BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Ohio Power Siting Board's Consideration of Ohio Admin. Code Chapter 4906-4.	)))	Case No: 19-778-GE-BRO

APPLICATION FOR REHEARING OF INNOGY RENEWABLES US LLC AND HARDIN WIND LLC

Innogy Renewables US LLC and Hardin Wind LLC (collectively, "Innogy")[1] file this Application for Rehearing under R.C. 4906.12 and R.C. 4903.10 from the November 21, 2019, Finding and Order (the "November 21 Order") of the Ohio Power Siting Board (the "Board"). The November 21 Order was unreasonable and/or unlawful in these respects:

1. The Board unreasonably and unlawfully failed to set forth the reasons for its conclusion that the Board possesses the authority to impose new conditions on existing certificates through a subsequent rule-making.

2. The Board unreasonably and unlawfully imposed new conditions on existing certificates through subsequent rule-making, contrary to the Board's limited statutory authority.

3. The Board unreasonably and unlawfully adopted text for a new Incident Reporting Rule (Ohio Adm.Code 4906-4-10), that is in conflict with the Board's findings and reasoning in the November 21 Order and that fails to impose any timeframe on Staff's and its Executive Director's obligations under the rule.

[1] Hardin Wind LLC is a wholly-owned subsidiary of Innogy Renewables US LLC, and is the holder of the Certificate issued by the Board in Case No. 13-1177-EL-BGN for the Scioto Ridge Wind Farm.

A memorandum in support setting forth the specific grounds for rehearing follows. Innogy requests that the Board grant rehearing for the reasons set forth in this Application for Rehearing and modify its November 21 Order.

Respectfully submitted

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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING OF INNOGY RENEWABLES US LLC AND HARDIN WIND LLC

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I. INTRODUCTION

Innogy Renewables US LLC and its wholly-owned subsidiary, Hardin Wind LLC, seek rehearing of the Board's November 21, 2019 Order in which the Board adopted a new rule, entitled "Notice and reports of incidents involving wind farm facilities" as Ohio Adm.Code 4906-4-10 (the "Incident Reporting Rule"). The Incident Reporting Rule purports to impose telephonic and written reporting requirements regarding wind turbine incidents, as well as restart approval oversight by the Executive Director, on **all** wind farm operators in the state including wind farm developers and operators holding previously issued certificates of environmental compatibility and public need. The Board should grant rehearing for three reasons.

First, in adopting the Incident Reporting Rule, the Board did not address the argument made by Innogy Renewables US LLC[2] that applying the Incident Reporting Rule to wind farm operators with existing certificates is contrary to Ohio law. The Board's November 21 Order notes that "[t]he Board considered and rejects additional public comment suggestions … expressing that the proposed rules are solely prospective …." (November 21 Order at ¶25). But the Board never provided its reasoning for *how* it believes it has the authority to retroactively add conditions to existing certificates, as R.C. 4903.09 and R.C. 4906.12 require. For this reason alone, the Board should grant rehearing.

Second, the November 21 Order is substantively flawed because the Board lacks the statutory authority to adopt rules that retroactively impose conditions on an existing certificate. The Board cannot impose a reporting and restart requirement on existing certificates through rulemaking because to do so would be beyond the Board's statutory authority and contradictory to

[2] Hardin Wind LLC is filing this Application for rehearing along with Innogy Renewables US LLC. Both are "affected" by the November 21 Order and are therefore able to file an application for rehearing pursuant to R.C. 4903.10. Innogy Renewables US LLC and Hardin Wind LLC are collectively referred to herein as "Innogy".

R.C. 4906.10(A). It also would unlawfully impair rights that vested upon issuance of the certificate.

Third and finally, the proposed text of the Incident Reporting Rule attached to the November 21 Order is contrary to the Board's November 21 Order and fails to address the timing of the Staff's investigation of those incidents and the restart of the impacted turbines. The Incident Reporting Rule's proposed text includes an illustrative (not exhaustive) list of incidents subject to the Incident Reporting Rule, whereas the November 21 Order specifically limited the applicability of the rule to certain types of incidents. The Incident Reporting Rule also includes "collector or feeder line failure" as incidents justifying a report, which not only are undefined but are unrelated to the turbine incidents that the Incident Reporting Rule is meant to cover. The November 21 Order also establishes specific timeframes for a wind farm operator's investigatory cooperation with Staff, but the Incident Reporting Rule's proposed text does not impose any timeframe for Staff's investigation or the Executive Director's approval for restart.

The existing statutory scheme (conditions imposed at the time of certificate issuance) provides certainty to certificate holders. To preserve that certainty, the Board should grant rehearing to limit the applicability of the Incident Reporting Rule to those projects for which a certificate has yet to be issued. It could do so by moving the text of the rule to Rule 4906-4-09 which requires certificate applicants to commit to certain conditions. The Board should also grant rehearing and revise the text of the Incident Reporting Rule as suggested by Innogy in this memorandum in support.

II. RELEVANT BACKGROUND

There are a number of wind projects with final, non-appealable certificates issued by the Board in varying stages of construction and operation. The Blue Creek, Timber Road I, Timber Road II, Timber Road III, Hog Creek I, Hog Creek II, and Northwest Ohio wind projects have

been issued certificates by the Board and are currently in operation.[3] The Timber Road IV, Hardin, Greenwich, and Scioto Ridge wind projects have been issued certificates, and are currently under construction.[4] The certificates issued to all of these projects include a number of conditions regulating the design, construction, and operation of the projects.

On March 29, 2019, the Board initiated a limited rulemaking process under Case No. 19-0778-GE-BRO to "investigate whether to adopt a rule requiring turbine operators to report blade shear turbine incidents to the Board." (March 29, 2019 Entry at ¶1). The Board's mandate then became a more wide-ranging review of "whether to adopt a rule requiring turbine operators to report incidents to the Board." (April 4, 2019 Entry at ¶1). The Board requested comment on several different issues. (April 4, 2019 Entry at ¶4).

Following the Board's issuance of the draft rule, which included both reporting obligations and a requirement to not restart turbines until approval is given by the Board's Executive Director, various entities submitted comments and reply comments to the Board for consideration. Because the rule as drafted could arguably be applied to existing certificates and projects, Innogy Renewables US LLC submitted reply comments arguing that the Board lacks the statutory authority to impose new certificate conditions on existing certificates by rule. Following receipt of the comments and reply comments, the Board issued the November 21 Order. The November 21 Order makes minor changes to the proposed text of the Incident Reporting Rule in response to comments received, but did not address its statutory authority to issue the Incident Reporting Rule as applicable to **all** wind farm operators. The rule as approved also was not consistent with the

[3] Blue Creek: Case No. 09-1066-EL-BGN; Timber Road I: Case No. 09-0980-EL-BGN; Timber Road II: Case No. 10-0369-EL-BGN; Timber Road III: Case No. 10-0369-EL-BGN; Hog Creek I: Case No. 09-0277-EL-BGN; Hog Creek II: Case No. 10-0654-EL-BGN; Northwest Ohio: Case No. 13-0197-EL-BGN.

[4] Timber Road IV: Case No. 18-0091-EL-BGN; Hardin: 09-0479-EL-BGN; Greenwich: Case No. 13-0990-EL-BGN; Scioto Ridge: Case No. 13-1177-EL-BGN.

November 21 Order and also did not impose any timeframe on Staff's investigation of an incident or the Executive Director's decision to allow a restart of the turbine(s) involved in the incident.

Innogy Renewables US LLC and its wholly-owned subsidiary, Hardin Wind LLC, now seek rehearing on three assignments of error.

III. ARGUMENT

Assignment of Error No. 1: The Board unreasonably and unlawfully failed to set forth the reasons for its conclusion that the Board possesses the authority to impose new conditions on existing certificates through a subsequent rule-making.

By its terms, the Incident Reporting Rule subjects *all* wind farm operators, including those holding existing final, non-appealable certificates, to new reporting conditions and a condition to not restart the turbines involved in an incident until the Board's Executive Director approves the restart. In its comment, Innogy argued that if the Board intended the Incident Reporting Rule to apply to existing certificates, then the Board lacked the statutory authority to do so. (Innogy Renewable US LLC's July 26, 2019, Reply Comment). By implication, the Board's November 21 Order found that the Incident Reporting Rule *is* retrospective. (November 21 Order at ¶ 25) (disagreeing with "public comment suggestions . . . that the proposed rules are solely prospective"). The Board then rejected Innogy's position, concluding only that "the proposed rule changes, as amended, strike a fair balance between public safety and operational efficiency in addressing the safety concerns that arise from extraordinary wind farm incidents." (*Id.*). But nowhere does the November 21 Order address the question that Innogy and other commentators raised: whether the General Assembly ever authorized the Board to retroactively impose new conditions on existing duly issued certificates through rule-making.

In so doing, the Board violated R.C. 4903.09,[5] which states:

> In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the **commission shall file**, with the records of such cases, findings of fact and **written opinions setting forth the reasons prompting the decisions arrived at**, based upon said findings of fact. [Emphasis added].

Under that statute, "when 'the commission has not set forth in its order its reasons in sufficient detail to enable the Supreme Court, upon appeal, to determine how the commission reached its decision, the order will be set aside.'" *Interstate Gas Supply, Inc. v. PUC (In re Duke Energy Ohio, Inc.)*, 148 Ohio St.3d 510, 2016-Ohio-7535, 71 N.E.3d 997, ¶ 23, quoting *Gen. Tel. Co. v. Pub. Util. Com.*, 30 Ohio St.2d 271, 285 N.E.2d 34 (1972); *see also Motor Serv. Co. v. Pub. Util. Com.*, 39 Ohio St.2d 5, 313 N.E.2d 803 (1974) ("It is the opinion of this court that the commission failed to make specific findings of fact, supported by the record, **or to state reasons derived therefrom**, which prompted its decision, in violation of the requirements of R.C. 4903.09.") (emphasis added).

Interstate Gas Supply set aside Commission orders that summarily concluded that Duke Energy's application satisfied state law, but failed to explain *how* Duke complied with the relevant statutes. 148 Ohio St.3d at 516. The same situation confronts the Board here. R.C. 4903.09 requires the Board to explain its reasoning; that is, whether and *how* Ohio law empowered the Board to retroactively impose additional conditions on existing certificates through rulemaking. In failing to include that explanation, the November 21 Order is unlawful and unreasonable.

[5] R.C. 4903.09 applies to the Board through R.C. 4906.12.

<u>Assignment of Error No. 2</u>: The Board unreasonably and unlawfully imposed new conditions on existing certificates through subsequent rule-making, contrary to the Board's limited statutory authority.

A. The General Assembly did not authorize the Board to impose new conditions on existing certificates by rule.

The General Assembly did not authorize the Board to retroactively impose new conditions on existing certificates through rulemaking. The November 21 Order is thus unlawful and unreasonable because it requires holders of existing certificates to comply with the new incident reporting and turbine restart rule.

Like any administrative agency, the Board only has that authority granted to it by statute. *See, e.g., Discount Cellular, Inc. v. PUC*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51 ("The PUCO, as a creature of statute, has no authority to act beyond its statutory powers."); *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 537, 620 N.E.2d 835 (1993). And that authority is construed narrowly. *Ohio Fresh Eggs, LLC v. Boggs*, 183 Ohio App.3d 511, 2009-Ohio-3551, 917 N.E.2d 833 (10th Dist.) ("[I]n construing a grant of administrative power from a legislative body, the intention of that grant of power, as well as the extent of the grant, must be clear, and, if there is doubt, that doubt must be ***resolved against the grant of power***.") (emphasis added).

Courts also take a particularly dim view of laws or rules that purport to apply retroactively. The Supreme Court of Ohio has noted that "retroactive laws and retrospective application of laws have received the near universal distrust of civilizations." *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100, 104, 522 N.E.2d 489 (1988). That view is reflected both in R.C. 1.48, which presumes that statutes are prospective "**unless expressly made retrospective**,"[6] as well as Section

[6] R.C. 1.48 (emphasis added).

28, Article II of the Ohio Constitution, which prohibits the General Assembly from passing retroactive laws. *Discount Cellular* at ¶ 41. "The prohibition against retroactive laws pertaining to legislative enactments also applies to rules and regulations promulgated by administrative agencies." *Smith v. Ohio Edison*, 2d Dist. Clark C.A. CASE No. 98 CA 37, 1999 Ohio App. LEXIS 16, at *10 (Jan. 8, 1999); *Cosby v. Franklin Cty. Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 07AP-41, 2007-Ohio-6641.

Here, the General Assembly did not expressly vest the Board with the authority to retroactively add new conditions to previously issued certificates through rule-making. Instead, the Board *only* has the statutory authority to impose conditions as part of its decision to grant a ***pending*** certificate application**.** As R.C. 4906.10(A) states:

> The power siting board shall render a decision upon the record either granting or denying the application as filed, or **granting it upon such terms, conditions, or modifications** of the construction, operation, or maintenance of the major utility facility as the board considers appropriate. The certificate shall be conditioned upon the facility being in compliance with standards and rules adopted under sections 1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code [Emphasis added].

Thus, under R.C. 4906.10(A), the Board's authority to add conditions ends once the Board issues a final, non-appealable certificate.

Likewise, R.C. 4906.04 states that "[a]ny facility, with respect to which such a certificate is required, shall thereafter be constructed, operated, and maintained in conformity with such certificate and any terms, conditions, and modifications **contained therein**." (Emphasis added). But the General Assembly did *not* require the certificate holder to abide by terms or conditions imposed through a later-enacted rule—one *not* "contained therein", that is, within the certificate itself.

And while the Board has general rule-making authority under R.C. 4906.06(C), R.C. 4906.10(A) specifically controls the Board's ability to impose conditions on a certificate. In any

event, nowhere does R.C. 4906.03(C) permit the Board to retroactively impose new conditions on previously issued certificates either. Rather, R.C. 4906.03(C) only provides for rules necessary and convenient to implement Chapter 4906 such as "evaluating the effects on environmental values of proposed and alternative sites" and "projected needs for electric power." *See* R.C. 4906.03(C). If the General Assembly intended to allow the Board to modify existing certificates through rulemaking, the Supreme Court of Ohio requires the General Assembly to have said so. *See Discount Cellular* at ¶ 51 ("The General Assembly did not expressly state that R.C. 4927.03 was to be applied retrospectively. Therefore, we hold that the PUCO exceeded its statutory authority when it retroactively applied R.C. 4927.03 in this matter.").

In sum, nothing in R.C. Chapter 4906 authorizes the Board to pass rules that retroactively impose conditions on an existing certificate. By seemingly requiring holders of existing certificates to comply with the newly promulgated rule, the November 21 Order is unreasonable and unlawful. The Board can rectify this error by moving the text of the rule to Rule 4906-4-09 which requires certificate applicants to commit to certain conditions.

B. The November 21 Order unconstitutionally deprives certificate holders of the vested right to operate under those conditions set out in a duly issued certificate.

Even if the General Assembly had authorized the Board to promulgate retroactive rules (and it did not), Section 28, Article II of the Ohio Constitution prohibits the Board from issuing substantive rules that retroactively impair vested rights. *See State v. Cook*, 83 Ohio St.3d 404, 411, 1998-Ohio-291, 700 N.E.2d 570 (explaining that a statute is substantive under a retroactivity analysis "if it impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligation or liabilities as to a past transaction, or creates a new right."); *Discount Cellular* at ¶ 41 ("Only if we find that the General Assembly intended the statute

to apply retroactively do we then consider whether the statute is substantive, rendering it unconstitutional.").

The right to build and develop property, including through a Board-issued certificate, is a quintessential vested right. *See, e.g., Gibson v. Oberlin*, 171 Ohio St. 1, 3, 167 N.E.2d 651 (1960) ("The ability to establish a nonconforming use [under zoning law] constitutes a valuable right and one which cannot be abrogated…."); *O'Brien v. Columbus*, 10th Dist. Franklin No. 89AP-877, 1990 Ohio App. LEXIS 443, at *7-8 (Feb. 6, 1990) ("Under *Gibson*, an applicant for a building permit has a vested right to establish a nonconforming use in reliance on the zoning code as it existed when the application was filed. It is a vested right to build in reliance on a specific zoning classification."); *Jackson Twp. Bd. of Trustees v. Donrey Outdoor Advertising Co.*, 10th Dist. Franklin No. 98AP-1326, 1999 Ohio App. LEXIS 4341 (Sep. 21, 1999) (holding that billboard company had a vested right to complete the installation of a billboard under a duly issued zoning certificate, despite a later change to the zoning ordinance).

Likewise here, the right to build and operate under a Board-issued certificate is a substantive right that vests upon the date the application was filed and remains vested during the life of the certificate. In adding onerous new burdens to existing certificate holders, the November 21 Order impermissibly impaired these holders' vested right to complete and operate the certificated facility on those conditions set out in the certificate. For example, the rule transfers the discretion on whether to restart a turbine involved in an incident from the certificate holder to the Board's Executive Director – a significant change and new condition on the operation of a certificated facility. The Board has no authority to add new conditions on a certificate through rulemaking, and to do so is unreasonable and unlawful.

For these reasons the Board should limit the applicability of the Incident Reporting Rule to those projects for which a certificate has yet to be issued. It could do so, as noted above, by moving the text of the rule to Rule 4906-4-09 which requires **certificate applicants** to commit to certain conditions.

> **Assignment of Error No. 3: The Board unreasonably and unlawfully adopted text for a new Incident Reporting Rule (Ohio Adm. Code 4906-4-10), that is in conflict with the Board's findings and reasoning in the November 21 Order and that fails to impose any timeframe on Staff's and its Executive Director's obligations under the rule.**

The text of the Incident Reporting Rule, as adopted by the Board, does not match the Board's statements in its November 21 Order. Thus, the Board should grant rehearing to edit the text of the Incident Reporting Rule to match the Board's stated reasoning. The rule also does not address or impose a standard for timeliness on Staff's and the Executive Director's obligations under the rule, which also warrants a grant of rehearing. To address these issues, Innogy has provided suggested revisions to the text of the Incident Reporting Rule below in Section D.

A. The Incident Reporting Rule leaves open what constitutes an incident.

The Board was very clear in its November 21 Order that"[r]eportable wind farm incidents under this rule **are limited to events where** there is injury to any person, damage to others' property, or where a tower collapse, turbine failure, thrown blade or hub, collector or feeder line failure, nacelle fire, or ice throw results in operator property damage that is estimated to exceed fifty thousand dollars." November 21 Order at ¶24 (emphasis added). The Incident Reporting Rule, however, states that "[f]or purposes of this rule incidents **include** events where: …." (Ohio Adm.Code 4906-4-10(A)(2)(Emphasis added). The use of the word "include" still implies that the list of events that follows is illustrative, and not exhaustive. This conflicts with the reasoning in the November 21 Order and the rule should be revised as suggested below in Section D.

B. The Incident Reporting Rule as drafted includes non-turbine events.

The Incident Reporting Rule requires telephone notice of incidents involving a wind turbine but then includes a "collector or feeder line failure" as a reportable incident. (See 4906-4-10(A)(1) and (A)(2)(c). Nowhere in this proceeding has a "collector or feeder line failure" been defined and more importantly, collection lines are not part of a wind turbine. Instead, as the Board is aware, collection lines are underground lines connecting turbines and eventually connecting the generation system to the collector substation. It was unreasonable and an oversight to leave the phrase "collector or feeder line failure" in the Incident Reporting Rule. Because collection lines are not part of a wind turbine and because the rule relates to incidents involving a wind turbine, the phrase should be removed from the list of events that could lead to a report. Alternatively, if the Board is concerned that a collection line failure can impact the operation of a turbine, then the phrase can be revised at a minimum to read "collector or feeder line failure that results in a turbine incident."

C. The Incident Reporting Rule does not require Staff to timely investigate an incident.

The Board, in the November 21 Order, recognized the importance of timely resolution of an incident, finding that "[b]y requiring a **timely incident response and investigatory cooperation with Staff**, the Board is satisfied with the public safety enhancements contained in these rules." (November 21 Order at ¶25) (emphasis added). The Board then approved the Incident Reporting Rule's imposition of strict timeframes for a wind farm operator's reporting of an incident but did not impose any timeframe for Staff's investigation of the same incident or the Executive Director's decision to allow a restart of the turbine. Doing so was unreasonable and ignores the balance between public safety and operational efficiency which the Board's rule changes sought to attain. (November 21 Order at ¶ 25).

The Board can address this issue by imposing a timeframe on Staff's investigation and the Executive Director's decision to allow a restart. Innogy would propose no more than a seven-day investigation period for Staff following submittal of the final written report by the wind farm operator and a three-day maximum period for any restart decision following notice from the wind farm operator that the turbine or turbines are ready to restart. This will ensure that an investigation is performed in a timely manner and that there is no material delay in restarting turbines after the operator has made a decision that the equipment can be restarted. Importantly, timeframes on both the Staff's investigation and the Executive Director's decision to restart provide certainty to wind farm operators and investors that the Staff investigation will be prompt and that a restart decision will be made expeditiously and quickly after notice from the wind farm operator.

D. The Incident Reporting Rule can be revised to better match the Board's November 21 Order.

To address and remedy this third assignment of error, Innogy suggests that the Board **at a minimum** make the following edits to the Incident Reporting Rule:

4906-4-10 Notice and reports of incidents involving wind farm facilities.

(A) Telephone notices of incidents.

(1) Wind farm operators should notify the board's executive director by calling: 1-855-945-3321, as well as local law enforcement and first responders on all incidents involving a wind turbine, within thirty minutes after discovery unless notification within that time is impracticable under the circumstances.

(2) For purposes of this rule an incident~~s include~~ is an event~~s~~ that involve a turbine or turbines where:

(a) There is injury to any person;~~.~~

(b) There is damage to property other than the property of the windfarm operator or~~.~~

(c) ~~Where~~ There is a~~n event such as~~ tower collapse, turbine failure, thrown blade or hub, collector or feeder line failure that results in a turbine incident, ice throw, or nacelle fire that causes ~~, cause~~ damage to the wind farm operator's property that is estimated to exceed fifty thousand dollars, excluding the cost of electricity lost, which is the sum of the estimated cost of material, labor, and equipment to repair and/or replace the operator's damaged property.

(B) Written reports regarding incidents.

(1) Within thirty days after the incident is discovered, a wind farm operator will submit a written report to the executive director describing the cause of the incident, where ascertainable, and any damage to the wind farm facility or to the neighboring properties or persons, on a form provided by the board.

(2) Each wind farm operator will also docket, in the wind farm certificate case, a final written report on a form provided by the board within sixty days after discovery of the incident, unless the wind farm operator:

(a) For good cause shown, demonstrates more time is needed; and

(b) Submits interim reports to the executive director at intervals of not more than sixty days until a final report is docketed.

(C) Each final written report will address:

(1) Cause of the incident;

(2) Date and time the incident occurred and date and time it was discovered;

(3) If the incident involved a turbine, the distance between debris and the wind turbine base;

(4) If the incident involved a turbine, the distance between debris to habitable structures and property lines, and photographs of the debris field;

(5) A narrative description of the incident and actions taken by the wind farm operator, including a timeline of events;

(6) What, if any, damage occurred to the property within the wind farm facility;

(7) What steps were necessary to repair, rebuild, or replace damage to any property within the wind farm facility;

(8) What, if any, personal injury was caused by, or related to, the incident;

(9) What, if any, damage to properties within or adjacent to the wind farm project area was caused by, or related to, the incident;

(10) What, if any, steps were, or will be, taken to prevent future incidents.

(D) Staff investigation and restart

(1) Staff will investigate every incident that results in a report being submitted pursuant to this rule and will complete the investigation within seven days of final written report submittal. Except as necessary for public safety, a wind farm operator should not disturb any damaged property within the facility or the site of a reportable incident until after staff has made an initial site visit.

(2) A wind farm operator will not restart any damaged property within a facility involved in a reportable incident until the wind farm operator provides notification to the board's executive director that the turbine or turbines are ready for restart and such restart is approved by the board's executive director or the executive director's designee, with the decision to approve any restart to be made no later than three days after notification is provided by the wind farm operator that the turbine or turbines are ready for restart.

IV. CONCLUSION

For the reasons above, the Board should grant rehearing on the First and Second Assignments of Error to not apply the Incident Reporting Rule to projects for which a final, non-appealable certificate has already been issued by the Board. Additionally, the Board should grant rehearing on the Third Assignment of Error to confirm that the text of the Incident Reporting Rule, as applicable to new certificates issued after the effective date of the rule, matches the Board's intent as expressed in the November 21 Order, and at a minimum imposes timeframes on Staff's and the Executive Director's obligations under the rule.

Respectfully submitted

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of filing this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 23rd day of December, 2019.

/s/ Michael J. Settineri
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Summary: App for Rehearing of Innogy Renewables US LLC and Hardin Wind LLC electronically filed by Mr. Michael J. Settineri on behalf of Innogy Renewables US LLC and Hardin Wind LLC