considerations

The Staff Report found the majority of land use to be utilized for the project is agricultural in nature and that the project footprint does not include any major population centers or industries other than farming. Staff. Ex. 1 at 22. There are no national scenic trails, national wildlife refuges, or state wildlife management areas within ten miles of the project areas. Staff Ex. 1 at 22. Due to the height of the turbines in a wind farm, it is impossible to directly screen them from all views. The turbines should be painted a neutral light color, per guidance from the Federal Aviation Administration ("FAA") and the placement of turbines within agricultural fields and adjacent to farm features such as silos will minimize turbine visualization. Existing woodlots also offer additional natural screening of portions of the facility. Staff Ex. 1 at 23.

The Applicant's literature review of the cultural, archaeological, and architectural resources concluded that the proposed project would not physically impact above ground cultural resources but potential impacts to archaeological resources remain unknown. Staff. Ex. 1 at 23. Furthermore, aesthetic impacts to above ground cultural resources need to be determined by further study. Staff recommends that the Applicant continue to consult with the Ohio Historic Preservation Office ("OHPO") to prepare for another field survey program, including evaluation of the effects on archaeological and architecturally significant properties. Staff Ex. 1 at 23. Republic, using the study results, should work with OHPO to determine what measures must be taken to avoid or minimize any potentially adverse impacts to cultural resources and if these potential or actual impacts cannot be avoided or minimized, the Applicant shall submit a modification or mitigation plan to Staff. Staff Ex. 1 at 23.

2. Economic Impact

Staff found the Applicant's economic analysis to be reasonable. The economic impacts, in terms of jobs, earnings, and output, both locally and to the State of Ohio, were determined to be developed using appropriate procedures. Staff Ex. 1 at 23 - 25. While considering the economics of the project, Staff noted that the Republic project should generate an estimated \$1.3 million annually for Seneca and Sandusky Counties based on a Payment in Lieu of Taxes ("PILOT") plan. The project is expected to create 753 construction related jobs for the state of Ohio with 41 long term operational jobs. Staff Ex. 1 at 24. Republic estimates that there will be \$14.4 million in new local earning

during construction for Ohio then resulting in \$2.3 million in earnings. Staff Ex. 1 at 24. The economics of this Project was not challenged during the hearing.

3. Decommissioning Plan

The Applicant committed to developing a decommissioning plan to restore the project area after it is no longer used, and will provide financial security to ensure that funds are available for decommissioning and land restoration. According to the application, at the end of the wind farm's useful life, or if the project has not generated electricity for a continuous period of twelve months, the Applicant shall remove all physical materials from the project area. Staff Ex. 1 at 42. This decommissioning plan shall include excavation of the turbine foundation to a depth of 36 inches below grade. Staff Ex. 1 at 42 – 43. Republic also plans to remove all access roads and other improvements unless the landowner requests that they remain in place. Staff Ex. 1 at 43. In accordance with Ohio Adm.Code 4906-4-09(I), the Applicant shall post a financial bond equal to the per-turbine decommissioning costs multiplied by the number of turbines and these decommissioning costs should be covered by a performance bond that is recalculated every five years. Staff Ex. 1 at 43. Staff recommends that the Board make the decommissioning plan part of the approved certificate.

4. Water

The Project's construction nor operation will require use of significant amounts of water; therefore, the requirements according to R.C. 1501.33 and 1501.34 are not applicable. However, the Applicant must obtain an Ohio National Pollutant Discharge

Elimination System construction storm wastewater permit and a nationwide permit 51 under Section 404 of the Clean Water Act. Staff Ex. 1 at 50. In addition, Republic shall also develop a Storm Water Pollution Prevention Plan. Staff Ex. 1 at 50. Staff recommends that these water permits and plans be required for the Republic Project to go forward.

As part of the studies regarding surface waters in the Project area, GIS data showed that proposed collection lines would cross four wetlands, including one category 2 wetland, wetland WHO-225. Republic indicated that the crossing of wetland WHO-225 is not necessary; therefore, Staff recommends that the Board adopt Condition 20 of the Staff Report and order that the Applicant not construct the collection line option which would impact wetland WHO-225. Staff Ex. 1 at 63.

5. Ecology

In accordance with R.C. 4906.07(C), R.C. 4906.10(A)(2) and rules of the Board, Staff completed its investigation with regards to the nature of the probable environmental impacts and submitted its findings and recommendations in the Staff Report for consideration by the Board. Staff Ex. 1 at ii. Specifically, with regards to ecological impacts, the Staff presented its findings and recommendations on page 22-33 and 63-66 of the Staff Report. These findings and recommendations were the result of Staff coordination with the Ohio Environmental Protection Agency, Ohio Department of Health, Ohio Department of Natural Resources (“ODNR”), Ohio Department of Agriculture, and the U.S. Fish and Wildlife Service (“USFW”). Staff Ex. 1 at ii.

The ecological conditions in the Staff Report are Conditions 20-40; and, of those conditions, the Applicant objected to Conditions Nos. 26, 33, 34, 35, and 40. Staff does not object to certain definitional clarifications being made to certain conditions, but, otherwise, Staff remains firm regarding its ecological recommendations. Absent Staff's acceptance of certain definitional clarifications, the Applicant's objections are without merit. To the extent that there are additional objections raised in the Applicant's or remaining parties' briefs, Staff will address them in its Reply Posting-Hearing Brief.

a. Minimizing Impacts to Threatened and Endangered Bats

Staff and ODNR believe that Condition No. 26 minimizes impacts to the Northern Long-Eared Bat and Indiana Bat. The Indiana Bat is a state and federal endangered species that is present in the project area. Staff Ex. 1 at 28. The Northern Long-Eared Bat is a federal and state threatened species present in the project area. Staff Ex. 1 at 28. The Indiana Bat recommendations in Condition 26 are already fulfilled through the technical assistance letter ("TAL")¹ the Applicant has received from USFW. App.Ex.13 at Att. DC-1. However, the TAL requires summertime feathering measures of the wind turbine to protect for the Indiana Bat that it does not for the Northern Long-Eared Bat. Tr. VI at

¹ A technical assistance letter is a letter from the USFWS, which details a curtailment regime for avoidance of a take, in this instance for the avoidance of an Indiana Bat take. There are no federal prohibitions against the incidental or purposeful take of the Northern Long-Eared Bat. Accordingly, it is not surprising that the TAL that the Applicant has already received from USFW focuses on the Indiana Bat. *See* Staff Report at p. 30.

1366. Staff and ODNR simply request that the Commission condition the approval of the application on the Applicant also applying the summertime feathering measures to the Northern Long-Eared Bat. Tr. VI at 1366. The Commission's adoption of Condition 26 would be consistent with the TAL because the condition does not require the Applicant to do less than what the TAL requires, it simply adds a requirement. Tr. VI at 1367. Further, Condition 26, which was written in coordination with ODNR, is also consistent with the Applicant's TAL because the TAL alerts the Applicant to consult with ODNR concerning the Indiana and Northern Long-Eared Bat.² Tr. VI at 1367 – 1368. The Applicant's expert witness, Mr. Kerlinger, whose pre-filed testimony claims that Condition 26 is inconsistent with the TAL, admits that he was not aware that the TAL required the Applicant to coordinate with ODNR. Tr. III at 756. Condition 26 is reasonable because it is consistent with the TAL and with the concerns of ODNR, the state agency responsible for minimizing impacts to Ohio wildlife.

b. Minimizing Impacts to Nesting Habitat Types

To resolve the Applicant's objection to Conditions 33, 34, and 35, Staff has agreed with the Applicant's suggestion that these conditions should define the "nesting habitat type" of the sandpiper, northern harrier, and the loggerhead shrike, as provided on page 4

² See Transcript at USFW Technical Assistance Letter attached to Applicant's Exhibit 13, last paragraph - ("We [USFW] recommend you coordinate this project with the ODNR-Department of Wildlife, as both the Indiana Bat and northern long-eared bat are state-listed species. Please contact Erin Hazelton at 614 265-6349, or Erin.Hazelton@dnr.state.oh.us").

of an April 27, 2018 ODNR letter (Applicant's Exhibit 40). Tr. VI at 1377 – 1379. Given no other objections to these conditions, they should be adopted by the Commission.

c. Minimizing Impacts to Bald Eagles

Staff and ODNR believe that Condition 40 is needed to minimize impacts to the bald eagle. Condition 40 gives USFW a more up-to-date chance to consider minimizing impacts to bald eagle at the project through additional bald eagle surveys and/or an Eagle Conservation Plan ("ECP"). Tr. VI at 1350. Although no eagle nests have been documented within the project area through Applicant surveys, the Applicant has not completed a bald eagle survey since 2012. Staff Ex. 1 at 31, Tr. VI at 1349. The Applicant objects to Condition 40 because of its expert witness', Paul Kerlinger's, opinion that bald eagles, regardless where the windmill project exists, rarely suffer deaths through collisions with windmill making any eagle surveys and/or an Eagle Conservation Plan (ECP) unnecessary, until an actual death is discovered. Tr. III at 739 – 741. However, Mr. Kerlinger admits that his sweeping views regarding bald eagles are not also shared by USFW. Tr. III at 741. He stresses that his sweeping views are merely his personal belief. Tr. III at 744. And, specifically, when it comes to Ohio, Mr. Kerlinger is not sure whether USFW would agree with his views. Tr. III at 741.

Condition 40 simply requires the Applicant to seek out USFW's opinion on the need for additional eagle surveys and an ECP. Mr. Kerlinger admits that he is not aware of the Applicant seeking USFW's opinion on the need for an ECP. Tr. III at 736 – 737. If USFW agrees with Mr. Kerlinger's opinion that neither additional eagle surveys nor an

ECP are necessary, then Mr. Kerlinger admits that Condition 40 requires nothing of the Applicant beyond a simple inquiry. Tr. III at 743 – 744. If USFW does not agree with Mr. Kerlinger opinions, then Staff and ODNR are requesting that the Commission make mandatory the expert recommendations of USFW. Accordingly, Condition 40 is a completely reasonable requirement that this Commission should adopt.

d. Geology

The project, located in Sandusky and Seneca Counties is in the Wisconsin-age glacial till area. Staff Ex. 1 at 26. This area can contain Karst features. Karst features occur principally in the eastern portion of Sandusky and Seneca Counties. Staff Ex. 1 at 26. The Applicant notes that 27 of the proposed 64 wind turbines are situated in areas exhibiting Karst features. Staff Ex. 1 at 26. Staff witness Conway noted that there is Karst topography in the project area and this requires avoidance and special consideration during foundation design and installation. Staff Ex. 5 at 9. The Applicant will conduct geotechnical studies that identify Karst features and where the Karst features are identified, these areas should be avoided for siting wind turbines. Staff Ex. 1 at 26 and Tr. Vol VII at 1415-1417.

6. Traffic

The biggest traffic impact is expected to occur during the Project's construction phase. The Applicant plans to enter into a road use agreement with the county engineer prior to construction and submit the plan to Staff for review and confirmation that the agreement is satisfactory. The agreement shall provide for a preconstruction survey of the

conditions of the roads; a post construction survey of the condition of the roads; and objective standard of repair that obligates Republic to restore the roads to the same or better condition as they were prior to construction, and a timeline for posting of the construction road and bridge bond prior to the transport of heavy equipment on public roads and bridges. Staff Ex. 1 at 35. Staff recommends that this road use agreement be a part of the conditions of the Project's certificate.

7. Noise

The Applicant's witness, Isaac Old, sponsored Applicant's noise study to determine existing environmental sound levels within the project area. This was necessary, he testified, because of the Board's requirements for submitting applications. App. Ex. 17 at 3. Mr. Old testified the study relied on seven locations that accurately denoted the soundscape of the area and that the zones were carefully monitored for fifteen days, in accordance with the guidelines provided in the American National Standard Quantities and Procedures for Description and Measurement of Environmental Sound (ANSI S12.9-2005/Part 2 and ANSI S12.9-2013/Part 3). App. Ex. 17 at 4-6. The data collected in the study equated to an average project area nighttime of 41 dBA. App. Ex. 17 at 6. Mr. Old explained that the noise was an accurate reflection of the ambient nighttime average sound level under a variety of meteorological conditions at sites representative of the project area. Mr. Old added that, applying the Board's regulations regarding the "operational sound limit of 5 dBA above the average nighttime ambient sound level," the project has an operational sound threshold of 46 dBA. App. Ex. 17 at 6.

Staff witness Mark Bellamy testified about the validity of Staff's Conditions 44 and 58 regarding noise levels in the project area. Staff Ex. 15 at 3-4. Condition 44 restricts the sound level of the facility at night. Staff Ex. 1 at 67 (requiring the "cumulative nighttime sound level at any nonparticipating sensitive receptor within one mile of the project boundary will not exceed 5dBA over the project area ambient nighttime average sound level, except during daytime operation that is in accordance with Ohio Adm.Code 4906-4-09(F)(2)). As noted by the Applicant, this condition is in-line with the Board's existing precedent and rules regarding the threshold for ambient nighttime noise levels. App. Ex. 17 at 2-3.

During the course of the hearing, the attorney for the local residents extracted testimony admitting into the record results of an additional noise study performed by Appellant's witness Old as part of a different Republic power siting case – a transmission case that is a separate case pending before the Board, but the study was done in an area well within the Republic Wind Farm Project area³ Tr. I at 199-207; Tr. II at 333. Based on this new evidence, Staff witness Bellamy recommended using the new sound data as an "eighth monitoring point" for evaluating the ambient nighttime noise in this case. Staff Ex. 16 at 2. The new noise data presented study results from the western area of the Project. Witness Bellamy justified its inclusion as the data provides a "more complete picture of the wind generation project area," as there were no data samples from the

³ These sound monitoring values were obtained as part of the related case, Case No. 19-1066-EL-BTX, the Republic Wind transmission line case, Tr. II at 325, and allowed in to cross-examine Applicant's expert. Tr. II at 333.

western part of the Project. Staff Ex. 16 at 2. The results of this additional study were admitted into this case. With the inclusion of this new data point, the project area ambient nighttime noise changes to approximately 40.5 dBA, placing the noise limit at 45.5 dBA instead of 46.⁴ Staff Ex. 16 at 3. Staff encourages the Board to adopt Conditions 44, 58, and 60. Condition 44 is identical to Ohio Adm.Code 4906-4-09(F)(2) and was used by Applicant in designing and analyzing the project. Its application in this case is not contested by Staff nor the Applicant, thus the Board should approve the condition.

At the public hearing, Staff learned that the noise study that was submitted to Staff on October 10, 2019 failed to include at least one residence on the noise study map. The Applicant stated in response to a Staff data request that there were an additional nine residences not initially modeled in the noise study. Staff Ex. 15 at 4. Although the new data did not alter the overall noise impact limit, Staff recommends that the Board prohibit construction of any turbine that is modeled to impact a previously non-modeled receptor (residence) above the ambient level of the project area. Staff Ex. 15 at 4. Condition 58 prohibits the use of certain turbine models at location 37 due to Applicant's failure to fully disclose the sound data for the location in a timely manner. Applicant failed to provide the data until after it was pointed out to Staff by concerned citizens. Staff believes that the non-participants should have been provided the information sooner, and, as a result of the surprise, Staff believes it is fair to use turbines that will not raise the

⁴ The actual calculated ambient nighttime L_{eq} with the eight data point is 40.42, but Staff recommends rounding up to 40.5. Staff Ex. 16, at 3.

sound levels above the current ambient level at the site. Applicant's witness agrees that such a result would be possible and does not pose a problem for the Applicant's plan. App. Ex. 18 at 4. Thus, in the interest of fairness and to protect the interests of the public, Condition 58 should be adopted.

Condition 60 requires the Applicant to submit a noise study 30 days prior to the construction of the facility. This condition should also be approved. According to the Board's rules, the Applicant must "submit a preconstruction background noise study of the project area that includes measurements taken under both day and nighttime conditions." Ohio Adm.Code 4906-4-08(A)(3)(e). Given that the modeling is likely different based on the inclusion of the eighth data point, a second submission of the ambient sound levels within the project area is essential to determine whether the project still meets the requirements of L_{eq} plus 5 dBA before the project is begun. Condition 60 satisfies the Board's rule both in letter and spirit.

Thus, the Board should accept Staff's three conditions regarding noise as found in the Staff Report, Supplement to the Staff Report, and the Supplemental Prefiled Testimony of Mark Bellamy.

Staff's report indicated that the Republic project's nature of the probable environmental impact had satisfied R.C. 4906.10(A)(2), provided that the Board include Staff's recommended conditions.

C. R.C. 4906.10(A)(3) – Minimum Adverse Impact

The facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives. The Staff Report identified the various efforts that the Applicant would undertake to ensure that impacts, both temporary and permanent, were reasonably minimized. Staff concluded that those efforts, together with its recommended conditions to further mitigate those impacts, represented the minimum adverse impact.

D. R.C. 4906.10(A)(4) – Electric Grid

The Project must be consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the facilities will serve the interests of electric system economy and reliability. Staff found that the Project, as conditioned, would satisfy that requirement. The record contains no evidence to the contrary, and Staff recommends that the Board find that the facility complies with the requirements specified in R.C. 4906.10(A)(4). Staff Ex. 1 at 49.

E. R.C. 4906.10(A)(5) – Air, Water, Solid Waste and Aviation

1. Air, Water, and Solid Waste

Air quality permits are not required for construction and operation of the proposed facility. Fugitive dust rules adopted pursuant to R.C. Chapter 3704, may, however, be applicable. Construction nor operation of the proposed facility require the use of significant amounts of water. The Applicant will obtain the necessary water pollution

control permits for construction and operation sufficient to comply with the requirements of R.C. 6111, Ohio's water supply laws - the permits required for the project are the Ohio National Pollutant Discharge Elimination System ("NPDES") construction storm water permit and a nationwide Permit 51 under Section 404 of the Clean Water Act. Staff Ex. 1 at 50. In addition, solid waste generated during construction, which would mainly consist of metals, packaging materials, construction debris, office waste, scrap lumber, cables, glass and general refuse would be removed from the Project area and disposed of at a licensed disposal facility. Staff Ex. 1 at 50. Staff believes that the Applicant's solid waste disposal plans will comply with solid waste disposal requirements of R.C. Chapter 3734 and the rules adopted pursuant to those chapters. Staff Ex. 1 at 51.

2. Aviation

There are several airports near the project that would be negatively impacted if the project is constructed as proposed by Republic. As required by R.C. 4906.10(A)(5), the Board shall consult with the ODOT's Office of Aviation under R.C. 4561.341 when determining whether the proposed facility will comply with all rules and standards adopted under R.C. 4561.32. This consultation must be performed so the board can determine whether a siting certificate can be issued. In this case, the Board Staff consulted ODOT Office of Aviation regarding the Republic Wind Farm proposal.

The FAA also analyzed the proposed project as it relates to the navigable air space of affected airports. ODOT reviewed the FAA's determination and also performed a separate and independent analysis based on the same obstruction criteria described in 14

CFR Part 77, which is the criteria that the FAA used. Staff Ex. 3 at 4. The FAA and ODOT both identified that all 50 turbines would exceed obstruction standards. However, the FAA issued a determination of no hazard letters for these wind turbines, because it determined that there would be no significant adverse effect. In order to make that determination, new flight procedures and measures for the Ohio National Guard 179th Airlift Wing, Dougherty Airport, Seneca County Airport, Sandusky County Regional Airport, and Fostoria Metropolitan Airport, would need to be implemented. App. Ex. 29 at Att. at 11, Staff Ex. 1 at 51-53.

ODOT's engineer, John Stains, testified about the FAA process for making a no hazard determination. In this case, the FAA published a notice asking for input from the public, including local airports on the proposed turbines that had been determined to be obstructions. But the FAA notice was not initially received by the Fostoria Metropolitan Airport. Staff Ex. 3 at 9. Fostoria later learned of the FAA's Notice requesting comments regarding the Republic Wind Farm. Fostoria filed a petition for discretionary review with the FAA but Fostoria's petition was outside of the FAA's deadline. Staff Ex. 3 at 10. Even though Fostoria's petition letter was not received on time by the FAA and not considered when the FAA issued its determination of no hazard. Staff Ex. 6 at 4. The comments raised in Fostoria's petition letter were submitted timely to the Board and analyzed by ODOT. There are adverse impacts from the turbines/obstructions to Fostoria's navigable airspace. Tr. Vol. III at 884. These adverse impacts are proper for the Board to consider when determining whether a siting certificate can be issued for Republic Wind. ODOT provided analysis on the 12 turbines that affect Fostoria's

navigable airspace. Staff Ex. 3 at 8 -12. Staff analyzed the turbine models, location, and heights proposed by the Applicant and found that certain turbine models can still be installed and at a height that will have no effect on the airport or its approaches. Staff Ex. 6 at 5. Staff has incorporated this analysis into its recommendation of Condition 59 of the Staff's Supplemental Report.

An important part of the ODOT review and determination process involves receiving input from affected aviation stakeholders. Staff Ex. 3 at 7 – 8. ODOT contacted, among other entities, Brad Newman, the airport manager at Seneca County Airport, David Wadsworth, airport manager of the Sandusky County Airport and David Sniffen, airport manager for the Fostoria Metropolitan Airport. One of the issues raised by the managers were the FAA's recommendation to raise the minimum flight altitudes, indicating that raising the approach procedure creates a decrease in safety because the increase in altitude could create more time spent in icing conditions. Staff Ex. 3 at 10. Mr. Newman, an experienced pilot, pointed out that if the wind turbines were constructed as proposed, it might force pilots to alter their current instrument landing procedures; thereby, reducing the utility of the Seneca County Airport. Seneca County Ex. 2.

In considering the wind project, Mr. Stains cited statistics indicating the importance of these airports to the economy of the area. The Seneca County Airport supports 131 jobs and has a total annual economic output of \$14,300,000. Staff Ex. 3 at 3. The Sandusky County Airport supports 34 jobs and has a total economic output of \$3,900,000. Staff Ex. 3 at 3. And the Fostoria Metropolitan Airport supports 46 jobs and an annual economic output of \$4,900,000. Staff Ex. 3 at 4.

ODOT, when determining whether compliance with obstruction standards may be waived, inquires of local airports about their willingness to give up the utility of their navigable airspace, meaning whether they are willing to agree with the FAA raising minimum flight altitudes or changing flight patterns. None of the airports affected by the proposed project agreed to forfeit their current navigable airspace. Staff Ex. 3 at 17.

In summary, the FAA acknowledged that this wind farm would create obstructions to air navigation and the FAA acknowledged that the affected airspace must be adjusted to deal with the height of the turbines, but the FAA found that the number of flights that would be impacted by this change were not significant enough to have a substantial adverse effect to determine that the Project would constitute a hazard. Staff Ex. 3 at 17. However, as Mr. Stains explained, ODOT does not want to assume risk when it comes to the safety of the traveling public, and if there is an obstruction caused by the project and the affected local airport is not willing to give up the current utility of their airport by having flight procedures changed, which there clearly is here, ODOT will conclude that in its analysis. Staff Ex. 3 at 17.

The Applicant accepted the Staff Report findings regarding LifeFlight. Applicant's Ex. I-23 at 15. LifeFlight, a medical air ambulance company that operates in the project area, expressed a general concern about having reduced landing zones within the wind farm area. Staff Ex. 5 at 14 – 15. Staff's research found that a predesignated landing zone can be beneficial to have a wind farm in the area. A predesignated landing zone can consist of a cleared field, marked with safety cones and a concrete pad. Staff Ex. 5 at 14 - 15. Staff recommends that the Applicant create such a predesignated zone if the Project is

built. Furthermore, Republic would put air ambulatory services in touch with Applicant's 24-hour emergency operation center in order to shut down the turbines during an emergency. Staff Ex. 5 at 14 - 15.

Staff's recommendations related to aviation are complex in order to minimize the adverse impacts from the Republic Wind farm that extend outside the wind farm's project area footprint and would affect multiple airports. Staff's recommended aviation related Conditions 52, 53, 54, 55, 56, 57, and 59 of the Staff's Supplemental Report should be adopted and made conditions of the certificate.

II. Setbacks

Power siting rules require that the distance from a wind turbine base to any property line be at least at least 1,125 feet in horizontal distance from the tip of the turbine's nearest blade at 90 degrees to the property line of the nearest adjacent property, including a state or federal highway Ohio Adm.Code 4906-4-08(C)(2)(b). According to the application, turbines 10, 38, and 43 should not be constructed as they do not meet this minimum setback standard. Staff Ex. 1 at 67. Staff witness Conway testified that the minimum setback calculates to 1,371 feet (1,125 plus the blade length) from the turbine base to the nearest adjacent property, including a state or federal highway. Staff Ex. 5 at 9. Turbine 10 is less than that distance to State Route 19 and turbines 38 and 43 are less than that distance to State Route 18. Staff Ex. 5 at 9 – 10. These distances are not disputed by the Applicant. Staff Ex. 5 at 10, *See* footnote 1. Turbine 10, 38, and 43

should not be constructed as they do not meet the statutory minimum setback requirements.

Staff also reviewed the safety manual for the turbines. In doing so, Staff determined if there is a fire at either turbine 10, 38, or 43, Republic, also with local emergency services, would need to establish a safety area of 1,640 feet around the turbine and this would require stopping traffic on the relevant portions of State Routes 18 and 19. Staff Ex. 5 at 10. Republic's application, which includes the preliminary Emergency Action Plan (Ex. Y) does not address this situation. Staff Ex. 5 at 10. This is further rationale why turbines 10, 38, and 43 should not be constructed as proposed.

In following Board precedent and the Ohio Adm.Code 4906-4-08(C)(2)(c), the distance from a wind turbine base to any gas pipeline shall be at least one and one-tenth times the total height of the turbine as measured from the tower's base to the tip of the blade at the highest point. *In the Matter of the Application of Black Fork Wind Energy, L.L.C. for a Certificate to Site a Wind-Powered Electric Generating Facility in Crawford and Richland Counties, Ohio*, Case No. 10-1-2865-EL-BGN, Opinion, Order, and Certificate at 24, 74, (Jan. 23, 2012); *In the Matter of the Application of 6011 Greenwich Windpark, LLC for a Certificate to Construct a Wind-Powered Electric Generation Facility in Huron County, Ohio*, Case No. 13-990-EL-BGN, Opinion, Order, and Certificate at 33, 47, (Aug. 25, 2014). This prescribed formula for turbine 42 would make the setback 666.2 feet. Staff Ex. 1 at 33. Turbine 42 is approximately 609 feet from a mapped gas pipeline; therefore turbine 42 should not be constructed at the proposed

location because it does not meet this minimum setback distance. Staff Ex. 1 at 33 and 67.

A. R.C. 4906.10(A)(6) – Public Interest, Convenience, and Necessity

According to R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity.

Republic conducted two public information meetings and provided copies of its application to all relevant local officials. Staff Ex. 1 at 55. The Applicant maintains a local office in Bellevue, Ohio and a project website.

The Applicant will implement a complaint resolution plan to resolve complaints received about the Project. Republic will notify, by mail, affected property owners and tenants regarding the project and the complaint resolution plan no later than seven days prior to construction. Staff Ex. 1 at 55.

Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and therefore complies with the requirements specified in R.C. 4906.10(A)(6).

B. R.C. 4906.10(A)(7) – Agricultural Districts and Agricultural Land

According to R.C. 4906.10(A)(7), the Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project boundary. The construction, operation, and maintenance for the Republic Wind Farm would occur on land that is currently used for agricultural purposes. Of the total agricultural land lost due to the project, approximately 18 acres of agricultural district

land would be permanently impacted. Staff Ex. 1 at 57. The viability of the agricultural district lands would not be compromised by the Republic Wind Farm. Staff Ex. 1 at 57. There will also be up to 83 circuit miles of electric collection cable installed underground. This trenching and direct burial activities would create a temporary disturbance, but excavated top soil will be restored to original conditions unless otherwise specified by the landowner. Staff Ex 1 at 57.

Staff recommends that the Board find that the impact of the Project on existing agricultural land in an agricultural district has been determined, and complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906.10(A)(7).

C. R.C. 4906.10(A)(8) – Water Conservation Practice

Construction of the facility nor operation of the wind farm facility will require the use of significant amounts of water. Water consumption associated with the Project does not require specific conservation procedures. Also, a potable water supply would be provided to the operations and maintenance building for project and personal needs of the employees, but the amount consumed for these purposes is minimal.

Staff therefore recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and therefore complies, subject to the agreed-upon conditions, with the requirements specified in R.C. 4906(A)(8).

CONCLUSION

Staff respectfully requests that the Board condition any certificate issued in this case by adopting all the conditions set forth in that Staff Report, Supplement to the Staff Report, and Staff's supporting testimony.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Jodi J. Bair

Jodi J. Bair
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215
614.644.8599 (telephone)
614.644.8764 (fax)
jodi.bair@ohioattorneygeneral.gov

**On behalf of the Staff of
The Ohio Power Siting Board**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief**, submitted on behalf of the Staff of the Ohio Power Siting Board, was served via electronic mail upon the following parties of record, this 23rd day of December, 2019.

/s/ Jodi J. Bair

Jodi J. Bair

Assistant Attorney General

PARTIES OF RECORD:

Sally W. Bloomfield

Dylan F. Borchers

Devin D. Parram

Dane Stinson

Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
614.227.2300 (telephone)
614.227.2390 (facsimile)
sbloomfield@bricker.com
dborchers@bricker.com
dparram@bricker.com
dstinson@bricker.com

Counsel for Republic Wind, LLC

Chad A. Endsley

Leah F. Curtis

Amy M. Milam

Ohio Farm Bureau Federation 280 North
High Street, P.O. Box 182383 Columbus,
OH 43218-2383
614.246.8256 (telephone)
614.246.8656 (facsimile)
cendsley@ofbf.org
lcurtis@ofbf.org
amilam@ofbf.org

Jack Van Kley

Christopher A. Walker

Van Kley & Walker LLC
120 West Second Street, Ste 1700
Dayton, OH 45402
937.226.9000 (telephone)
937.226.9002 (facsimile)
jvankley@vankleywalker.com
cwalker@vankleywalker.com
Counsel for Local Resident Intervenors

Mark E. Mulligan

Sandusky County Prosecutor's Office
100 North Park Avenues Suite 220
Fremont, OH 43420
419.334.6221 (telephone)
419.334.6232 (facsimile)
mulligan_mark@co.sandusky.oh.us

*Counsel for Petitioner the Board of
Trustees of York Township, Sandusky
County, Ohio*

*Counsel for Ohio Farm Bureau
Federation*

Miranda R. Leppla

Trent A. Dougherty

Christopher D. Tavenor

The Ohio Environmental Council

1145 Chesapeake Avenue, Suite I

Columbus OH 43212

614.487.7506 (telephone)

614.487.7510 (facsimile)

mleppla@theoec.org

tdougherty@theoec.org

ctavenor@theoec.org

*Counsel for Ohio Environmental Council
and Environmental Defense Fund*

Dennis & Leslie Hackenburg

6015 County Road 191

Bellevue OH 44811

dennyh7@frontier.com

Pro Se Counsel

Michael & Tiffany Kessler

4133 N Township Road

Republic Oh 44867

mkessler7@gmail.com

Pro Se Counsel

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