

## 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 March 5, 2020

#### I. SUMMARY

{¶ 1} The administrative law judge grants: (1) the petition to intervene filed on behalf of Tom Yingling and Kevin Erf; (2) the petition to intervene filed on behalf of Black Swamp Bird Observatory; (3) the motions for permission to appear pro hac vice filed on behalf of James M. Lynch, Adam N. Tabor, and Michael B. Gerrard; and, (4) the request for Jim and Cathy Limbird to withdraw as intervenors in this proceeding. Further, the administrative law judge schedules a telephonic prehearing conference for March 31, 2020, at 10:00 a.m.

#### 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 298.2 megawatt (MW) wind-powered electric generating facility in Huron, Erie, and Seneca counties, Ohio.

{¶ 5} On January 31, 2019, Firelands filed its application with the Board for a certificate of environmental compatibility and public need to construct and operate a wind-powered electric generation facility (“Project” or “Emerson Creek Project”) in Huron and Erie counties, Ohio. Applicant explained that the information presented in the pre-application notification letter was 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. Firelands stated that the Project would 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 consisted of up to 87 turbine generators, each with a nameplate capacity rating of 4.2 to 4.5 MW which resulted in the Project generating up to 297.66 MW, rather than the 298.2 MW listed in the pre-application notification letter.

{¶ 6} Applicant filed supplements to its application on March 18, 2019, July 10, 2019, September 12, 2019, and October 4, 2019.

{¶ 7} On December 23, 2019, the administrative law judge (ALJ) found that the application, as supplemented, was complete as provided for in R.C. 4906.06. Further, the ALJ ordered that petitions to intervene in the proceeding must be filed by February 6, 2020.

{¶ 8} On February 6, 2020, Tom Yingling and Kevin Erf filed a joint petition to intervene in the proceeding. Also on February 6, 2020, the Black Swamp Bird Observatory (BSBO) filed a petition to intervene in the proceeding. No memoranda contra were filed in response to either of the petitions to intervene.

{¶ 9} On February 10, 2020, motions for permission for James M. Lynch and Adam N. Tabor to appear pro hac vice were filed by Christine Pirik, Esq., counsel for Applicant. No memoranda contra were filed in response to the motions for permission to appear pro hac vice.

{¶ 10} On February 11, 2020, a motion for permission for Michael B. Gerrard to appear pro hac vice was filed by Philip Leppla, Esq., counsel for petitioning intervenors Yingling and Erf. No memoranda contra were filed in response to the motion for permission to appear pro hac vice.

{¶ 11} On February 28, 2020, a notice was filed on behalf of intervenors Jim and Cathy Limbird, who advise that they are withdrawing as intervenors and will not be participating in this proceeding.

**B. *Motions to Intervene***

{¶ 12} Pursuant to Ohio Adm.Code 4906-2-12, an ALJ may grant intervention in a proceeding upon a showing of good cause. Factors considered in deciding whether good cause exists include: 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. *See In re Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010); Ohio Adm.Code 4906-2-12.

{¶ 13} Petitioning intervenors Yingling and Erf seek to intervene based on their status as longtime resident landowners and farmers who have entered into lease agreements with Applicant to participate in the project. As leaseholders to the project, each claim that they will be denied income if the project is not approved by the Board. Further, they claim that their participation as individual and community members that will benefit from approval of the project is unique, and not advanced by any other party currently participating in the proceeding. Finally, each represents that their party participation will not unduly delay the Board's review of the project.

{¶ 14} Petitioning intervenor BSBO seeks to intervene based on its status as an Ohio nonprofit corporation that was formed for the specific purpose of fostering the appreciation, enjoyment, and conservation of birds and their habitats through research, education, and outreach. BSBO claims that 60-70 of its 3,000 members reside in Erie and Huron counties, and that their member activities are potentially impacted by the project. BSBO claims that its bird and bat expertise is unique, and not advanced by any other party currently participating in the proceeding. Finally, BSBO represents that it only intends to participate in the proceeding with regard to issues that affect birds and bats such that its participation will not unduly delay the proceeding.

{¶ 15} The ALJ finds that the unopposed petitions to intervene filed by Yingling and Erf, and BSBO, demonstrate good cause for permitting intervention. Accordingly, both petitions for intervention are granted.

**C. *Motions for Permission to Appear Pro Hac Vice***

{¶ 16} Pursuant to Ohio Adm.Code 4906-2-26, the Board may grant an out-of-state attorney permission to appear before it pro hac vice, subject to compliance with the requirements in paragraph (A)(6) of section 2 of rule XII of the Rules of Government of the Bar of Ohio. The ALJ has reviewed the motions filed on behalf of out-of-state attorneys Lynch, Tabor, and Gerrard, and finds that each satisfies the criteria to appear pro hac vice in matters before the Board. Accordingly, the motions for permission to appear pro hac vice are approved.

**D. *Notice of Withdrawal of Jim and Cathy Limbird as Intervenors***

{¶ 17} Pursuant to an Entry dated June 26, 2019, Jim and Cathy Limbird were approved as intervenors in this proceeding. Pursuant to their filing of February 28, 2020, the Limbirds advise that they are withdrawing as intervenors and will not be further participating in the matter. The ALJ approves the request to withdraw and finds that Jim and Cathy Limbird are no longer intervenors in this proceeding.

**E. Prehearing Conference**

{¶ 18} The ALJ finds that a telephonic prehearing conference shall be scheduled for March 31, 2020, at 10:00 a.m. Counsel for the parties will be provided with additional conference information at a later date.

**III. ORDER.**

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That intervenor status be granted in accordance with Paragraph 15. It is, further,

{¶ 21} ORDERED, That permissions to appear pro hac vice are granted in accordance with Paragraph 16. It is, further,

{¶ 22} ORDERED, That Jim and Cathy Limbird are no longer participating intervenors in accordance with Paragraph 17. It is, further,

{¶ 23} ORDERED, That this matter is scheduled for a telephonic prehearing conference in accordance with Paragraph 18. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Michael L. Williams

By: Michael L. Williams  
Administrative Law Judge

JRJ/hac

**This foregoing document was electronically filed with the Public Utilities**

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**3/5/2020 1:30:05 PM**

**in**

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

Summary: Administrative Law Judge Entry granting intervenor status, granting permission to appear pro hac vice, ordering Jim and Cathy Limbird are no longer participating intervenors and scheduling telephonic prehearing conference electronically filed by Heather A Chilcote on behalf of Michael L. Williams, Administrative Law Judge, Ohio Power Siting Board