

In the Matter of the Application of)
Firelands Winds, LLC for a Certificate of)
Environmental Compatibility and Public)
Need to Construct a Wind-Powered Electric)
Generation Facility in Huron and Erie)
Counties, Ohio)

INITIAL POST-HEARING BRIEF OF THE LOCAL FARMERS

Counsel for Local Farmers

1

I. Introduction

Tom Yingling and Kevin Erf (“Local Farmers”) are residents of Bellevue, Huron County, who have signed leases to participate in the Emerson Creek Wind Farm (“Project”). Both are fourth-generation farmers who hope to pass their land down to the next generation. *See* Erf & Yingling (“Local Farmers”) Ex. 1 (Direct Testimony of Tom Yingling) at 2; Local Farmers Ex. 2 (Direct Testimony of Kevin Erf) at 2. Local Farmers view the Project as an opportunity to use their property to generate supplemental income. They also support the Project because it will provide economic benefits to their broader community and expand Ohio’s renewable energy capacity. For the reasons that follow, Local Farmers urge the Ohio Power Siting Board (“the Board”) to adopt the Joint Stipulation and grant a Certificate of Compatibility and Public Need for the Project subject to the conditions set forth in the Joint Stipulation.

II. Facts

Firelands Wind, LLC (“Applicant”) opened this proceeding on October 26, 2018 by filing a pre-application notification letter regarding the project. Board Staff (“Staff”) Ex. 1 (March 2, 2020 Staff Report of Investigation) at 5. The Applicant held a public informational meeting about the Project on November 15, 2018 at the Bronson-Norwalk Conservation League Facility in Norwalk, Ohio. *Id.* The Applicant filed the application for the Emerson Creek Wind Farm with the Board on January 31, 2019. Applicant (“App.”) Ex. 1 (Jan. 31, 2019 Application). The application proposes a 297.66-megawatt wind energy facility located in Erie and Huron Counties. *Id.* at 2. The project area is comprised of approximately 32,000 acres of leased land involving approximately 1,000 parcels. Staff Ex. 1 at 7. The Applicant filed four supplements between March and October 2019. *Id.* at 5-6. On April 3, 2019, the Applicant held a second

informational meeting at the Bellevue Veterans of Foreign Wars facility in Bellevue, Ohio. *Id.* at 5.

On March 2, 2020, Staff issued a Report of Investigation recommending that the Board grant Applicant a Certificate of Compatibility and Public Need (“Certificate”) with certain conditions. *Id.* at 75-82. A public hearing was held on August 20, 2020. Joint Ex. 1 at 2. On September 11, 2020, Applicant filed a stipulation signed by the Applicant, the City of Willard, the Board of Commissioners of Huron County, the Board of Trustees of Richmond Township of Huron County, the Board of Trustees of Norwich Township of Huron County, Local Farmers, and Staff. *See generally id.* The stipulation largely adopted the recommendations made by the Staff report, with some minor modifications. *See id.* at 2-9. At an adjudicatory hearing held from October 5-16, the Administrative Law Judges heard cross-examination of witnesses from Applicant, Staff, Local Farmers and local resident intervenors. *See* Tr. Vol. I-IX. Following the close of the hearing, the Administrative Law Judges set dates for initial and reply briefs arguing for and against the issuance of a Certificate based on information in the record.

III. Standard of Review

The Board’s decision of whether to grant a Certificate for a wind farm is based on the criteria set forth in R.C. 4906.10(A). The Board may not grant a Certificate unless it finds and determines the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline;¹
- (2) The nature of the probable environmental impact;
- (3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;

¹ Because the Project is not a proposed electric transmission line or gas pipeline, this requirement does not apply here.

- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under section 4561.32 of the Revised Code. . . ;
- (6) That the facility will serve the public interest, convenience, and necessity;
- (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Revised Code that is located within the site and alternative site of the proposed major utility facility. . . ;
- (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

R.C. 4906.10(A).

Where, as here, the Board is reviewing a contested stipulation, the Board may place substantial weight on the terms of the stipulation. O.A.C. Rule 4906-2-24(D); *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). The Board has set forth a three-part test for determining whether a stipulation is reasonable, which considers whether 1) the settlement is a product of serious bargaining among capable, knowledgeable parties; 2) the settlement, as a package, benefits customers and the public interest; and 3) whether the settlement package violates any important regulatory principle or practice. *Consumers' Counsel*, 64 Ohio St.3d at 126.

IV. Argument

The record provides ample evidence that the Project meets the criteria for granting a Certificate, including that the Project represents the minimum adverse environmental impact and will serve the public interest, convenience, and necessity. *See* App. Ex. 1-6, 31-46; Staff Ex. 1-9. Additionally, the Joint Stipulation meets the Board's reasonableness test. It is the product of

multiple meetings among capable, knowledgeable parties, including Staff, several local governments, and local intervenors, all of whom were represented by counsel throughout the process. The stipulation will benefit customers and the public interest, and does not violate any important regulatory principle or practice.

Consistent with their interests and priorities, Local Farmers' brief focuses on the nature of the Project's probable environmental impact and whether it will serve the public interest. R.C. 4906.10(A)(2), (6); *Consumers' Counsel*, 64 Ohio St.3d at 126. Specifically, Local Farmers highlight that the Project will advance the public interest by providing local economic benefits and by contributing to addressing climate change through an expansion of Ohio's renewable energy capacity.

A. The Project will benefit the local community economically.

The Project will serve the public interest, convenience, and necessity by generating local economic benefits. *See, e.g., In re the Application of Clean Energy Future-Lordstown*, No. 14-2322-EL-BGN, 2015 WL 5597825 at *17 (Ohio P.U.C. Jan. 1, 2015) (considering direct and indirect economic impacts under R.C. 4906.10(A)(6)). The application and Erica Tauzer's testimony contain evidence of the Project's expected economic impacts through job creation, payments to local governments, and supplemental income to landowners who lease their land to the Applicant. *See* App. Ex. 1 at 35-38; App. Ex. 36. On a statewide basis, the construction of the Project is expected to produce \$62.9 million in total employment earnings and \$170.4 million in total economic output. App. Ex. 36 at 4. Subsequently, each year the Project is operational it is expected to generate approximately \$3.1 million in total earnings and \$10.6 million in total economic output. *Id.* Payment in lieu of taxes ("PILOT") revenues could amount to \$1.8 million to \$2.7 million to local taxing authorities every year. *Id.* In the absence of a PILOT agreement,

the Applicant would pay property taxes to Erie and Huron Counties. Staff Ex. 1 at 34. In the first year, Erie County would receive \$1.3 million and Huron County would receive \$3.1 million. *Id.*

The new jobs and increased revenue to local authorities will make a difference in community members' lives. At the public hearing, for example, Anne Fry testified that throughout 35 years of teaching in the Seneca East Local School District she saw the harmful effects of budgetary constraints on educational opportunities, and felt jealous of colleagues in school districts with major economic development projects. Tr. Public Hearing at 45-46. "We now have that chance with the prospect of wind energy projects bringing hundreds of thousands of dollars to our districts each year." *Id.* at 46. Deb Fritz similarly testified, "[m]y husband and I are landowners and residents in Norwich Township of Huron County for 59-plus years. Our rural community can benefit and prosper from wind energy." *Id.* at 84; *see also* Local Farmers Ex. 1 at 3 ("Anything we can do to create jobs and expand local revenue is a wonderful asset to the community. Extra income coming into schools facilities will also be wonderfully appreciated and directly benefit the kids."); Tr. VI at 810 (Cross-examination of Kevin Erf) ("[O]ver the course of my lifetime I've seen our property taxes continue to go up . . . we have very small, very minimal margins. . . . [T]he tax revenue coming from this might help us either keep our tax burden where it is or lower it.").

The Project will also provide annual lease payments to participating landowners. These payments confer much-needed supplemental income on farmers, including some who struggle to make a living through agriculture alone. For example, Tom Yingling testified,

Wind farms . . . bring outside income into rural farming communities, and allow independent-minded farmers to stay independent by providing an additional source of income. New income allows people to take debt pressure off, and it makes payments easier. Everyone in agriculture is looking for niche income where we can make some extra money. A windmill generating income takes a lot of pressure off the bottom line without requiring a lot of investment. And we still

get to farm the land since a windmill has a small footprint. An extra income stream not related to farming also provides stability in rough times. It would allow some farmers to stay in business, and others to have the next generation continue.

Local Farmers Ex. 1 at 3. In his direct testimony Kevin Erf also explained, “I would like to have a turbine on my land. I see it as another source of income—another crop that we can harvest.”

Local Farmers Ex. 2 at 3; *see also* Tr. Public Hearing at (testimony of Dale Wilson that “[a]s prices for farm commodities continue to be pressured and the cost of our inputs continue to rise, . . . any financial assistance that might be provided by the project would be appreciated”); *id.* at 197 (testimony of Douglas Adams that participating in the Project will allow him to retire without selling his land, and as a result he can keep his farm in his family). The Project’s economic boost to the local community—including its role in sustaining local farmers—will serve the public interest, convenience and necessity.

B. The project will expand Ohio’s renewable energy capacity.

In determining the Project’s “probable environmental impact,” the Board should consider that the Project will contribute to reducing greenhouse gas emissions and mitigating climate change by expanding Ohio’s renewable energy capacity. *See* R.C. 4906.10(A)(2); *see also In re the Application of American Municipal Power-Ohio Inc.*, 06-1358-EL-BGN, 2008 WL 596099 at *8 (Ohio P.U.C. Marc. 3, 2008) (probable environmental impact as related to carbon dioxide emissions was determined “as required by Section 4906.10(A)(2)”). Reducing greenhouse gas emissions is in the public interest because climate change poses grave threats to Ohio. The Fourth National Climate Assessment found that in Midwestern states such as Ohio, “climate change is expected to worsen health conditions and introduce new health threats by increasing the frequency and intensity of poor air quality days, extreme high temperature events, and heavy

rainfalls.”² As explained in Ohio’s most recent Hazard Mitigation Plan, “[t]he fact that climate change is occurring is not disputed and over the past several decades there has been a marked increase in the frequency and severity of weather-related disasters, both nationally and in the state.”³

Climate change presents unique risks to farmers, whose work is disrupted by extreme and unpredictable weather patterns. *See* Local Farmers Ex. 1 at 3 (“Climate change is impacting everything we do every day. Everything is unpredictable, and unpredictability leads to income instability”).⁴ Expanding wind energy in Ohio by granting a Certificate for the Project will contribute to mitigating these impacts over the long term. *See* Local Farmers Ex. 9 at 55-56 (transitioning from fossil fuels to wind energy reduces greenhouse gas emissions and mitigates climate change).

V. Conclusion

The Project will serve the public interest in a number of ways, including by providing local economic benefits and contributing to addressing climate change by increasing Ohio’s renewable energy capacity. Local Farmers hope to participate in the Project in order to ensure that their families, farms, and communities reap those benefits. For these reasons, Local Farmers

² Angel, J., C. Swanston, B.M. Boustead, K.C. Conlon, K.R. Hall, J.L. Jorns, K.E. Kunkel, M.C. Lemos, B. Lofgren, T.A. Ontl, J. Posey, K. Stone, G. Takle, and D. Todey, 2018: Midwest. In *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, pp. 874. doi: 10.7930/NCA4.2018.CH2.

³ Ohio Dep’t of Public Safety & Ohio Emergency Management Agency, *State of Ohio Enhanced Hazard Mitigation Plan* (Feb. 2019) at 2-220, *available at* <https://bit.ly/32lcWrr>.

⁴ *See also* U.S. EPA, *What Climate Change Means for Ohio* (Aug. 2016) (due to climate change, “the state will have more extremely hot days, which may harm . . . corn harvests in rural areas” and “summer droughts are likely to be more severe”), *available at* <https://bit.ly/354W3mx>; U.S. Dep’t of Ag., *Climate Solutions*, <https://www.usda.gov/topics/climate-solutions> (visited Oct. 9, 2020) (“The changing climate presents real threats to U.S. agricultural production.”).

urge the Board to adopt the Joint Stipulation grant the Project a Certificate with the conditions set forth therein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons listed below this 20 day of November, 2020.

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Summary: Brief (Initial) of Local Farmers in Support of the Joint Stipulation electronically filed by Ms. Hillary W. Aidun on behalf of Erf, Kevin Mr. and Yingling, Tom Mr.