

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the Ohio :
Power Siting Board's :
Consideration of Ohio Adm.: Case No. 19-778-GE-BRO
Code Chapter 4906-4. :

- - -

WEBEX WORKSHOP PROCEEDINGS

before Mr. Michael L. Williams, Administrative Law
Judge, at the Ohio Power Siting Board, called at
10:03 a.m. on Friday, August 14, 2020.

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Friday Morning Session,

August 14, 2020.

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ALJ WILLIAMS: Good morning and welcome, everyone. My name is Michael Williams. I am an Administrative Law Judge in the Legal Department of the Ohio Power Siting Board which I will reference as Board throughout the proceeding today. I have been assigned by the Board to conduct a workshop in Case No. 19-778-GE-BRO which involves the review of OAC rules impacting the manner of reporting and responding to incidents that impact major utility facilities, namely, wind farms.

Due to the COVID -- COVID-19 emergency that remains in effect under Executive Order No. 2020-01(D) which was issued by Ohio's Governor, and consistent with Amended Substitute House Bill 197, today's workshop is being held through Webex, which enables interested persons to witness the workshop and offer comments on the proposed rule adoption by telephone or video on the internet.

Before we get started with the workshop, I would like to address some preliminary issues. First, if you experience technical difficulties during the workshop, we have several options. If

1 your internet connection drops at any point, you can
2 try to join the Webex by video again, or you can
3 participate by phone. If those options are
4 unsuccessful, please call the Board's Legal
5 Department at 614-466-6843 immediately for
6 assistance.

7 Finally, if you merely wish to listen to
8 the workshop using your phone instead of accessing
9 via Webex on the internet, you can listen to the
10 workshop by dialing 1-408-418-9388 and entering
11 meeting No. 129 938 2351 when prompted. More
12 information about the Webex technical help options
13 can be obtained through the chat feature which will
14 be available throughout the workshop. You may click
15 on the chat button at any time to obtain technical
16 assistance or to ask procedural questions during the
17 workshop.

18 The chat feature should not be used for
19 any other purpose such as to offer comments about the
20 proposed rule that is the subject of today's
21 workshop. Please be aware that chats are recorded
22 and should not be considered private. Chats are also
23 not part of the official record for this case.

24 During today's workshop, individuals who
25 have registered to provide comments should be ready

1 to speak when I read their names from the
 2 registration list. Individuals who are commenting by
 3 video will be unmuted by a Board staff member when it
 4 is time for the individual's comments. If you are
 5 providing comments by telephone, a Board staff member
 6 will call you at your phone number when it is your
 7 turn to comment. Please be aware -- please bear with
 8 us as we work to queue up each commenting individual
 9 which may take some time. It may -- it also may
 10 divert our attention at times from what is happening
 11 in the workshop. Again, if this happens, please be
 12 patient and know that we are working hard to ensure
 13 that everyone has an opportunity to participate
 14 today.

15 We ask that you keep your comments to a
 16 reasonable length of time and avoid repetitive
 17 comments. To avoid unnecessary background noise, we
 18 will keep your microphone on mute unless you are
 19 commenting. Again, if you have questions about this
 20 process as the workshop proceeds, please use the chat
 21 function.

22 Heather Chilcote is our event host who
 23 will be overseeing the event on Webex, and Mary
 24 Fischer will be helping to facilitate our workshop by
 25 monitoring the chat function.

1 All right. Now that we've addressed the
2 preliminary issues, let's get started officially with
3 today's proceedings.

4 The Ohio Power Siting Board has assigned
5 for workshop at this time and place Case No.
6 19-778-GE-BRO which is captioned In the Matter of the
7 Ohio Power Siting Board's Consideration of Ohio
8 Administrative Code Chapter 4906-4. My name is
9 Michael Williams, and I am the Administrative Law
10 Judge assigned by the Board to preside over today's
11 workshop. Today's workshop is a further step in the
12 rulemaking process regarding whether modifications
13 should occur to proposed Rule 4906-4-10. A bit of
14 history is in order regarding its current status.

15 In response to weather-related events
16 that involved wind farms and wind turbines, the Board
17 opened this case to consider the adoption of a new
18 rule that addresses procedures for responding to
19 incidents that impact wind turbine facilities.
20 Additionally, the Board considered the proposed
21 revision to its rules to make explicit that
22 economically significant wind farms and major utility
23 facilities consisting of wind power generation adhere
24 to local building codes. After conducting a prior
25 workshop and considering comments and reply comments

in this case, the Board recommended the amendment of OAC 4906-4-09 and the adoption of 4906-4-10 pursuant to orders dated November 21, 2019, and February 20, 2020. Thereafter, the Board has determined that further consideration should be given to Rule 4906-4-10(D), as described in the workshop scheduling entry dated August 7, 2020. At this time, the Board is only interested in comments related to the changes described in Section (D), as described in the attached rule proposal that accompanied the scheduling entry, which generally describe a more detailed requirement for how Board Staff and an impacted wind farm operator must respond to investigating and restarting wind farm operations after a damaging event.

Following today's workshop, the Board Staff, who is attending today's event, will review the comments received and determine whether to recommend any changes to the proposed rule. After Staff's review, the Board will open this case for formal written comment to be filed later in this docket. Once the written comment period is concluded, the Board will consider the adoption of a rule with possible changes to be added to the other Board rules in the Ohio Administrative Code.

I want to stress that today's workshop is your initial opportunity to provide feedback on the consideration of proposed changes to the adoption of the rule as discussed above. Also, nothing said today will be considered binding on any of the interested stakeholders. Binding recommendations will be part of the formal written comment proceeding that will follow today's workshop.

I would also like to emphasize that today's workshop is not a general overview or review of all of the Board's rules found in the Ohio Administrative Code Chapter 4906. The next overall review of the Board's rules is expected to begin late this year or early next year and will be considered in a separate docket. Nor is the purpose of today's workshop to discuss any case or pending proceeding currently before the Board.

This workshop is being transcribed by a court reporter, Karen Gibson of Armstrong & Okey. If you offer comments, please speak slowly and clearly so that the court reporter can accurately reflect your comments for the record. Also if you have prepared a written statement, it would be helpful to provide a copy of that to the court reporter as well, which you can do by e-mailing to the OPSB at

1 contactop -- contactopsb@puco.ohio.gov.

2 Now normally in the context of a
3 workshop, I would simply open up the floor for
4 comments and ask you to come forward, give your name
5 and address, and begin speaking. But due to the
6 virtual nature of this proceeding, we will call you
7 according to the order in which you preregistered in
8 accordance with the instructions in the entry dated
9 August 7, 2020.

10 That's all I have. As we proceed, I'll
11 assume that there are no questions from those who are
12 virtually attending unless Mary Fischer interjects in
13 her role as monitor of the chat function of this
14 hearing.

15 Mary, I'm not seeing you interject, so
16 with that, we will begin with our first commenter who
17 is Mr. Andrew Gohn.

18 MR. GOHN: Good morning. Can you hear
19 me?

20 ALJ WILLIAMS: Yes, Mr. Gohn. Thank you.

21 MR. GOHN: Thank you. Good morning,
22 Judge Williams. My name is Andrew Gohn. I
23 appreciate the opportunity to offer comments today on
24 behalf of the American Wind Energy Association, or
25 AWEA. AWEA is the national trade association for the

1 U.S. wind industry, the largest source of renewable
2 energy in the country.

3 We represent 1,000 member companies,
4 120,000 jobs in the U.S. economy in a nationwide
5 workforce located across all 50 states. AWEA serves
6 as a powerful voice for how wind works for America.
7 Members include global leaders of wind power and
8 energy development, turbine manufacturing, and
9 component and service suppliers.

10 Judge, AWEA thanks the Ohio Power Siting
11 Board for the opportunity to provide additional input
12 on the proposed rules as revised this morning. We
13 have not actively participated in the rule -- in the
14 review of Rule 4906-4-10 to date, but we are glad to
15 add our voice to offer recommendations regarding
16 certain proposed elements of the rule.

17 We greatly appreciate the active
18 engagement of the Board's Staff and their hard work
19 in coming forward with this modified proposal. AWEA
20 agrees with stakeholders who questioned the
21 retroactive application, but we will respect the
22 August 7 guidance limiting this workshop to
23 discussion of the text of the proposed revisions to
24 the rule.

25 Therefore, my comments this morning will

1 focus on two specific issues raised in the proposed
2 revisions. First, in the event of any incident
3 described in Subsection 82 -- Subsection (D)(3) would
4 seem to condition the approval of any facility a
5 restart on verification from a licensed professional
6 engineer that the damaged property has been repaired
7 and that it is safe to restart the damaged property
8 from the proposed rule.

9 Broadening this requirement, however, to
10 allow for verification to be provided by equipment
11 manufacturers as well may better protect public
12 safety because manufacturers are often more familiar
13 with relevant facility equipment and how to ensure
14 safe operation of that equipment.

15 Allowing the use of qualified
16 representatives of equipment manufacturers who
17 specialize in facility equipment and systems can
18 provide the reassurance of expert third-party input
19 on safety considerations in the wake of a reportable
20 incident. Ensuring that wind farm operation
21 specialists maintain that flexibility is also
22 important to avoiding unnecessary costs and ensuring
23 reliable energy to consumers.

24 Second, AWEA recommends modifying
25 Subsection (D)(4) to allow a wind farm operator to

1 restart wind farm property three business days after
2 verifying any necessary equipment repairs rather than
3 the proposed seven calendar days. In cases where the
4 Board sees no good cause to otherwise suspend
5 restart, this change would provide a reasonable
6 amount of time for OPSB Staff to review the final
7 written report and any other materials and identify
8 any issues while ensuring the wind farm operators can
9 get back to providing energy for consumers in Ohio
10 and the region.

11 AWEA appreciates and shares the
12 commitment of OPSB of safe operation of power-
13 generating equipment. We are proud that wind energy
14 continues to be one of the safest ways to generate
15 power, and we appreciate the opportunity to offer
16 comment this morning on this important issue.

17 We thank the Board for your
18 consideration.

19 ALJ WILLIAMS: Mr. Green, before you sign
20 off, I do have a follow-up question. So your
21 suggestion was that in substitution of a report from
22 a licensed professional engineer, that the operator
23 might provide some verification from the equipment
24 manufacturer. Would that report come with any
25 special qualifications, engineering designation, or

1 simply be -- who would it be from at the
2 manufacturer?

3 MR. GOHN: I thank you for the question,
4 Judge Williams. I'm not the subject matter expert on
5 these -- on these safety and facility questions. I
6 will be happy to take your question and report back,
7 but I'm not able to fully answer that question this
8 morning. I'm sorry.

9 ALJ WILLIAMS: I appreciate that and the
10 nature of your appearance here today. That might
11 make sense for presentation during the comment
12 portion of this case.

13 MR. GOHN: Great. Thank you very much.

14 ALJ WILLIAMS: Thank you very much,
15 Mr. Gohn. Have a great day.

16 MR. GOHN: You too.

17 ALJ WILLIAMS: We'll next hear from
18 Mr. Bruce Burcat.

19 MR. BURCAT: This is Bruce Burcat. Are
20 you able to hear me?

21 ALJ WILLIAMS: Mr. Burcat, hear you loud
22 and clear. Thank you.

23 MR. BURCAT: Excellent. My name is Bruce
24 Burcat, spelled B-U-R-C-A-T. I'm the Executive
25 Director of the Mid-Atlantic Renewable Energy

Coalition which we call MAREC. I appreciate the opportunity to offer comments today on behalf MAREC. We are a nonprofit trade association of renewable energy developers including wind, wind turbine manufacturers, and nonprofit organizations committed to promoting use of renewable energy.

MAREC's mission is to improve and enhance the opportunities for renewable energy in numerous jurisdictions in and around the Mid-Atlantic Region including Ohio in order to improve the environment, diversify electric generation portfolios, and boost economic development throughout the region.

MAREC thanks the Ohio Power Siting Board for the opportunity to provide additional input on these proposed rules as revised. We have participated in the review of Rule 4906-4-10 since the proceeding began in 2019. Throughout -- throughout MAREC has articulated a consistent position in any changes to the Board's approach of incident reporting and response for wind farms to provide the clarity and certainty that any business needs to effectively operate in today's economy. We greatly appreciate the active engagement of Board Staff in that ongoing conversation and their hard work in coming forward with this modified proposal.

1 While MAREC continues to believe that
2 this new rule only applies perspectively, we
3 understand the Board's August 7 entry limits -- entry
4 limits the scope of the workshop to discussion of new
5 revisions to these incident reporting and response
6 requirements as is not meant to reopen questions of
7 which resources are subject to these requirements.
8 We, therefore, limit our input today to suggestions
9 regarding how to incorporate commonsense business
10 considerations into these rules while still
11 accounting for the Board's safety goal.

12 MAREC's comments today will focus on two
13 elements of the modified proposal. I think I have a
14 slightly different perspective, but you've heard a
15 couple comments already from the American Wind Energy
16 Association on these. And we were looking at
17 Subsection (D)(3), the requirements for verification
18 by a licensed professional engineer it is safe to
19 restart damaged property after a final written report
20 has been submitted; and Subsection (D)(4), wind farm
21 operator's obligation to wait seven days after
22 submission of the final incident report before
23 restart.

24 In both cases, MAREC believes some
25 relatively minor modifications can make these

1 elements of the proposed rule more workable while
 2 preserving their overall intent and effectiveness.
 3 MAREC recommends that the Board expand subject --
 4 Subsection (D)(3) to allow for verification by a
 5 qualified representative of the equipment
 6 manufacturer in addition to a licensed professional
 7 engineer, essentially permitting an either/or --
 8 sorry about that, either -- either/or option.

9 Currently, it is not common for wind farm
 10 operators to call professional engineers for events
 11 in safety operation facility equipment, but equipment
 12 manufacturers do weigh in on safety considerations
 13 based on their relevant experience, expertise, and
 14 familiarity with the equipment allowing wind farm
 15 operators to continue this latter approach as a means
 16 for complying with the proposed rule could avoid
 17 unnecessary costs and red tape while still offering
 18 the Board the reassurance of expert third-party input
 19 on safety considerations in the wake of a reportable
 20 incident.

21 And with respect to your question to
 22 Mr. Green, I think that's something that could be
 23 addressed with the actual developers on these types
 24 of things who would be the qualified individual or
 25 person -- personnel at one of these companies to

1 provide that certification. If the equipment
2 manufacturer personnel were not in the position to
3 offer relevant expertise, a professional engineer to
4 offer wind facility operators the flexibility to use
5 the right person for the job, indeed most
6 professional engineers are likely to have experience
7 to opine on the safety of a wind turbine and could be
8 deterred from doing so by the prospect of liability.

9 Second, MAREC proposes that Subsection
10 (D) (4) be changed to allow restart of damaged
11 property within three business days rather than seven
12 calendar days after docketing of the final written
13 incident report and safety verification. This time
14 frame mirrors the proposed addition to Subsection
15 (D) (1) and ensures that a wind farm operator will be
16 able to timely resume operation where an incident
17 that triggers the rule turns out to be easily
18 addressed without ongoing safety issues.

19 Ensuring a pathway to an expeditious
20 restart is essential. Allowing three business days
21 for the Board to consider the final written
22 identification of any outstanding problems,
23 especially since Staff will have already had the
24 information regarding the incident based on the site
25 inspection and any interim written reports.

1 Moreover, the Board retains the option to delay
2 restart for good cause if there were outstanding
3 concerns that still needed to be addressed.

4 MAREC believes these two minor
5 adjustments would result in a rule that is more
6 workable while maintaining sensible safety
7 projections. We appreciate the Board's consideration
8 of our proposal, and we thank you for the opportunity
9 to speak today. I look forward to providing further
10 feedback in the interest of moving toward a workable
11 and effective role.

12 Thank you very much.

13 ALJ WILLIAMS: Mr. Burcat, thank you for
14 your comments. Before you dash off, and not
15 surprising, I would like to follow up on the same
16 question I had for Mr. Gohn. I'm able to easily
17 define what a licensed professional engineer is and
18 insert that into a proposed rule. Defining a
19 qualified rep -- representative is obviously a bit
20 more of concern or potentially problematic.

21 So if you have some insight today as to
22 the better definition of a qualified representative,
23 I would hear that. If not, I would again encourage
24 you to make that part of your comments as well.

25 MR. BURCAT: We will definitely make it

1 part of our comments but what I would say is that the
 2 concern of just relying or only relying on a
 3 professional engineer is the fact that they are --
 4 not necessarily have the specific expertise with
 5 regard to wind farm development. So my feeling --
 6 our feeling is that it's really important to have the
 7 experienced person involved in this, and we will
 8 definitely get you that information as to who the
 9 right individual type of person who would provide
 10 that type of certification for -- from the
 11 manufacturer.

12 ALJ WILLIAMS: Thank you, Mr. Burcat.

13 MR. BURCAT: That will be part of our
 14 comments.

15 ALJ WILLIAMS: I appreciate your
 16 response, and I appreciate your time this morning.

17 Quick administrative matter before I
 18 proceed to our next witness, of all the things I read
 19 through today probably one of the most important was
 20 the e-mail address to provide comments if you have a
 21 written transcript or some -- some copy of what you
 22 provided here today. And I think I probably stumbled
 23 through, so I want to highlight that now, and I will
 24 highlight it again hopefully before we conclude today
 25 as well. The e-mail address to use to file a copy of

1 your transcript or your comments today is all
 2 together contactopsb@puco.ohio.gov. Again, that's
 3 contactopsb, no space, nothing in between,
 4 @puco.ohio.gov. So if you've tried to submit
 5 comments and been rejected, it's probably because
 6 yours truly didn't read that very clearly the first
 7 time. We would appreciate your continuing in that
 8 realm.

9 I will proceed to the next witness which
 10 is Ms. Julia Johnson. Ms. Johnson, are you there?

11 MS. JOHNSON: I'm here. Can you hear me?

12 ALJ WILLIAMS: I can, Ms. Johnson, loud
 13 and clear. Thank you. Okay.

14 MS. JOHNSON: Thank you very much for the
 15 opportunity --

16 ALJ WILLIAMS: Ms. Johnson. Ms. Johnson,
 17 I'm sorry. Ms. Johnson, when you went to video, it
 18 got very distorted. Now, I can't hear you.

19 MS. JOHNSON: Can you hear me now?

20 ALJ WILLIAMS: I can hear you now.

21 MS. JOHNSON: Is it clear?

22 ALJ WILLIAMS: It is very clear now.

23 MS. JOHNSON: Okay. My -- my connection
 24 is not the best. So if there's a problem, just let
 25 me know and I will call in on the phone.

1 ALJ WILLIAMS: And maybe -- you're fine
2 now. If it starts to break down, we may turn your
3 video off. That might help us. But, for now, you
4 are doing just fine.

5 MS. JOHNSON: Okay. Thank you.

6 ALJ WILLIAMS: Excellent. Thank you.

7 MS. JOHNSON: My name is Julia Johnson.
8 I reside in Champaign County. My mailing address is
9 Post Office Box 230, Urbana, Ohio 43078.

10 I would like to express my support for
11 the Board's efforts to adopt the rule requiring
12 industrial wind facility operators to file public
13 reports on incidents. Given the history of incidents
14 experienced in Ohio and the lack of transparency
15 surrounding those events, the public has demanded
16 more accountability and assurance that the safety of
17 the community is given the highest priority in siting
18 industrial wind turbines.

19 And because Ohio has preempted local
20 zoning in the governance of these facilities, we must
21 rely on the effective state level protocols. We
22 believe that the rules must require timely reporting,
23 meaningful staff investigation, and authorized
24 restarts of any turbines following a failure.

25 It is deeply concerning to the residents

1 of northwest Ohio that many representatives of the
2 industry have objected to reasonable requirements
3 which they call costly, duplicative, or unnecessary.
4 Also claims that ambiguity in the proposed rules
5 could have an adverse impact on business financing we
6 think are speeches, but we believe these proposed
7 revisions do remove any ambiguity.

8 Recently there -- there was some -- some
9 expression to the Joint Committee on Agency Rule
10 Review that -- that these reporting requirements
11 would -- would harm the financing of wind facilities
12 if there was a period of investigation before
13 restart. And it's absurd to think that communities
14 would prefer to put tax revenue before the safety of
15 local residents.

16 We think three days for an initial site
17 visit by Staff is reasonable. And up to seven days
18 following the docketing of the -- of the incident
19 is -- is reasonable prior to restart. The Board's
20 Amended Rule 4906-4-10(D) provides for a swift and
21 reasonable process that will give the community some
22 assurance that their well-being is protected going
23 forward following a blade shear, ice throw, tower
24 collapse, or other failures such as was experienced
25 at the Timber Road Paulding Wind Farm where a

1 technician in Portland, Oregon, restarted a damaged
2 turbine causing a blade to strike the tower and then
3 throw debris across the field.

4 I believe the turbines in the 2018 Blue
5 Creek incident in Van Wert were Gamesa, but the
6 Timber Road facility's turbines are Vestas as are the
7 Hog Creek turbines in Hardin County. And it was
8 disturbing to read on Tuesday of this very week that
9 Vestas reported a quarterly loss due to extraordinary
10 warranty claims on a considering number of blades
11 causing the company to restate their guidance for
12 2020 expecting a lower profitability than predicted
13 earlier in the year.

14 And the source of the warranty issues was
15 reported to be a high incidence of lightning strike
16 blade damage. Vestas' CEO, Henrik Andersen,
17 reportedly refused to say how many blades were
18 impacted and what models were. Wouldn't we all like
19 to know if any of these models are operating in Ohio?
20 Without incident reports that apply to existing and
21 future utility wind facilities, we may never know.

22 The citizens of northwest Ohio have long
23 complained about the culture of secrecy in the wind
24 industry, and it starts with quiet visits to the
25 community, signed lease agreements that are not

1 timely reported, gag clauses preventing leaseholders
2 from speaking out about adverse impacts,
3 unwillingness to disclose avian mortality rates,
4 claims that safety manual information is
5 confidential, and so on and so on.

6 The proposed -- the Power Siting Board's
7 proposed incident reporting rules are a first step in
8 bringing about a cultural change in the Ohio -- in
9 Ohio with respect to that culture of secrecy.

10 The risk to the public from wind turbine
11 incidents is documented. The people of Ohio have a
12 right to expect their government to maintain
13 protocols that provide for their awareness and
14 safety, and the proposed rules and time frames
15 associated with those rules are reasonable and should
16 be adopted.

17 Thank you.

18 ALJ WILLIAMS: Ms. Johnson, thank you for
19 your comments.

20 Our next witness is Ms. Lauren Kiser.

21 MS. KISER: Good morning. Can you hear
22 me?

23 ALJ WILLIAMS: I can, Ms. Kiser.

24 MS. KISER: Great. Thank you very much
25 for the opportunity to speak today. My name is

1 Lauren Kiser, and I am the Government Affairs
2 Associate for the Eastern Region of EDP Renewables.

3 I want to again thank you for the
4 opportunity to provide comments in response to the
5 Ohio Power Siting Board's consideration of the
6 proposed revision to the Administrative Code
7 4906-4-10.

8 As the first and the largest owner and
9 operator of wind farms in Ohio, EDPR appreciates the
10 chance to offer additional input. We're the fourth
11 largest developer/owner/operator of wind farms in the
12 United States. To date we've invested 700 million in
13 four wind farms in Ohio making us the largest
14 operator in the state with over 390 megawatts
15 operating in Paulding and Hardin Counties. Over the
16 life of the wind farms, they will contribute more
17 than \$200 million to support the communities hosting
18 our projects, their school districts, and their
19 landowner payments.

20 EDPR will offer comments to make minor
21 modifications to the proposed changes in the
22 timelines in Sections (D)(1) and (D)(4) and
23 modification to Section (D)(3) on the required
24 verification documentation.

25 First, we appreciate the Board's

1 willingness to consider changes to the rule as filed
 2 with JCARR. In our opinion and based on our
 3 experience operating projects in Ohio and around the
 4 country, that proposal did not provide sufficient
 5 time bounds needed to prevent unnecessarily prolonged
 6 delays and would have been detrimental to current
 7 projects and potentially render future projects
 8 unfinanceable. Lengthy delays prior to remedy also
 9 do a disservice to our projects' neighbors.

10 The change in (D)(1) including the Staff
 11 visit that will make its initial visit within three
 12 business days of the notice of a reportable incident
 13 is a step in the right direction to prevent undue
 14 delays to repairing any damaged property and getting
 15 on a timely path to restart.

16 However, we remain concerned inclusion of
 17 business days could cause further delays to the
 18 process to repair. Three calendar days excluding
 19 holidays would allow Staff to make their initial site
 20 visit during normal business hours and enable the
 21 operator to timely make the necessary repairs.

22 Second, we believe the restart period
 23 after the final report in Section (D)(4) need not be
 24 a full seven days and again propose a three-day
 25 period for Board review of the final report and

1 verification. This would offer the appropriate
2 amount of time for the Board to review and verify the
3 repairs -- repairs have been carried out
4 satisfactorily and prevent prolonged delays to
5 restart.

6 Some repairs such as addressing damages
7 to collection line failures can be carried out quite
8 quickly, oftentimes within a 24- to 48-hour time
9 period. So requiring the operator to wait three days
10 before the repair can commence, then the time to
11 carry out the repair, and then an additional seven
12 days for review and potential restart will result in
13 significant downtime often leaving a full circuit or
14 more offline and unable to generate electricity and
15 with what benefit to the public.

16 Therefore, we urge the Board to not treat
17 collection line incidents the same as the listed
18 incidents in the same manner, and we believe that the
19 restart period after final report for collection line
20 should be one day to better align the regulation with
21 the reality of responding to such an event given the
22 minimal and controllable public safety risk, the
23 meaningful impact on the operations of the asset, and
24 potential resource impact on landowners.

25 Ensuring appropriate timelines are

important because Ohio's need for electricity does not take holidays or weekends. Any downtime can result in significant potential economic consequences to projects and unnecessarily inhibit owners' ability to meet contractual obligations with their offtakers such as American Electric Power, Amazon Web Services, and Microsoft.

We believe that the above proposed timelines are more appropriate to ensure that the repairs are carried out correctly, the Board has the appropriate time to review and verify while mitigating potential financial risks to projects.

Lastly, we suggest that (D)(3) be changed to premise approval on the completion of the final written report as verification -- as well as verification of the turbine manufacturer, a trusted third party with the best available skill and experience to verify the safe operation of a wind turbine after repair.

In addition, (D)(3) should also include the effects -- flexibility for the operator to show that the facility has been repaired consistent with industry standards, their certificate, and the Ohio Administrative Code. Requiring a professional engineer's approval is at odds with industry and best

1 practices and fails to address the stated concern of
2 the Board's Staff as most PEs are in no position to
3 opine on the safety of the equipment.

4 In our experience the turbine
5 manufacturer is the best -- is best positioned to
6 evaluate and advise on remedies for turbine
7 incidents. The manufacturer will know the ins and
8 outs of the equipment and are the most equipped to
9 assess any and all safety and operational issues
10 better than a different third-party engineer who may
11 not be as familiar with the specifications of the
12 equipment.

13 EDPR takes seriously the obligation to
14 safely operate its wind farms and comply with Ohio
15 laws, regulations, and the terms of our certificates.
16 We have been operating projects in Ohio since 2011
17 and have gained extensive experience in certificate
18 compliance and monitoring with the Ohio Power Siting
19 Board. We've developed a very productive and working
20 relationship with the Board and Staff and know that
21 that will continue.

22 EDPR believes these modifications will
23 not compromise the health and safety of Ohioans or
24 the Board's policy goals and be more workable to
25 continue to bring environmentally and economically

1 beneficial wind development in Ohio.

2 Again, I thank you for the opportunity to
3 speak this morning.

4 ALJ WILLIAMS: Thank you, Ms. Kiser. A
5 couple of quick follow-ups just to make sure I
6 understand. So I understand you wanted to change
7 (D) (1) to substitute calendar days for business days.
8 And (D) (4), what I thought I heard you indicate was
9 that you would like an accelerated three calendar
10 days standard in regard to collection line repairs,
11 or was that in regard to the entirety of the whole
12 package?

13 MS. KISER: Consistent with what AWEA and
14 MAREC said, three calen -- three days for general --
15 the other incidents and then an accelerated timeline
16 for collection lines considering that those can be
17 addressed quite quickly.

18 ALJ WILLIAMS: So the notion would be
19 (D) (4) would be segregated and there would be a three
20 calendar day restart for collection line repairs, and
21 all other repairs would still be subject to a seven
22 day restart?

23 MS. KISER: No, sir. Three days for all
24 as AWEA and MAREC previously mentioned but carving
25 out for collection lines for one day.

1 ALJ WILLIAMS: That was not my
2 understanding of your testimony. So the position
3 would be then within one day of receipt of the report
4 from the manufacturer presumption of restarting on a
5 collection line.

6 MS. KISER: Yes.

7 ALJ WILLIAMS: And then same question in
8 terms of the qualifications of the manufacturer,
9 would something from a sales rep be satisfactory in
10 your opinion? What sort of qualifications should we
11 look for from the manufacturer who would certify the
12 ability to restart?

13 MS. KISER: Sure. So I will double-check
14 again with our operations staff but typically what
15 happens is the manufacturer will send out their
16 engineering and design teams to review the equipment
17 and review that the repairs have been done
18 satisfactorily. The exact qualification levels of
19 those engineers I don't have the answer for you right
20 now, but I will definitely check with the operators
21 and get back with the Board on what that typically
22 is.

23 ALJ WILLIAMS: Thank you. I appreciate
24 that. And again, if you want to file your testimony
25 today, the e-mail address is

1 contactopsb@puco.ohio.gov. Thank you for your time
2 this morning.

3 MS. KISER: Thank you very much.

4 ALJ WILLIAMS: All right. Next scheduled
5 witness was set to be a Ms. Cheryl Mira. Ms. Mira
6 did e-mail Board Staff this morning indicating that
7 she had a conflict and would not be able to appear.
8 She'll certainly be advised pursuant to our next
9 entry regarding the ability to file formal comments
10 and reply comments.

11 As her comment via the e-mail was pretty
12 succinct, I am going to just briefly read that into
13 the record, maybe a little unorthodox, but we are in
14 the virtual world, and I think it's certainly within
15 the realm to put this in the record.

16 Skipping over the introductory, "My
17 opinion is," and this is Ms. Mira, "My opinion is
18 that a fully funded decommissioning plan must be part
19 of the application and must be assessed by the OPSB
20 prior to approval of any solar or wind turbine
21 project. Approval of the project without such a plan
22 puts the local population at risk. This is not a
23 single site generating facility. My opinion is that
24 every wind turbine incident needs to be reported and
25 assessed. Just like other -- other industries every

1 incident needs to be evaluated. The stakes are
2 bigger here. Thank you, Cheryl Mira."

3 So that would be the entirety of the
4 substance portion of her comments and that's now part
5 of today's record.

6 We do have one additional commenter
7 today. Mr. Mike Settineri from the law firm of Vorys
8 did e-mail Board Staff shortly after the cutoff
9 yesterday asking to be granted the ability to provide
10 comment here today. As ordinarily prior to our
11 virtual world, a workshop would involve frankly
12 presenting in person the morning of and informally
13 stepping up to make comments, and as this is a case
14 of first impression where we are conducting this
15 virtually, and subject to a defined cutoff for
16 registration for commenters, and also as we only had
17 four other presenters here today, such that we are
18 not impeding anybody else's ability to comment on the
19 record, the Board is going to grant Mr. Settineri
20 leave to provide comments on a one-time basis.

21 With that, Mr. Settineri, I see you on my
22 screen. Can you hear me?

23 MR. SETTINERI: I can. Hopefully you can
24 hear me.

25 ALJ WILLIAMS: I can. Please begin.

1 MR. SETTINERI: All right. Thank you,
2 your Honor, for the courtesy of being able to speak
3 today.

4 For the record my name is Mike Settineri
5 with the law firm of Vorys, Sater, Seymour & Pease,
6 52 East Gay Street, Columbus, Ohio 43215. I'm
7 appearing today and providing comments on behalf of
8 Hardin Wind, LLC.

9 Today, while my comments will focus on
10 the proposed change to the rule, I'll note that
11 Hardin Wind continues to challenge the retroactivity
12 application of the rules as other commenters today
13 have indicated themselves.

14 So the first thing I want to do today, I
15 guess what I want to do today is walk through the
16 redline. The first comment I think is more of a
17 corrective comment I will flag for the Board and its
18 Staff is part (D)(2) of the rule. That remains in
19 place and that rule, as written today, states, and
20 I'll paraphrase, wind operator will not restart
21 damaged property until the restart is approved by the
22 Board's Executive Director. I believe that (D)(2)
23 should have been stricken from the rule and may be an
24 inadvertent oversight, but I will flag that for Board
25 Staff today.

Continuing on then I want to discuss the verification language that is here, specifically for the licensed professional engineer. And I think other commenters have indicated whether a repair is of the nature that a PE can even opine on. That's the first piece of this.

I think it's also important to note when a PE can take on the verification to again say damaged property has been properly repaired as well as to say whether it's safe to restart the damaged property. I think it's very important for the Board to consider the language and the specificity it's going to insert as to any verification that's required. So, for instance, if I had a professional engineering firm, architectural engineering firm, would I be comfortable providing a guarantee verification that it is safe to restart the damaged property? Would a professional engineering firm be able to do that?

I will note for the Board that professional engineers under Ohio law have ethical obligations. So I will refer the Board and its Staff to Chapter 4733 of the Ohio Administrative Code, specifically Rule 4733-35-04(C). Hopefully I have that cite right. But you'll see there that

1 professional engineers in Ohio are limited as to the
2 certifications, guarantees they can provide. So I
3 wanted to flag that for the Board. I think that's a
4 very important point.

5 Also, in terms of the -- the verification
6 that it's safe to restart, a question whether, again
7 going back to taking on risk and liability, whether
8 that is a type of verification that can be obtained
9 from even a manufacturer. I don't know the answer to
10 that, but I would flag that as a question for the
11 Board to consider.

12 Again, it goes back to the specificity of
13 the verification that you are trying to achieve here.
14 I think the comment that I will provide to the Board
15 in terms of a form of verification, and, remember,
16 the Board and its Staff will have the final report of
17 the incident with the repairs that were made in hand,
18 is to have a verification from the operator itself
19 that the repairs were made and the project is ready
20 and able to operate in compliance with its Power
21 Siting Board certificate. So a much more general
22 verification but, again, we will have the final
23 report. We will have a verification from the
24 operator who has overall responsibility for the
25 project that it is ready -- has been repaired and

1 ready to operate in compliance with its Power Siting
2 Board certificate.

3 The last area I will comment on --
4 actually a couple more but is again just to reiterate
5 the timing in Rule Section (D)(4). Instead of seven
6 days consider whether three business days would be
7 more appropriate. Other commenters have highlighted
8 that. I think the piece that I want to highlight for
9 the Board and Staff three business days ensures that
10 the weekend doesn't get counted against the Staff and
11 its Executive Director when they are reviewing that
12 final report. But again, the difference between
13 seven days and three business days can be significant
14 for a project in terms of getting back up into
15 operation.

16 The last thing I'll just note, and again,
17 I appreciate the opportunity to provide comments
18 today, obviously Hardin Wind reserves the right to
19 comment on any proposed rules, and I also appreciate
20 the Administrative Law Judge's recognition that
21 comments by the parties today are nonbinding.

22 So we -- on behalf of Hardin Wind, we
23 appreciate the opportunity to provide these brief
24 comments to you today. So thank you very much.

25 ALJ WILLIAMS: Thank you. I have a

1 similar question regarding qualifications of what's
2 being reported back to Board Staff. It seemed like
3 you took a little different route. Prior comments
4 focused on getting some sort of a verification from
5 the manufacturer regarding safe to return. It sounds
6 as though you took exception with the term or the
7 notion of safe to restart as well as suggested that
8 the comments or the official opinion would come from
9 the operator and not the manufacturer. Is that a
10 safe understanding of what you conveyed?

11 MR. SETTINERI: Yes. Again, it goes back
12 to the specificity of the verification. The more
13 specific the verification I think the more -- that's
14 more important for the operator to be able to make
15 that verification meaning it's more difficult for a
16 third party to make a more specific verification,
17 especially, for instance, safe to restart.

18 The operator has the -- is operating the
19 project. It is responsible under the certificate for
20 the project; and, therefore, I believe, you know, the
21 operator is the appropriate entity to make that
22 verification. Hopefully that answers your question.

23 ALJ WILLIAMS: It does answer my
24 question. I mean, obviously there's still some
25 concerns regarding the level of expertise and the

1 level of, I would guess, for lack of a better term,
2 investment or deep pockets associated with the
3 manufacturers as opposed to an operator, but
4 certainly we'll take those comments under
5 consideration as we consider whether further revision
6 to the proposed rule is -- is warranted.

7 Do you have an alternative term or notion
8 to the term safe to restart that's in the current
9 proposed rule? Is there different language that you
10 would advance?

11 MR. SETTINERI: Not at this time. But
12 that's a question we can take back during the comment
13 period as well. And again, just keep repeating the
14 specificity -- specificity of the language and the
15 verification, I think, can -- if too specific will
16 cre -- could create delays and that's just my
17 opinion.

18 ALJ WILLIAMS: Okay. Thank you for your
19 comments this morning.

20 MR. SETTINERI: Thank you.

21 ALJ WILLIAMS: Mary, anything in the chat
22 function I should be aware of before I proceed toward
23 closing this?

24 MS. FISCHER: No, but I did put the
25 contactopsb e-mail in the chat for everyone's

1 reference.

2 ALJ WILLIAMS: I will stop reading that
3 into the record then.

4 Okay. With that this concludes those
5 individuals who signed up to provide comments today.
6 The Board appreciates your participation in this
7 workshop. I also thank all those who may have
8 witnessed the workshop either via Webex or over the
9 phone.

10 Again, I want to remind you that
11 regardless of whether you chose to provide comments
12 today, the Board will open this case for further
13 comments, further formal comments, pursuant to a
14 future order. Please continue to follow the docket
15 in this case, as the public is encouraged to
16 participate further in this rule consideration
17 process through the formal comment phase of the case.

18 With that, this concludes today's
19 workshop, and we are adjourned. Thank you, everyone.

20 (Thereupon, at 10:50 a.m., the hearing
21 was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Friday, August 14,
2020, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6496)

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