

## THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF  
REPUBLIC WIND, LLC FOR A  
CERTIFICATE TO SITE WIND-POWERED  
ELECTRIC GENERATION FACILITIES IN  
SENECA AND SANDUSKY COUNTIES,  
OHIO.

CASE NO. 17-2295-EL-BGN

### ENTRY

Entered in the Journal on April 8, 2020

{¶ 1} Republic Wind, LLC (Republic or Applicant) is a person as defined in R.C. 4906.01.

{¶ 2} 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).

{¶ 3} On November 13, 2017, Republic filed a pre-application notification letter with the Board regarding its proposed windfarm with up to 200 megawatt (MW) electric generating capacity in Seneca and Sandusky counties, Ohio. According to the letter, the proposed site will consist of approximately 35,000 acres of leased land in Adams, Reed, Scipio, and Thompson townships in Seneca County and York Township in Sandusky County.

{¶ 4} On February 2, 2018, as amended on March 27, 2018, December 26, 2018, and June 28, 2019, Republic filed an application with the Board for a certificate of environmental compatibility and public need to construct between 44 and 47 wind turbine generators, each with a nameplate capacity rating of 4.2 MW to 4.5 MW, depending on the final turbine model selected. The total generating capacity of the facility will not exceed 200 MW.

{¶ 5} On May 30, 2018, Republic filed its certificate of service of its accepted and complete application, in accordance with the requirements of Ohio Adm.Code 4906-3-07. On June 25, 2018, Republic submitted the application fee to the Board, pursuant to Ohio

Adm.Code 4906-3-12.

{¶ 6} Pursuant to R.C. 4906.07(A), on July 18, 2018, the attorney examiner issued a procedural schedule in this matter including an intervention deadline of 30 days following the publication of the notice required by Ohio Adm.Code 4906-3-09. Subsequently, the procedural schedule in this matter was amended several times.

{¶ 7} On June 28, 2019, Republic filed a notice of project modifications and project information update, noting turbine model modifications to the facility. In the filing, Republic states that, pursuant to Ohio Adm.Code 4906-3-11(A)(6), the modifications to the turbines do not create further impacts for property owners or within the planned site, and in some cases, result in a reduction of impacts to property owners.

{¶ 8} On July 25, 2019, Staff filed its report of investigation pursuant to R.C. 4906.07(C).

{¶ 9} By Entry dated August 19, 2019, as amended by an Entry on September 12, 2019, the administrative law judge (ALJ) established a new procedural schedule in this matter.

{¶ 10} A local public hearing was held on September 12, 2019. An adjudicatory hearing commenced on October 2, 2019 and concluded on November 25, 2019.

{¶ 11} The parties filed post-hearing briefs on December 23, 2019 and reply briefs on January 13, 2020.

{¶ 12} On March 11, 2020, Staff filed a letter from the Ohio Department of Transportation (ODOT) in this docket. In the letter, ODOT states that it is modifying its earlier determination regarding the Project, which it issued on September 27, 2019, because of a recent court decision. ODOT states that the proposed wind turbine structures will be obstructions under the standards established by 14 CFR Part 77 and have been determined by the Federal Aviation Administration to have an adverse effect on the safe and efficient

use of navigable airspace by aircraft. However, ODOT Office of Aviation's determination is limited by statute to include only impacts to the clear zone, horizontal, conical, primary, approach, and transitional surfaces of airports that have been issued a commercial operating certificate. As such, according to ODOT, none of the proposed wind turbine structures impact the surfaces subject to ODOT determination.

{¶ 13} On March 12, 2020, Republic filed a notice of additional authority with an attached decision from the Franklin County Court of Common Pleas (Franklin County Court). In the notice, Republic states it filed its reply brief on January 13, 2020, and within it, cited *One Energy Enterprises LLC, et al., v. Ohio Dept. of Transp.*, Franklin C.P. No. 17 CV 005513 (March 2, 2020). Republic indicates that at the time it filed its reply brief, One Energy Enterprises LLC's (One Energy) motion for partial summary judgment was pending before the Franklin County Court regarding a complaint One Energy filed against ODOT. On March 2, 2020, Republic states the Franklin County Court issued a decision granting summary judgment as to one count of One Energy's complaint. Because the *One Energy* decision was not available when Republic filed its reply brief, Republic states it is now notifying the Board. A review of the *One Energy* decision indicates that the Franklin County Court held that ODOT's permitting authority under the Ohio Airport Protection Act, specifically R.C. 4561.34, is expressly limited to regulating the following six, imaginary surfaces: clear zone, horizontal, conical, primary, approach, and transitional.

{¶ 14} Upon review of the ODOT letter and the *One Energy* decision, the ALJ finds that a conference should be scheduled for April 15, 2020, at 11:00 a.m., which will be conducted telephonically. The purpose of this conference call is to discuss the potential impacts of the *One Energy* decision in this proceeding. The parties should use the following conference line information to participate:

- Toll-free dial-in number (U.S. and Canada): 866-209-2820
- Conference code: 4172579639

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the parties attend the telephonic conference on April 15, 2020, in accordance to Paragraph 14. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Anna Sanyal

By: Anna Sanyal  
Administrative Law Judge

NW/kck

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

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**Case No(s). 17-2295-EL-BGN**

Summary: Administrative Law Judge Entry scheduling a telephonic conference to be held on 4.15.20 at 11:00 a.m. The parties are directed to call 866.209.2820 and use code # 4172579639. electronically filed by Mrs. Kelli C King on behalf of Anna Sanyal, Administrative Law Judge, Public Utilities Commission of Ohio