

**EXHIBIT A**

**Second Supplement to the  
Staff Report of Investigation**

Republic Wind Farm  
Republic Wind, LLC

Case No. 17-2295-EL-BGN

May 4, 2020

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Mike DeWine, Governor | Sam Randazzo, Chairman

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**In the Matter of the Application of Republic Wind, LLC )  
for a Certificate of Environmental Compatibility and )  
Public Need for a Wind-Powered Electric Generating ) Case No. 17-2295-EL-BGN  
Facility in Seneca and Sandusky Counties, Ohio. )**

**Second Supplement to the Staff Report of Investigation**

Submitted to the  
OHIO POWER SITING BOARD

**BEFORE THE POWER SITING BOARD OF THE STATE OF OHIO**

**In the Matter of the Application of Republic Wind, LLC )  
for a Certificate of Environmental Compatibility and )  
Public Need for a Wind-Powered Electric Generating ) Case No. 17-2295-EL-BGN  
Facility in Seneca and Sandusky Counties, Ohio. )**

Chairman, Public Utilities Commission	Director, Department of Natural Resources
Director, Department of Agriculture	Public Member
Director, Development Services Agency	Ohio House of Representatives
Director, Environmental Protection Agency	Ohio Senate
Director, Department of Health	

To the Honorable Power Siting Board:

In accordance with the Ohio Revised Code (R.C.) 4906.07(C) and rules of the Ohio Power Siting Board (Board), the staff of the Public Utilities Commission of Ohio (Staff) completed its investigation in the above matter and submitted its findings and recommendations in its Staff Report on July 25, 2019 and Supplement to the Staff Report on October 18, 2019, for consideration by the Board. Since that time, new information regarding impacts from aviation have compelled the Staff to supplement that Staff Report.

The findings and recommendations contained in this Second Supplement to the Staff Report include the results of Staff coordination with the Ohio Department of Transportation – Office of Aviation (ODOT-OA).

In accordance with R.C. 4906.07(C) and Ohio Administrative Code (Ohio Adm.Code) 4906-2-05(A), copies of this Second Supplement to the Staff Report have been filed with the Docketing Division of the Public Utilities Commission of Ohio and served upon the Applicant or its authorized representative, the parties of record, and pursuant to Ohio Adm. Code 4906-3-06(C)(5), placed in the main public libraries of the political subdivisions in the project area.

This Second Supplement to the Staff Report presents the results of Staff's investigation conducted in accordance with R.C. Chapter 4906 and the rules of the Board, and does not purport to reflect the views of the Board nor should any party to the instant proceeding consider the Board in any manner constrained by the findings and recommendations set forth herein.

Respectfully submitted,

/s/ Theresa White  
Theresa White  
Executive Director  
Ohio Power Siting Board

## **Background and Purpose**

The Board commenced an adjudicatory hearing regarding the Application of Republic Wind, LLC (Republic or Applicant) on November 4, 2019 and concluded the hearing on November 25, 2019. During that adjudicatory hearing, the Staff Report, Supplement to the Staff Report, and prior ODOT-OA determination letters were admitted into the record. Parties filed initial post-hearing briefs on December 23, 2019 and reply briefs on January 13, 2020. Since that time, new information regarding impacts from aviation have compelled the Staff to submit a second supplement to its Staff Report of Investigation (Second Supplement) to modify and update aviation related conditions.

Notably, on March 2, 2020, the Franklin County Court of Common Pleas issued a decision in *One Energy Enterprises LLC, et al., v. Ohio Depart. of Transp.*, No. 17-CV-005513 (Franklin C.P. March 2, 2020) (*One Energy Decision*). Subsequent to that decision, on March 10, 2020, ODOT-OA issued a modified determination letter pursuant to R.C. 4561.341, which Staff filed with the Board on March 11, 2020.

The purpose of this Second Supplement is to provide Staff's analysis on the aviation related issues and to modify staff's previous recommendations where appropriate.

## **Staff Investigation**

Staff contacted the ODOT-OA during the review of this application (in accordance with R.C. 4906.10(A)(5) and 4561.32) to coordinate review of potential impacts of the facility to airspace navigation.

On March 10, 2020, ODOT-OA issued a modified determination letter pursuant to R.C. 4561.341, which Staff filed with the Board on March 11, 2020. In that letter, ODOT-OA stated that, following the March 2, 2020 *One Energy Decision*, its 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. These surfaces are outlined in 14 CFR Part 77.19 and 77.21 and are clearance areas or perimeters around airports. In its March 10 letter, ODOT-OA advises that none of the proposed wind turbine structures would impact these surfaces.

The Federal Aviation Administration (FAA), after performing its aeronautical study, concluded that: "the proposed construction would not have a substantial adverse effect on the safe and efficient use of the navigable airspace by aircraft or on any air navigation facility and would not be a hazard to air navigation provided the conditions set forth in this determination are met."<sup>1</sup> The FAA has issued determination of no hazard letters for all 50 wind turbine structures with requirements in those letters. Generally, the requirements included proper marking and lighting of the turbines, construction notifications, and alterations to various flight procedures and flight altitudes.

Staff examined the proposed aviation conditions in light of the recently modified determination of ODOT-OA and concluded that certain revisions should be made to the conditions in the original Staff Report of Investigation and Supplemental Staff Report as described below.

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<sup>1</sup> FAA Aeronautical Study No. 2018-WTE-11673-OE at 12 (June 26, 2019).

### *Modification to Condition 52*

Staff finds that Condition 52 of the Staff Report should be revised as follows:

(52) The Applicant shall meet all recommended and prescribed Federal Aviation Administration (FAA) requirements to construct an object that may affect navigable airspace.

Staff recommends this condition to assure the Board that the FAA has reviewed those wind turbines that have 14 CFR Part 77 impacts and that they will comply with related aviation regulations. The ODOT-OA has reviewed the wind farm project and advises that none of the proposed wind turbine structures impact the surfaces under its determination in R.C. 4561.341.

### *Removal of Condition 56*

Staff finds that a tip height restriction on turbine location 3, to avoid interference with the non-directional beacon runway approach at Seneca County Airport, is no longer necessary. Staff has found that the non-directional beacon navigation system can continue to be utilized at Seneca County Airport, but at a higher altitude after installation of the wind farm project as currently proposed.<sup>2</sup> The ODOT-OA has reviewed the wind farm project and advises that none of the proposed wind turbine structures impact the surfaces under its determination. Staff recommends that Condition 56 of the Staff Report be removed.

### *Removal of Condition 57*

The ODOT-OA has reviewed the current wind farm project and advises that none of the proposed wind turbine structures impact the surfaces under its determination. Staff recommends that Condition 57 of the Staff Report be removed.

### *Removal of Supplemental Report Condition 59*

By letter dated August 1, 2019, the Fostoria Metropolitan Airport (Fostoria) manager petitioned the FAA to object to the determination of no hazard letters issued for 12 wind turbines proposed by Republic.<sup>3</sup> Specifically, the Fostoria manager objected that 12 wind turbines would impact the minimum vectoring altitudes for the runway 27 GPS instrument approach procedure, representing a loss of utility for that approach procedure. Fostoria also alleged that there would be a decrease in safety because increased altitude represents more time spent in icing conditions, particularly for Bowling Green State University (BGSU) flight center students.

Staff contacted the FAA and learned that the FAA had sent Fostoria two postcards to inform it of the FAA's public notice circularization process and its opportunity to provide comments to the FAA. The FAA's public notice of this aeronautical study was from 4/22/2019 to 5/29/2019. Fostoria did not submit its comments/objections during that period. The FAA determination of no hazard letters were issued on 6/26/2019 with a deadline of 7/26/2019 to file a petition with the FAA. Fostoria did not participate in the FAA public notice circularization process and late filed

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<sup>2</sup> Newman, Transcript, Vol. VI at 1242:15-23.

<sup>3</sup> "Public Comment of Dave Sniffen, Airport Manager, Fostoria Metropolitan Airport" Case No. 17-2295-EL-BGN, (August 15, 2019).

its petition letter. Fostoria's petition was examined by FAA and found not to meet the criteria in 14 CFR Part 77 and declared it to be an invalid petition. With regards to the icing issue raised in Fostoria's correspondence with the FAA, Benjamin Doyle, consultant with Capitol Airspace Group, testified that there would be no icing concerns. Specifically, the approach altitude would be altered by plus or minus 100 feet. That altered flight path would not create a hazardous environment.<sup>4</sup>

Staff found that the FAA has addressed icing holistically and was aware of the potential safety risk to pilots. To address the matter, FAA previously published Advisory Circular 91-74B entitled "Pilot Guide: Flight in Icing Conditions."<sup>5</sup> This FAA Advisory Circular acknowledges that some aircraft are equipped with de-icing/anti-icing systems and some aircraft are certificated to fly in icing conditions. It also acknowledges that pilots have many tools to account for potential icing conditions such as flight planning, weather notification services, and pre-flight checklists. The Advisory Circular further states that: "If an aircraft is not certificated for flight in icing conditions, each flight should be planned carefully so that icing conditions are avoided."<sup>6</sup> It also confirms the Applicant's testimony that for an aircraft that is not certificated for flight in icing conditions that inadvertently encounters ice, the aircraft should exit the icing conditions and declare an emergency with air traffic control.<sup>7,8</sup>

Further, Staff contacted the BGSU flight center and found that BGSU flight students receive a flight handbook which details all the rules and regulations on when the students can fly including adverse weather conditions. Staff learned that students review this handbook and brief with the Chief Flight Instructor at the beginning of the semester.

Staff recommends that Condition 59 of the Supplement to the Staff Report, filed on October 18, 2019, be removed.

#### *New Recommended Condition 60*

In order that the facility represents the minimum adverse environmental impact and assure that the facility will serve the public interest, convenience, and necessity, Staff recommends the following new condition, as Condition 60:

(60) That at least 30 days prior to the preconstruction conference, the Applicant shall design and hold a training session to inform local aviation stakeholders (including but not limited to the Seneca County Airport, Sandusky County Regional Airport, and Fostoria Metropolitan Airport) of the changes to flight procedures and altitudes outlined in the Federal Aviation Administration (FAA) determination of no hazard letters.

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<sup>4</sup> Transcript, Vol. IV at 899.

<sup>5</sup> FAA Advisory Circular 91-74B, Pilot Guide: Flight in Icing Conditions (2015), [https://www.faa.gov/documentLibrary/media/Advisory\\_Circular/AC\\_91-74B.pdf](https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_91-74B.pdf) accessed 4/29/2020.

<sup>6</sup> Id. at 6.

<sup>7</sup> Id. at 40.

<sup>8</sup> Doyle, Transcript, Vol. IV at 898.

**Recommendation:**

Following a review of the application filed by the Republic Wind LLC, and the record compiled to date in this proceeding, Staff recommends the removal of Conditions 56, 57, 59; modification of Condition 52; and the addition of Condition 60, as follows:

- (52) The Applicant shall meet all recommended and prescribed Federal Aviation Administration (FAA) requirements to construct an object that may affect navigable airspace.
- (60) That at least 30 days prior to the preconstruction conference, the Applicant shall design and hold a training session to inform local aviation stakeholders (including but not limited to the Seneca County Airport, Sandusky County Regional Airport, and Fostoria Metropolitan Airport) of the changes to flight procedures and altitudes outlined in the Federal Aviation Administration (FAA) determination of no hazard letters.