

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 July 13, 2020

{¶ 1} Firelands Wind, LLC (Firelands 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 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, Emerson Creek Wind Farm Project (Emerson Creek), in Huron, Erie, and Seneca counties, Ohio.

{¶ 4} On January 31, 2019, Firelands filed its application with the Board for a certificate of environmental compatibility and public need to construct and operate the Emerson Creek wind-powered electric generation facility (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. Specifically, Firelands states that the Project will 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 consists of up to 87 turbine generators, each with a nameplate capacity rating of 4.2 to 4.5 MW which results in

the Project generating up to 297.66 MW, rather than the 298.2 MW listed in the pre-application notification letter.

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

{¶ 6} By Entries dated December 23, 2019, and December 24, 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 established a procedural schedule in this matter, including a local public hearing to be held on March 18, 2020, and an adjudicatory hearing to commence on April 14, 2020. Additionally, it was determined that motions to intervene would be accepted by the Board up to 30 days following publication of the notice required by Ohio Adm.Code 4906-3-09 or by February 6, 2020, whichever was later. Publication of the notice occurred on January 7, 2020, in the *Sandusky Register* and the *Norwalk Reflector*, newspapers of general circulation in Erie and Huron counties.

{¶ 7} The Board Staff (Staff) filed its Report of Investigation on March 2, 2020.

{¶ 8} On March 5, 2020, the ALJ issued an Entry that granted intervenor status, granted permission to appear pro hac vice, and granted the withdrawal of parties as intervenors in the case. The Entry further scheduled the case for a prehearing conference on March 31, 2020.

{¶ 9} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no

longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 10} On March 11, 2020, the ALJ issued an Entry suspending the procedural schedule in this matter in light of the guidance issued by the Executive Order and the Department of Health. Among other things, the ALJ postponed the local public and adjudicatory hearings and directed that notice of the postponement be issued by Applicant.

{¶ 11} Pursuant to the Entry dated June 1, 2020, a remote access technology prehearing conference was scheduled for June 16, 2020, for the purposes of discussing a new procedural schedule and options for proceeding with hearings through video conferencing or other means. The June 16, 2020 prehearing conference was held as scheduled.

{¶ 12} At this time, the ALJ finds that a procedural schedule in this matter should be reestablished. Accordingly, the local public hearing in this case will be held on Thursday, August 20, 2020, beginning at 3:00 p.m. The adjudicatory hearing will commence on Monday, October 5, 2020, at 10:00 a.m. Due to the continued state of emergency, and given the passage of Am. Sub. H.B. 197, the local public and adjudicatory hearings will both be held using remote access technology that facilitates participation by telephone and/or live video on the internet. In regard to the local public hearing, persons that wish to provide testimony regarding the project or that plan to join the remote access event must register with the Consumer Call Center for the Public Utilities Commission of Ohio (Commission) before 12:00 p.m. on August 19, 2020, by calling 1-800-686-7826 or by using the Board's online comment form at <https://opsb.ohio.gov/wps/portal/gov/opsb/events/emerson-creek-public-hearing>. Testimony to be provided will be limited to five minutes in duration and persons who are interested in testifying must register for the applicable time block from either between 3:00 p.m. to 6:00 p.m., or after 6:30 p.m.

{¶ 13} Interested individuals who wish to attend the public hearing remotely and not offer testimony can do so by calling +1-408-418-9388 and entering access code 129 345 1686. The local public hearing will also be live streamed for viewing at

www.youtube.com/user/PUCOhio. Additional information is available by viewing the Board's web site at <https://opsb.ohio.gov/wps/portal/gov/opsb/cases/18-1607-el-bgn> or by contacting the Commission's Consumer Call Center at 1-800-686-7826.

{¶ 14} Firelands should issue public notice of the rescheduled hearings and the application in this matter. The notice should be published, at least 30 days before the local public hearing, in newspapers of general circulation in those municipal corporations and counties in which the chief executive officer received service of a copy of the application pursuant to Ohio Adm.Code 4906-3-07. The notice should be published with letters not less than ten-point type, bear the heading "Notice of Proposed Major Utility Facility" in bold type not less than one-fourth inch high or 30-point type, and include the following information: the name and a brief description of the project; a map showing the location and general layout of the proposed facility; statement, including the assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is now pending before the Board; a statement indicating that the current hearings were previously scheduled and are now being rescheduled to the established dates; the date and time of the adjudicatory and local public hearings; a statement that the hearings will be conducted by telephone and live video on the internet; and a statement that the public will be given an opportunity to comment on the proposed facility.

{¶ 15} The notice should also state that interested persons that wish to provide testimony regarding the project or that plan to join the remote hearing event must register with the Commission's Consumer Call Center before 12:00 p.m. on August 19, 2020, by calling 1-800-686-7826 or by using the Board's online comment form at <https://opsb.ohio.gov/wps/portal/gov/opsb/events/emerson-creek-public-hearing>. The notice should further indicate that the testimony to be provided will be limited to five minutes in duration and that persons who are interested in testifying must register for the applicable time block from either between 3:00 p.m. to 6:00 p.m., or after 6:30 p.m.

{¶ 16} Individuals interested in providing public testimony will be required to provide their full name, home address, telephone number, and electronic mail address, if available; state that they wish to register for the local public hearing in Case No. 18-1607-EL-BGN; specify whether they plan to join the remote access event by internet or by telephone; and indicate whether they intend to offer testimony. Individuals that plan to attend the remote access event through internet access must have a computer or smart device with a microphone and speakers, an electronic mail address, and reliable internet service.

{¶ 17} For purposes of the local public hearing, the Board will begin hearing testimony at 3:00 p.m. on Thursday, August 20, 2020. Individuals who have registered to testify will be asked to speak beginning shortly after 3:00 p.m., so all those who have registered to testify during the 3:00-6:00 p.m. timeslot should be prepared to speak at that time. The same procedure will occur for the “after 6:30” timeslot, as all persons planning to offer testimony should be prepared to speak beginning at 6:30 p.m. For individuals who are speaking by telephone, the Board’s staff will contact those individuals by telephone when it is time for their testimony and connect them to the public hearing. If access or other issues are experienced during the local public hearing, individuals should immediately use the chat function within WebEx or contact the Board’s legal department at 1-614-466-6843 for assistance.

{¶ 18} If individuals wish to supplement their testimony with an exhibit for the Board’s consideration, a copy of the document, along with a reference to Case No. 18-1607-EL-BGN, must be provided to the Board by August 19, 2020, if possible, but no later than August 28, 2020, by electronic mail to contactOPSB@puco.ohio.gov or by mail to Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215.

{¶ 19} Public comments can be provided in writing on the Board’s website at <https://opsb.ohio.gov/wps/portal/gov/opsb/help-center/contact-us>, by electronic mail to contactOPSB@puco.ohio.gov, or by mail to Ohio Power Siting Board, 180 East Broad

Street, Columbus, Ohio 43215. Written comments should reference the case number for this matter.

{¶ 20} Access information for the local public hearing will be provided to counsel for the parties at their electronic mail address of record and mailed to the pro se intervenors.

{¶ 21} For individuals who have technical difficulties in participating in the local public hearing, an opportunity for public testimony will also be available, at the commencement of the evidentiary hearing, for good cause shown.

{¶ 22} Ohio Adm.Code 4906-2-09(B) provides that the ALJ shall regulate the course of the hearing, including requiring that expert or factual testimony to be offered in Board proceedings be reduced to writing and filed with the Board, according to a schedule established by the ALJ. Accordingly, the ALJ finds that the following procedural schedule should be implemented:

- (a) On or before August 27, 2020, each party shall file a list of issues citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the adjudicatory hearing.
- (b) All expert and factual testimony to be offered by Firelands shall be filed by September 11, 2020.
- (c) All expert and factual testimony to be offered by intervenors and Staff shall be filed by September 21, 2020.
- (d) Any stipulation entered into by the parties shall be filed by September 25, 2020, along with the associated testimony supporting the stipulation.

{¶ 23} A prehearing conference will take place on Friday, September 25, 2020 at 10:00 a.m. EST. The prehearing conference will occur via a remote access technology conference

and will focus on the processes to be utilized relative to the conducting of the evidentiary hearing. The Board will email instructions to the parties for participation in the prehearing conference prior to the event. For those parties that are unrepresented who have not provided email addresses, the Board will provide correspondence to them describing the process for participation in the prehearing conference. Further, anyone interested in attending the prehearing conference as a non-party can access the conference through either <https://bit.ly/18-1607-PH> or calling +1-408-418-9388 and entering access code 129 549 4997. Although non-parties will be able to access the prehearing conference, they will not be able to actively participate.

{¶ 24} The ALJ reiterates that the parties are encouraged to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJ.

{¶ 25} Finally, the ALJ notes that pursuant to the Entry of June 25, 2019, Jeff and Jenny Geary and Thomas and Lori Collins were granted intervention status in this proceeding. On May 29, 2020, counsel for Firelands filed a copy of an email from Jeff Geary indicating that he and his wife have not retained counsel, but they are not representing themselves in this proceeding. On July 7, 2020, Thomas Collins contacted the Board's offices and indicated that he and his wife Lori are no longer interested in participating as intervenors in this matter.

{¶ 26} Based on these representations, the ALJ will consider the aforementioned communications to signify that Jeff and Jenny Geary and Thomas and Lori Collins no longer desire to be intervenors in this case. Unless any of these individuals file a statement within seven days of this Entry to state otherwise, they will be dismissed as parties in this matter.

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That the hearings in this matter be scheduled in accordance with Paragraph 12. It is, further,

{¶ 29} ORDERED, That notice of the application and hearings be published by Firelands in accordance with Paragraphs 14 and 15. It is, further,

{¶ 30} ORDERED, That witness registration occur pursuant to Paragraphs 12, 16 and 17. It is further,

{¶ 31} ORDERED, That a procedural schedule be established in accordance with Paragraph 22. It is, further,

{¶ 32} ORDERED, That a prehearing conference be scheduled in accordance with Paragraph 23. It is, further,

{¶ 33} ORDERED, That Jeff and Jenny Geary and Thomas and Lori Collins be dismissed as intervenors in this matter consistent with Paragraph 26. It is, further,

{¶ 34} ORDERED, That a copy of this Entry be served upon all parties of record.

THE OHIO POWER SITING BOARD

/s/ Jay S. Agranoff

By: Jay S. Agranoff
Administrative Law Judge

MJA/mef

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/13/2020 4:21:30 PM

in

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

Summary: Administrative Law Judge Entry scheduling hearings, ordering that notice of the application and hearings be published by Firelands, ordering that witness registration occur pursuant to the Entry, establishing a procedural schedule, scheduling prehearing conference, and ordering that Jeff and Jenny Geary and Thomas and Lori Collins be dismissed as intervenors electronically filed by Heather A Chilcote on behalf of Jay S. Agranoff, Administrative Law Judge, Ohio Power Siting Board