

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 August 4, 2020

I. Procedural History

{¶ 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 in this docket dated March 10, 2020, from the Ohio Department of Transportation Office of Aviation (ODOT) to the Board Staff (Modified Determination Letter). 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's 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 *One Energy Enterprises LLC, et al., v. Ohio Dept. of Transp.*, Franklin C.P. No. 17 CV 005513 (Mar. 2, 2020) (*One Energy Decision*). In the notice, Republic states it filed its reply brief on January 13, 2020, and within it, cited the *One Energy Decision*. 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} By Entry dated April 8, 2020, the ALJ scheduled a telephonic conference in this matter to discuss the potential impacts of the *One Energy Decision* in this proceeding. During the conference, a procedural schedule was established. Pursuant to this schedule, on May 4, 2020, the Board Staff filed a motion to reopen the proceeding. On May 11, 2020, Seneca County, Adams Township, Reed Township, Scipio Township, and Seneca County Park District (collectively, Seneca County Local Parties) filed a memorandum contra Staff's

motion to reopen the proceeding. On May 19, 2020, Republic filed a memorandum contra Staff's motion and a motion for the Board to take administrative notice of the *One Energy Decision*.

II. Motion to Reopen the Proceeding

{¶ 15} Pursuant to Ohio Adm.Code 4906-2-31, a motion to reopen a proceeding may be filed at any time prior to the issuance of the final order and shall specifically set forth the nature and purpose and shall set forth facts showing why such evidence could not with reasonable diligence have been presented earlier in the proceeding.

{¶ 16} In its motion, Staff requests the reopening of this proceeding for the limited purpose of permitting the parties to supplement the record with additional aviation-related evidence via the filing of an updated Staff Report. Attached to its motion is a Second Supplement to the Staff Report of Investigation. Staff submits that the additional evidence could not have been presented at the time of the hearing in this matter. According to Staff, in its Staff Report filed on July 25, 2019, it referenced that ODOT had issued two letters prior to the issuance of the Staff Report. The first letter was issued on July 18, 2019, following the receipt of the FAA determination of no hazard. Staff explains that relying on ODOT and FAA, it recommended that certain aviation-related conditions become part of any certificate issued for the proposed facility. The second ODOT letter was issued in September 2019 and indicated that the proposed wind turbines will be obstructions consistent with 14 CFR Part 77 and noting that the FAA has determined that they will have an adverse effect on the safe and efficient use of navigable airspace by aircraft. Staff explains that the need for ODOT's September 2019 letter was prompted by concerns raised by Fostoria Metropolitan Airport and receiving clarification of the objections regarding the wind turbines from the Seneca County Airport. Staff explains that, following its receipt of ODOT's September 2019 letter, it issued a Supplement to the Staff Report recommending that two additional conditions become part of the any certificate issued in this proceeding.

{¶ 17} According to Staff, ODOT, in its Modified Determination Letter to the Board,

stated that it was modifying its earlier recommendations due to the *One Energy Decision*. Specifically, ODOT now believes that none of the proposed wind turbine structures impact the surfaces subject to ODOT's jurisdiction for the purpose of making a permitting decision according to R.C. 4561.32(A).

{¶ 18} Staff believes that ODOT's Modified Determination Letter, in combination with the *One Energy Decision*, necessitates the reopening of the proceeding as both did not exist at the time of hearing and when the briefs were filed in this case. In support of its motion, Staff notes that it had previously consulted with both ODOT and the FAA in reaching its recommendations in this case relative to Staff's investigation and deferred to the more stringent recommendations between the two. Staff notes that ODOT's recommendation in its September 2019 Letter directly impacted specific conclusions set forth in the Staff Report, specific certificate conditions proposed in the Staff Report, certain aviation-related testimony, as well as the evidence presented at hearing and addressed in the briefs. According to Staff, inasmuch as it will now only rely upon the FAA's recommendations, Staff will need to update the evidence in this case with respect to Staff's investigation pursuant to R.C. 4906.07, including additional aviation-related evidence, the removal of and modification to proposed conditions in the Staff Report and Supplement, as well as the addition of a new condition to ensure that the Board can make a determination relative to R.C. 4906.10. Staff submits that such an approach will ensure that a full investigation has been conducted based on an accurate and complete record and allow for due process.

{¶ 19} Staff believes that its motion to reopen meets the standards of Ohio Adm.Code 4906-2-31. First, Staff points out that its motion was filed before there was a final order issued. Second, Staff submits that, consistent with R.C. 4906.10, the Board must make a finding and determination with respect to a number of issues, including whether the facility represents the minimum adverse environmental impact, whether the facility will serve the public interest, convenience, and necessity, and whether the facility, after consultation with ODOT, will comply with certain aviation-related regulations. Staff highlights that aviation

issues were previously addressed in the Staff Report and Supplement in Conditions 52, 56, 57, and 59. Staff also points out that its witness Conway and ODOT witness Stains provided prefiled testimony regarding aviation issues. According to Staff, the *One Energy Decision* and the ODOT Modified Determination Letter, which were both issued after the conclusion of the hearing and the filing of briefs in this case may directly alter the above-mentioned conditions and conclusions as they relate to Staff's investigation.

{¶ 20} As reflected in Staff's proposed Second Supplement to the Staff Report of Investigation, Staff recommends removal of Conditions 56, 57, and 59 and the addition of a new Condition 60. With respect to Condition 56, Staff indicates that a tip height restriction on Turbine Location 3 in order to avoid interference with the non-directional beacon runway approach at Seneca Airport is no longer necessary. With respect to Condition 57, Staff notes that ODOT has determined that none of the proposed wind turbine structures impact the surfaces under determination. Staff also proposes that Condition 52 be revised to reflect that the Application shall meet all recommended and prescribed FAA requirements to construct an object that may affect navigable airspace. Staff believes that this condition is necessary to assure the Board that the FAA has reviewed those wind turbines that have 14 C.F.R. Part 77 impacts and that they will comply with related aviation regulations. With respect to Condition 59, Staff recommends that the condition be removed inasmuch as the icing concerns have been investigated and are not an issue. Finally, Staff recommends a new Condition 60 related to Republic conducting required training sessions for local aviation stakeholders in order to inform them of changes to flight procedures and altitudes outlined in the FAA determination of no hazard letters.

{¶ 21} . Additionally, they contend that the *One Energy Decision* has no substantive impact on the materiality of the evidence presented at the hearing. "Seneca Local Parties contend that the attempted modification of OPTS's position, does not change OPTS's position, does not change the evidence that the airports would be negatively impacted by the project." Rather, they assert that Staff's recommended Conditions 52-57 and 59 related

to aviation are intended to minimize the adverse impacts from the Republic Wind Farm that extend outside of the Project footprint and would affect multiple airports.

{¶ 22} Republic agrees with Staff's proposal to modify Condition 52 and the withdrawal of Conditions 56, 57, and 59 of the Staff Report. However, Republic opposes Staff's proposal for a new hearing regarding Conditions 52, 56, 57, and 59. Specifically, Republic does not believe that additional evidence is needed to achieve this goal. From Republic's perspective, the *One Energy Decision* and the Modified Determination Letter address the purely legal issue of whether ODOT lacks jurisdiction to review 14 C.F.R. 77.17(a)(1)-(3) surfaces and that no additional evidence is required.

{¶ 23} According to Republic, no additional hearing is required because the *One Energy Decision* and the Modified Determination Letter serve as sufficient legal basis for Staff to modify/withdraw Conditions 52, 56, 57, and 59. Further, to the extent that there is a hearing, Republic posits that any proceeding that goes beyond the narrow jurisdictional issues raised by the *One Energy Decision* and the Modified Determination Letter would be highly prejudicial. Republic points out that Staff and other parties have already had an opportunity present evidence regarding the potential impacts on aviation.

{¶ 24} With respect to the new evidence set forth in the Second Supplement, Republic submits that this evidence was either presented during the hearing or could have been presented by Staff before the close of the hearing. Specific to the withdrawal of Conditions 56 and 59, Republic opines that the Second Supplement to the Staff Report is not necessary to support the withdrawal. Republic surmises that Staff proposed Conditions 56 and 59 to assist the Board in making its statutorily mandated findings and determinations pursuant to R.C. 4906.10(A)(5). Republic contends that this analysis is unrelated to the legal question addressed in Staff's motion regarding whether ODOT exceeded the jurisdictional limits. Therefore, Republic contends that it is unnecessary to hold a hearing regarding Staff's additional findings that go beyond the scope of ODOT's jurisdiction. Additionally, Republic asserts that there is already sufficient evidence in the record relative to the continued use of

the non-directional beacon approach and regarding the minimal impact of icing conditions on pilots in the project area. Therefore, Republic asserts that there is enough existing evidence to support the withdrawal of Condition 56 without the need to hold another hearing for the purpose of introducing the Second Supplement to the Staff Report. (Memorandum Contra at 10, 11.)

{¶ 25} Similarly, with respect Condition 60, Republic avers that Staff fails to provide any justification for presenting evidence regarding this new proposed condition. According to Republic, the purpose of conditions is to address potential impacts from the proposed project. Republic argues that since the close of the record, there has been no changes in facts regarding potential impacts to aviation that would justify Staff's proposal of a new condition. Rather, Republic claims that the only thing that has changed is that the Franklin County Court in *One Energy*, confirmed Republic's arguments that ODOT exceeded its jurisdiction in this case. Republic also argues that, rather than continuing to rely on R.C. 4906.10(A)(5) and R.C. 4561.32 as it did relative to Conditions 52, 56, 57, and 59, Staff is now proposing Condition 60 under a new legal theory to avoid the jurisdictional flaws of the ODOT July 18, 2019 Determination Letter and the September 27, 2019 Determination Letter. Republic argues that, although Staff is attempting to establish new conditions and new legal theories, there has been no change in the proposed project or new evidence regarding potential impacts that would justify a new condition. Rather, Republic submits that the only change that has occurred is that ODOT and Staff were incorrect regarding the scope of ODOT's jurisdiction. According to Republic, this scenario does not justify a brand-new condition and holding a new hearing regarding the condition, and such a result would be both prejudicial and unfair.

{¶ 26} Republic considers Staff's motion to be a broad invitation to present additional evidence on any aviation issue that arose during the hearing, which Republic believes will result in consideration of issues that go beyond the limited legal issue presented in the *One Energy Decision* and the Modified Determination Letter. Specifically, Republic notes that aviation issues raised at time of hearing include testimony regarding the increase in minimal

flight altitudes and the potential negative impact on pilots due to potential icing concerns, and the potential impact on non-directional beacon approach at the Seneca County Airport. Republic expresses concern that the reopening of the record will provide parties with “additional bites at the apple” relative to issues that have already been litigated. Republic is also concerned that reopening the record will delay any final resolution in this case, especially considering the COVID-19 pandemic.

{¶ 27} Rather than granting Staff’s request to reopen the record, Republic believes that the Board should simply take administrative notice of the Modified Determination Letter and allow briefing limited to the following narrow legal questions: (1) Do the *One Energy Decision* and Modified Determination Letter confirm that ODOT lacks jurisdiction to review 14 C.F.R. 77.17(a)(1)-(3) surfaces? and, if so (2) Must Conditions 52, 56, 57, and 59, which are based on ODOT’s extra-jurisdictional review, be withdrawn by Staff or rejected by the Board? Republic requests that briefs be submitted on an expedited basis so as not to cause prejudice through further delay. In conjunction with its motion to reopen the record in this proceeding, Republic filed a motion requesting that the Board take administrative notice of ODOT’s motion to take administrative notice of ODOT’s Modified Determination Letter.

{¶ 28} Republic asserts that the Board should not allow parties to argue new legal theories to support Conditions 52, 56, 57, or 59 or to relitigate the alleged impacts that the facility will have on aviation. With respect to Condition 60, although Republic opines that Staff has failed to explain how the *One Energy Decision* and Modified Determination Letter justifies a new condition or requires the presentation of additional evidence to resolve a legal issue, it is willing to accept Staff’s proposed Condition 60 in order to avoid additional hearings.

{¶ 29} While Republic would prefer that any additional proceedings be limited to briefing the legal questions pertaining to Conditions 52, 56, 57, and 59, to the extent that the Board determines that a hearing is required, Republic submits that the hearing must be

narrow in scope and only address the new evidence proposed by Staff. According to Republic, the hearing should include the Second Supplement and that Republic and intervenors should be provided with the opportunity for cross-examination on the new evidence presented.

{¶ 30} In support of its recommendations, Republic recognizes that Staff, in accordance with R.C. 4906.10(A)(5) and R.C. 4561.32, contacted ODOT to coordinate review of potential impacts of the facility on aviation. Republic identifies that Conditions 52, 56, and 57 in Staff Ex. 1 were derived based on ODOT's July 18, 2019 Determination Letter. Republic also notes that Condition 59 was derived based on ODOT's September 27, 2019 Determination Letter. Republic states that in its post-hearing briefs, Republic argued that ODOT exceeded the scope of its jurisdiction in its July 18, 2019 Determination Letter and the September 27, 2019 Determination Letter. Specifically, Republic argued that ODOT's jurisdiction is limited to the six imaginary surfaces set forth in R.C. 4561.32 and that ODOT's review of the surfaces listed under 14 C.F.R. 77.17(a)(1)-(a)(3) is unlawful. Republic also notes that at the time that it filed its reply brief in this proceeding, One Energy's motion for partial summary judgment was pending before the Franklin County Court of Common Pleas.

{¶ 31} Upon reviewing the arguments raised relative to Staff's Motion to Reopen the Proceeding, the ALJ finds that while Staff has demonstrated a need to reopen the record in this proceeding, it must be narrow in scope and consistent with the following parameters. In particular, although Staff requests the ability to supplement the record relative to presenting additional aviation-related evidence, any such evidence presented must be directly related to the need to update the record as a result of the issuance of the *One Energy Decision* and the Modified Determination Letter. Additionally, Staff should provide testimony sponsoring the Modified Determination Letter and explaining the impact of the *One Energy Decision* and the Modified Determination Letter on Staff's previously admitted aviation-related testimony, including that of Staff witness John Stains. In support of this determination, the ALJ notes that Mr. Stains filed testimony on behalf of Staff as an ODOT

Office of Aviation employee, which is the same agency that authored the Modified Determination Letter.

III. Motion to Take Administrative Notice

{¶ 32} As stated above, concurrent with its filing of its memorandum contra to Staff's Motion to Reopen the Proceedings in this case, Republic filed a motion to take administrative notice of the Modified Determination Letter. In support of its request, Republic submits that administrative notice should be taken irrespective of the outcome of Staff's motion in order to provide completeness of the record with respect to the issue of whether any of the turbine structures involved in this case impact the surfaces subject to ODOT's jurisdiction.

{¶ 33} Republic submits that the taking of administrative notice is consistent with the three-part test established in *Allen v. Pub. Utilities Com'n of Ohio*, 40 Ohio St.3d 184, 185, 532 N.E.2d 1307, 1309 (1988). Specifically, Republic avers that all parties have knowledge of the Modified Determination Letter due to its filing on the public record. In addition, Republic submits that all parties will have the ability to address the letter. Specifically, as discussed above, Republic proposes that the Board should allow parties to brief the legal issue regarding the impact of the Modified Determination Letter. Pursuant to this approach, Republic believes that no party will be prejudiced by granting of its motion.

{¶ 34} The ALJ notes, as referenced above, that on March 11, 2019, Staff filed a copy of the Modified Determination Letter and that on March 12, 2020, Republic filed a notice of additional authority by attaching the *One Energy Decision*. Based on the determination above regarding the requirement that Staff present a witness sponsoring the Modified Determination Letter, Republic's motion to take administrative notice is moot.

IV. Motion of Local Residents to Reopen Proceedings for Admission of Newly Discovered Evidence

{¶ 35} On June 8, 2020, Local Residents, pursuant to Ohio Adm.Code 4906-2-31(B), filed a motion to reopen the proceedings for admission of newly discovered evidence regarding existence of two new bald eagle nests (the Robinson Nest and the N&F Wildlife Nest) that are located in or near the project area, and the death of a bald eagle struck by a wind turbine blade near Bowling Green, Ohio. Local Residents represent that the Robinson Nest is located outside the project area and five turbine sites are within 2.5 miles of the nest. Local Residents state that the N&F Nest is located inside of the project area, less than 2.5 miles from 15 turbine sites, with six of the turbines being less than one mile away from the new nest and the closest one only a half mile away. According to Local Residents, the nests and bald eagle fatality occurred subsequent to the conclusion of the adjudicatory hearing and, therefore, could not be presented during the proceeding.

{¶ 36} According to Local Residents, it appears, based on Republic's Reply Brief at 56-58, that the Applicant believes that the turbines pose little risk of eagle mortalities. Local Residents reject the out-of-state mortality surveys relied upon by Republic and submit that the eagle death in Bowling Green, Ohio, demonstrates that turbine-related eagle deaths are a real issue relative to the proposed project. Additionally, due to the existence of a firsthand eyewitness account of the incident, Local Residents dismiss the need to wait for the results of a United States Fish and Wildlife Service (USFWS) investigation into the incident. Further, Local Residents contend that rather than waiting for USFWS to complete its investigation, the Board should exercise its authority pursuant to R.C. Chapter 4906 to protect the state's wildlife. Finally, while asserting that Ohio Adm.Code 4906-2-31(B) does not require a motion to identify the manner in which the new evidence will be sponsored, Local Residents represent that they plan to produce a witness to sponsor this information or would be willing to consider a stipulation to admit the evidence.

{¶ 37} Similarly, with respect to the issue of existence of newly discovered eagle nests, Local Residents assert that this information is pertinent to the alleged threat that the proposed project presents to bald eagles due to nesting eagles colliding with turbines located near their nests. Local Residents submit that current information is important for

the Board's consideration. In support of its position, Local Residents note that Republic witness Carr previously testified that the only eagle nest known to be inside the project area was farther than the 1.17-mile inter-nest buffer zone from turbines proposed by USFWS (Local Residents' June 26, 2020 Reply Memorandum at 4 citing Tr. I at 42, and Republic's January 2020 Reply Br. at 56, n. 27). Local Residents also note that witness Shieldcastle opines that the buffer zone should be 2.5 miles (Local Residents' June 26, 2020 Reply Memorandum at 4 citing Local Residents' Ex. 22 at 18). Local Residents aver that the newly discovered nest is closer than 1.17 miles for eight turbine sites and closer than 2.5 miles for 15 turbine sites (Local Residents' June 8, 2020 Motion at Ex. C). Local Residents believe they should not be prohibited from presenting the new nest information, especially since Republic acknowledges that the Project is proposed in an area in which the bald eagle population has proliferated.

{¶ 38} On June 22, 2020, Republic filed a memorandum contra Local Residents' motion to reopen the proceedings. According to Republic, new evidence alone does not constitute good cause to reopen the proceedings. Rather, Republic points out that, pursuant to Ohio Adm.Code 4906-2-31(A) and (B), Local Residents must demonstrate that good cause exists to reopen the proceedings and describe the nature and purpose of the request. Republic opines that Local Residents' motion fails to satisfy these criteria.

{¶ 39} Specific to the issue of the alleged eagle fatality, Republic responds that the scenario is not relevant to the issues before the Board inasmuch as the incident occurred at an unrelated wind facility and is still under investigation by the USFWS. Additionally, Republic points out that Local Residents have simply submitted a media report of the incident and have provided no specificity as to the witnesses that would present the new evidence or the relevancy of this information.

{¶ 40} Relative to the newly built nests in the project area, Republic asserts that the record already contains considerable evidence related to bald eagles and their nests. Republic considers the new information to be merely duplicative of the substantial amount

of evidence already presented at the hearing on these topics. In support of its position, Republic notes that Local Residents have submitted written direct testimony from six of their members regarding their recent observations of eagles and eagle nests in the project area. Republic also believes that the newly built nest is consistent with the testimony of both Local Residents' witness Shieldcastle and Republic witness Kerlinger regarding the proliferation of the bald eagle population in and around the project area and in Ohio in general.

{¶ 41} Additionally, Republic believes that the ability to minimize the potential impacts of the Project on bald eagles can be addressed consistent with Staff's proposed conditions (e.g., Staff Conditions 30 and 40). Republic asserts that there is more than enough evidence in the record for the Board to evaluate the potential impacts of the Project on bald eagles, including whether to adopt Staff's recommended conditions. Republic argues that it would be a dangerous precedent to future Board proceedings if the Board were to reopen the hearing every time a new nest is discovered. Republic submits that such a result could result in a case never ending.

{¶ 42} Republic avers that federal protection for eagles is comprehensive and wind energy projects are subject to industry-specific regulations and compliance programs, including those related to minimizing the impacts of wind projects on avian species, including bald eagles. Republic notes that the Project is and has been subject to federal law protecting bald eagles. Specifically, Republic references the Bald and Golden Eagle Protection Act, 16 U.S.C. §§668-668c, and the USFWS 2012 *Land-Based Wind Energy Guidelines*. Republic opines that the USFWS regulatory framework and oversight will be applicable for any future developments regarding bald eagle activity in the project area.

{¶ 43} Upon a review of the arguments set forth in Local Residents' motion to reopen this proceeding relative to the alleged eagle fatality, the ALJ finds that the motion should be denied. In making this determination, the ALJ notes that the alleged incident occurred in Bowling Green, Ohio, an area that is not a part of the project area under consideration in

this case.

{¶ 44} Upon a review of the arguments set forth in Local Residents' motion to reopen this proceeding relative to the alleged existence of a new eagles' nest, the ALJ finds that the motion should be granted, in part, specific to the N&F Wildlife Nest, which is represented to be located in the project area and less than 2.5 miles away from 15 proposed turbine locations, with 8 of the sites being less than 1.17 miles away from the new nest. In reaching this determination, the ALJ notes that the current record reflects that all turbine locations sited for this project fall outside of the half-mean, inter-nest buffer distance proposed by USFWS (Tr. at 42). Any additional testimony to be presented shall be limited to the significance of the half-mean, inter-nest buffer distance proposed by USFWS, the existence of the N&F Wildlife Nest and its proximity to the proposed turbine locations, as well as the ramifications of the N&F Wildlife Nest with respect to the half-mean, inter-nest buffer distance proposed by USFWS. The ALJ will reach out to the parties via email to ascertain availability for a prehearing conference to discuss the logistics of the reopened proceeding.

{¶ 45} It is, therefore,

{¶ 46} ORDERED, That Staff's motion to reopen the proceeding be granted consistent with Paragraph 31. It is, further,

{¶ 47} ORDERED, That Republic's motion to take administrative notice be considered moot consistent with Paragraph 34. It is, further,

{¶ 48} ORDERED, That Local Residents' motion to reopen the proceeding be granted in part and denied in part consistent with Paragraphs 43 and 44. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Jay S. Agranoff

By: Jay S. Agranoff
Administrative Law Judge

GAP/kck

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in

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

Summary: Administrative Law Judge Entry ordering Staff's motion to reopen the proceeding be granted; ordering Republic's motion to take administrative notice be considered moot; ordering that Local Residents' motion to reopen the proceeding be granted in part and denied in part.

electronically filed by Kelli C. King on behalf of Jay S. Agranoff, Administrative Law Judge, Public Utilities Commission of Ohio