

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of :
Firelands Wind, LLC for a Certificate of :
Environmental Compatibility and Public : Case No. 18-1607-EL-BGN
Need to Construct a Wind-Powered :
Electric Generation Facility in Huron and :
Erie Counties, Ohio. :

**REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE OHIO POWER SITING BOARD**

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*On Behalf of the Staff of the
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I. INTRODUCTION

The Board must determine whether the proposed project and associated conditions meet the requirements for a certificate set forth in R.C. 4906.10. It is Staff's opinion that the application, as conditioned by the Stipulation and Recommendation, satisfies those requirements, and should be approved with the specified conditions.

Those conditions ensure not only that all of the R.C. 4906.10 criteria will be met, but that the facility represents the minimum adverse environmental impact, considering the available technology and the nature and economics of the various alternatives, and that it will serve the public interest, convenience, and necessity. Because the Stipulation satisfies the Board's three-part test for reasonableness, the Board should approve the proposed wind project with the recommended conditions, as modified by the Joint Stipulation and Agreement.

II. ARGUMENT

Based upon the detailed information contained in the application and supplements, the Staff's interrogatories and investigation of that information, intervenor discovery, and the evidentiary record, the Staff recommends that the Board find that each criterion enumerated in R.C. 4906.10 has been met.

A. R.C. 4906.10(A)(2) – Nature of Probable Environmental Impact

Staff recommends that the Board find that the Applicant has determined the nature of the probable environmental impact for the proposed facility. Staff further recommends that the Board find that the project complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board include the conditions set forth in the Stipulation and Recommendation.

1. Socioeconomic Impacts

Staff found that the project was not expected to impact population trends or land use in either Huron or Erie County. The facility is expected to only temporarily impact access to some recreational areas, but otherwise not limit their use.

a. *Visual Impact Assessment (Residents' Argument VIII)*

The presence of a wind turbine in a community has a visual impact. The Board has long recognized that, while visual impacts would be reduced to varying degrees by topographical and vegetative screening, the size of turbines limits the extent to which they can be obscured from view.

Residents characterize the project as “inflict[ing] a visual blight on the Residents and the rest of the community.” Resident’s Brief at 40. The fact that turbines can be seen, however, does not mean, as Residents argue, that the project does not represent the minimum adverse environmental impact, or that it does not serve the public interest, convenience, and necessity. The Board has approved numerous wind farm projects, many now operational, all equally visible from home, yards, fields, roads, parks, and businesses. The mere fact that a turbine can be seen, that it flashes a red light at night for safety, is not grounds for rejecting the project. Residents ask the Board to preserve the enjoyment of their perspective while denying the property rights of participating landowners. The law neither requires, nor condones, such a result.

2. Ecological Impacts

Because of the magnitude of this project and the potential impacts in and around the proposed project area, the implementation of mitigation and, when possible, avoidance measures is critical to minimize impacts. Based upon Staff’s analysis, and subject to the Staffs recommended conditions, as modified by the Stipulation and Recommendation, the Staff recommends a Board finding that this criterion has been met.

a. *Karst* (Residents’ Argument II)

Staff believes that the Applicant has complied with the Board’s regulations in providing all of the information required by Ohio Admin.Code 4906-4-08, including water impacts and geological features. The Applicant and Staff acknowledge that the project has the potential to obstruct and contaminate the flow of groundwater that is used

by the area's groundwater wells. They are similarly aware of flooding issues in this area. But residents' argument that the Board cannot issue a certificate for the project without knowing whether the turbines will contaminate water supplies, or cause flooding, is without merit. Rather, it is incumbent on the Board to minimize the likelihood of any such impact and its consequences.

Staff initially notes that, as the Applicant has demonstrated, the majority of the proposed turbine sites are located in the Ohio Shale Formation, which is not prone to karst development. Direct Testimony of Alfred Williams, Applicant Ex. 38 at 6. Furthermore, studies provided by the Applicant demonstrate that Source Water Protection Areas ("SWPA") within the project area have concluded that construction of the facility will not constitute a restricted activity.

Stipulation Condition 7 requires that the project's engineering drawings "shall account for karst topography." Staff submits that this condition is sufficient to ensure that the risks associated with the karst formations in the project area are evaluated and addressed.

b. Threatened and Endangered Species

The Applicant identified threatened and endangered plant and animal species through agency requests, literature review, and field studies. Staff agrees with the assertions made by the Applicant in its Post-Hearing brief that

The Applicant conducted surveys for all species. These survey efforts were, at a minimum, in accordance with or, in most instances, in exceedance of United States ("U.S.") Fish and Wildlife Service ("USFWS") and the Ohio Department of

Natural Resources (“ODNR”) guidelines. Based on these survey results, USFWS and ODNR have not requested additional survey information and have made recommendations, which have been included as conditions in the Stipulation, to ensure minimum probable environmental impact.

Applicant’s Initial Brief at 17.

Numerous avian and bat studies were completed through the Project area and surrounding areas that were designed and completed in accordance with ODNR Protocols, as well as the USFWS and ODNR recommendations. The number of survey locations, and the amount of area surveyed for raptor and eagle nest surveys, passerine migration surveys, breeding bird surveys, and acoustic bat surveys exceeded the effort recommended in the ODNR Protocols, and the survey methods were consistent with the recommendations of ODNR and USFWS.

The Applicant must notify Staff, the Ohio Department of Natural Resources (“ODNR”), and the U.S. Fish and Wildlife Service (“USFWS”) within 24 hours if state or federal listed species are encountered during construction, operation, or monitoring activities. Activities that could adversely impact the identified plants or animals must be halted until an appropriate course of action has been agreed upon by the Applicant, Staff and the appropriate agencies. Numerous other conditions require that the Company take measures designed to minimize impacts on these and other non-threatened species. These measures are consistent with conditions that the Board has approved in the past to ensure that projects have a minimum adverse impact on the environment.

All energy infrastructure projects have environmental impacts. It is not the goal of the siting process to eliminate all negative impacts, for that would be impossible. Nor does the law require such a result. Rather the Board should endeavor to reduce, to minimize, them. Staff respectfully submits that the Stipulation and Recommendation appropriately and adequately ensures that environmental impacts will be minimized.

- ***Bats*** (Residents' Argument IX)

Residents' arguments that the Applicant's bat surveys were flawed were addressed in rebuttal by Company witness Paul Rabie. Dr. Rabie's testimony demonstrated that Residents' witness, Dr. Smallwood's, characterizations of Applicant's surveys were oversimplified, and, in some instances, simply wrong. Direct Testimony of Dr. Paul Rabie, Applicant Ex. 89 at 4. Furthermore, Dr. Rabie testified that Dr. Smallwood's own studies showed significant validation failures, and were "incapable of producing consistent estimates." *Id.* at 6.

The Applicant has obtained a technical assistance letter ("TAL") from the USFWS that will stay in effect for the life of the project. Notwithstanding Residents' criticisms, Staff found that the "operational measures implemented through the implementation of the TAL would protect Indiana bats, northern long-eared bats, and other bat species." Staff Report, Staff Ex. 1 at 42. Staff respectfully submits that the evidence of record demonstrates that the Applicant undertook reasonable efforts to determine the potential effects of the project on bat habitats and populations, and has agreed to conditions acceptable to Staff, ODNR, and the USFWS to minimize those impacts.

The Applicant and Staff acknowledge that impacts to bats are likely to occur, as is

common at many wind farms in the Midwest. Staff Report, Staff Ex. 1 at 41; Applicant's Initial Brief at 21. Federal and state endangered bat species have been documented roosting in and near the project area. Staff Report, Staff Ex. 1 at 40-42. Stipulation Conditions 20 and 21 reduce inherent risk to bats by requiring seasonal curtailment at night near known roost trees and during summer residency period.

In addition, Stipulation Conditions 19 and 23 ensure that the Applicant take appropriate action if risk to wildlife is found to be elevated during construction or operation of the facility, ensuring continued oversight by state agencies for the life of the project. Stipulation Condition 23 refers to a significant mortality event, as defined in the ODNR protocols (greater than 5 birds and bats found at a single turbine or greater than 20 birds and bats found facility-wide during a search period). This trigger value is not a permitted take value, as no such value has been approved for this project. Instead, it is the bar set for determining when the Applicant would have to team with Staff and ODNR to develop a mitigation plan. Therefore, Applicant's comparison of take at this wind facility to others in Ohio, Residents' Post-Hearing Brief at 20, or in the region, Residents' Post-Hearing Brief at 21, is irrelevant. In the event that significant mortality is observed, the Applicant will be required to develop a mitigation plan and management strategy.

The Board's rules do not require that mortality monitoring be filed in the docket or otherwise made public, as Residents demand. Monitoring plans must be submitted to the ODNR Division of Wildlife and Staff for review and approval, as must any mitigation plan. *Id.*

- ***Birds*** (Residents' Argument X and XI)

Residents dedicate a significant portion of their brief to arguing that Applicant's surveys were flawed and insufficient. Staff recognizes that Ohio wind facilities have the potential to impact avian species. Staff Report, Staff Ex. 1 at 40, 43. But as the Applicant noted in its post-hearing brief, annual avian fatalities from terrestrial wind turbines in the United States is biologically insignificant when compared to other sources of mortality, such as collisions with buildings, vehicles, communications towers and power lines. Applicant's Initial Brief at 20. Moreover, the projected mortality rate from the project is comparable to the impacts associated with wind farm projects previously approved by the Board. *Id.*

The ODNR protocols for terrestrial wind energy facilities, established in 2009, strives to balance the rigors of scientific data collection with the feasibility of collecting those data for a regulatory process. These protocols have been applied consistently to all Board wind-powered electric generation applicants and provide insight into the nature of the probable environmental impact. Staff agrees with the Applicant that recommended surveys were consistent with ODNR and USFWS guidance, Applicant's Initial Brief at 22, and meet the requirements for Staff review.

Staff understands that wildlife activity is highly variable spatially and temporally across the state and that data gaps are inevitable in any survey method, including the ODNR protocols. However, the Stipulation conditions regarding wildlife commit the Applicant to work with regulatory agencies, including ODNR, USFWS, and OPSB to ensure minimum adverse environmental impact to wildlife despite data gaps in performed surveys.

Staff disagrees with Residents' assertion that the nature of the probable environmental impact has not been identified. Residents' Post-Hearing Brief at 60. Staff determined there could be direct and indirect effects to wildlife, specifically avian and bat species, and provided recommendations to lower those risks. Staff Report, Staff Ex. 1 at 40-44. Staff's findings determinations are based on mortality results from terrestrial wind energy projects in Ohio and preliminary wildlife surveys conducted by the Applicant. The "actual" impact to wildlife is different than the "probable" impact, which is the requirement of R.C. 4906.10 (A)(2). The stipulated conditions are designed to recognize and mitigate that difference.

- ***Eagles*** (Residents' Argument XII)

As was true of the other wildlife studies performed for the Applicant, the raptor studies and reports for the Project were performed in accordance with the ODNR Protocols, the USFWS Land-Based Wind Energy Guidelines ("USFWS Guidelines"), and the USFWS Eagle Conservation Plan Guidance ("USFWS ECPG"). All eagle surveys, and the Staff Report itself (issued in March 2020), were completed prior to ODNR's most recent bald eagle census. That census, which came out in April 2020, confirmed additional nests.

Bald eagles were delisted by USFWS in 2007, and by ODNR in 2012. They are afforded the same state protection as all other raptors or any other wildlife species. R.C. 1531.02. Stipulation Condition 31 further lowers the risk to bald eagles by requiring additional oversight by USFWS via an Eagle Conservation Plan and, ultimately, a federal Eagle Take Permit which, while allowing for some federally-authorized take at the

facility, would provide greater protections for eagles elsewhere. Additional curtailment buffers around active or new bald eagle nests as suggested by Residents (Brief at 68) may be a component of the Plan.

Residents' argument, *Id.*, that the for minimum environmental impact to wildlife requirement of R.C. 4906.10(A)(3) equals no impact to wildlife is simply untrue. As a package, the purpose of the Stipulated Conditions is to identify potential risks and provide mechanisms to address actual risk appropriately, should it be found unacceptable. R.C. 4906.10 does not, as the Residents falsely claim (Brief at 69), address bald eagles specifically. Ultimately, the responsibility to ensure minimum adverse environmental risk at the Project is borne by the Applicant, and enforced by the Board, ODNR, and USFWS by legal authority and stipulations in the Certificate.

3. Public Services, Facilities, and Safety

The project is to be designed in accordance with applicable safety regulations. Applicant has committed to operating the facility in accordance with all applicable environmental and safety regulations.

a. *Blade Shear* (Residents' Argument III)

Blade shear can pose a danger. But in seeking a larger setback, ostensibly to protect against blade shear, Residents conflate the plain language of the manufacturer's safety manual. Residents' claim that "blade shear can send blade parts flying for 1640 feet," Residents' Post-Hearing Brief at 31, is simply factually wrong and misleading.

The Nordex safety manual provision relied upon by Residents warns that a safe distance of 500 meters (1640 feet) should be maintained “[i]n case of a fire.” Applicant witness Pedder produced a letter, attached to his direct testimony, from Nordex. Direct Testimony of Nate Pedder, Applicant Ex 31, Attachment N-2. While Residents endeavor to limit the import of this letter to instances involving lightning, the letter by its very terms is intended to be read more broadly. Generally, the manufacturer states that its manuals “should not be misinterpreted as guidance for setback distances for wind turbines from homes, roads, and property lines or otherwise.” *Id.* Following the discussion on lightning, Nordex what it characterized as “work instructions regarding emergency operating conditions.” No-one could dispute that a fire in a turbine would certainly be considered an emergency condition. The manufacturer continued, stating that:

The manual referenced does *not* specify any emergency clearance area for *siting* distances for wind turbines. Rather, the language applies *only* in case of and during an episode of an incident *to protect the worker*.

Id., page 2 (emphasis added). Residents simply misinterpret the manufacturer’s clear intent in proposing distances during emergencies, like lightning *and* fire. These “setback” distances have no relation to siting, but are rather guidance for workers for their protection.

Staff witness Bellamy was examined extensively about his knowledge of blade shear incidents in Ohio. In his recollection of five such incidents, he knew of two instances where the blade fell directly to the base of the tower, one where the blade

travelled about 250 feet, and a another where blade pieces travelled 233 meters (approximately 765 feet). Tr. Vol. III at 455-458. Although Staff acknowledges that the various technologies to prevent blade shear have not proven foolproof, they have, in conjunction with the setbacks proposed in this case, been more than adequate to protect the public and property.

b. *Operational Noise (Residents' Argument I)*

Staff respectfully submits that the noise limits recommended in its Staff Report and adopted by the Stipulation are reasonable and consistent with the Board's rules and past practice.

- ***“By five” versus “plus five”***

The Board's rule with respect to noise levels varies by time of day. Simply put, the facility must be operated such that it does not contribute more than the ambient nighttime average sound level (Leq) plus five A-weighted decibels (dBA) from 10:00 p.m. to 7:00 a.m., and, from 7:00 a.m. to 10:00 p.m., the greater of either the ambient nighttime Leq plus five dBA, or the validly measured ambient Leq plus five dBA at the location of the sensitive receptor.

Residents endeavor to parse the language of the rule in a manner that strains the logic of the rule. Is there a difference between “shall not exceed Leq by five” and “shall not exceed Leq plus five”? Staff does not believe so. While Leq plus five dBA is asserted to the level that causes annoyance, the rule speaks primarily in terms of not exceeding Leq plus five dBA. This would mean that the lower end of the allowable daytime noise

level would be the same as the nighttime level. That would be a logical construction of the rule. If, however, the Board interprets the nighttime limit to be “cannot equal Leq plus five,” then it should expressly state so.

In considering this question, Staff believes that it is important to recognize that these limits are intended to represent a “worst case” scenario. In evaluating the potential noise impact, the Applicant’s model used the maximum sound power for each of the proposed turbines. Even so, the highest modeled operational noise impact by any turbine on a non-participating receptor was 48.2 dBA, well below the average nighttime Leq plus five dBA of 49.1 dBA.

- ***Monitors 1 and 6***

The ambient nighttime Leq was measured by a background noise study that used data from nine monitors over two seasons, generally outside of planting and harvest periods. Two of those monitors, Monitor 1 and Monitor 6, were located adjacent to but not within the project boundary. These sites were selected “as representative of a given landscape or soundscape experienced by sensitive receptors in and around the project area.” Direct Testimony of Eddie Duncan, Applicant Ex. 41 at 5. While outside of the project boundary proper, Staff believes that these monitors are sufficiently representative of the project area, and that their use and inclusion was neither improper nor inappropriate.

Residents complaints that Monitor 1 was improper because it was located near railroad tracks and a highway are misplaced. The map in the sound study clearly shows that railroad tracks cross the project area in three separate areas. The fact that train noise

might be included is, in fact, representative of the project area. The same is true of the noise generated by the Ohio Turnpike. The Turnpike actually borders the project area for a distance of nearly 3 miles, and even passes through the project area. The monitor is otherwise located in a dormant agricultural field, far more representative than had the monitor been placed within the boundary but closer to the nearby operating quarry. Furthermore, Monitor 1 was located within 1000 feet of a number of non-participating sensitive receptors that were well within a mile both of the project boundary and a potential turbine site, the very receptors that the rule is intended to protect.

The same observations can be made about Monitor 6. That monitor was also placed near railroad tracks, and was adjacent to Route 4. Route 4 traverses significant stretches of the project area. As was the case with Monitor 1, this monitor was also located within 1000 feet of numerous non-participating sensitive receptors that were well within a mile both of the project boundary and numerous potential turbine sites.

Residents correctly observe that the sound level at any one monitor location is not necessarily representative of the sound level at another location. A diversity of monitoring locations, recognizing factors such as land use, road traffic, distance to roadways, population density, distance to geographic features, and variations in activity levels, allows for a balancing across the project area.

Residents, however, ask the Board to exclude monitors in sites that “are noisier than the rest of the Project Area.” Residents’ Post-Hearing Brief at 5. Because noisy portions of the project area will necessarily increase the average Leq determination for the whole, quieter locales will, Residents claim, suffer “serious adverse impacts.”

Consequently, Residents seek to exclude what they deem to be unfavorable monitor locations. But the Board's rule looks at the project area as a whole, noisy areas and more pastoral ones, rural areas with more urban. Rather than being arbitrary and capricious, the Board's rule is reasonable and practical. To require otherwise would necessitate separate noise limits for each sensitive receptor.

But while Residents assert that Applicant's study is a "ploy" that represents some kind of strategy "to make the existing sound level in the Project Area appear to be louder than it actually is," they offer no evidence of any such nefarious plan. The only evidence of record indicates that these locations were chosen to be representative of characteristics of the project area. Duncan Testimony, Applicant Ex. 41 at 6-7. Mr. Duncan further testified that the selection of these locations was based on best practices in the industry, following guidance from the American National Standards Institute used in other projects approved or under consideration by the Board. Residents arguments to the contrary should be rejected.

- ***WHO guidelines***

The Board has customarily and routinely approved certificates with conditions that limit noise to no greater than 5 dBA above the ambient Leq. This has been true regardless of what the ambient Leq is determined to be. Residents point to no instance where the Board has rejected this standard, now incorporated in its rules. Nor do Residents point to any instance in the past decade where the Board strictly adhered to the guidelines proposed by the World Health Organization. As recently as two years ago the Board reaffirmed conditions with this restriction where the ambient Leq had previously been

determined to be 42 dBA.¹ As recently as 2016, the Board reaffirmed conditions with this restriction where the ambient Leq had previously been determined to be 47.3 dBA.² The Board has consistently refused to adopt the WHO limits advocated by Residents, and should not do so here. The 44.1 dBA Leq determined in this case is consistent with Leq levels in other cases approved by the Board.

c. *Shadow Flicker* (Residents' Argument IV)

Applications rarely, if ever, satisfy the statutory siting scheme and Board rules implementing those statutes. While the Board is constantly endeavoring to ensure that projects are fully compliant with its rules, contingencies, both known and unknown, require that certificates be granted subject to a variety of conditions. Violation of those conditions has consequences for operators. Complaint procedures, both formal and informal, exist to resolve disputes and ensure compliance with conditions.

Residents are once again wrong when they assert that a “future promise to design its facility in a manner that complies with legal requirements does not satisfy the Board’s rules.” Residents’ Post-Hearing Brief at 32. They make this claim because the project as proposed would exceed the Board’s allowable exposure to shadow flicker. Tr. Vol. III at 463. Staff and the signatory parties have recommended that the certificate, if granted,

¹ *In the Matter of the Application of Hardin Wind LLC for a Fifth Modification to its Certificate Issued in Case No. 13-1177-EL-BGN, Case No. 17-2108-EL-BGA (Order on Certificate) (Mar. 15, 2018) at ¶38.*

² *In the Matter of the Applications of Hog Creek Farm, LLC for Amendments to its Certificates to Install and Operate Wind-Powered Electric Generation Facilities in Hardin County, Ohio and Request to Merge Operating Authority for the two Certificates, Case Nos. 16-1422-EL-BGA et al. (Order on Certificate) (Nov. 29, 2016) at 11.*

should be conditioned such that “shadow flicker impacts will not exceed 30 hours per year at any non-participating sensitive receptor.” Condition #34. Such a design would satisfy the Board’s requirements. Ohio Admin.Code 4906-4-09(H)(1). In addition, those rules specifically provide that “[a]fter commencement of commercial operation, the applicant shall conduct further review of the impact and possible mitigation of all project-related shadow flicker complaints through its complaint resolution process.” Ohio Admin.Code 4906-4-09(H)(2).

Residents’ argument that the Applicant’s modeling was inaccurate due to using an “unfair” input assumption is without basis. The use of a square meter area located a meter above the ground is not unreasonable. While Residents are correct that “no house or yard is one square meter in size,” Residents’ Post-Hearing Brief at 33, neither is there a “standard” house or yard dimension that could be universally applied. Nor does the Board’s rule require such a standard. It merely requires that a “non-participating sensitive receptor,” otherwise undefined, not be exposed to more than 30 hours of shadow flicker per year. To the extent that any such receptor, regardless of its size or dimensions, might experience excessive shadow flicker, the Applicant has a duty to mitigate that exposure.

But even this is unacceptable to Residents. They claim that shadow flicker “can easily be prevented” in total with an insignificant loss to the Applicant. Residents’ Post-Hearing Brief at 34. But the very insignificance that purports to justify their position highlights the reasonableness of the Board’s standard. If 30 hours a year constitutes only 0.003% of a turbine’s potential operation, then it equally represents a mere 0.003% of a

non-participating receptor's potential impact. It is incredulous that Residents argue that such nominal impact is anything but minimal in nature.

d. *Communications (Residents' Arguments VI & VII)*

The Staff Report stated that the Applicant recognized that the project is expected to cause impacts to television reception. Staff Report, Staff Ex. 1 at 54. As a result, Staff recommended that any certificate issued include the following condition (#38):

All existing licensed microwave paths, and licensed communication systems shall be subject to avoidance or mitigation. The Applicant shall complete avoidance or mitigation measures prior to commencement of construction for impacts that can be predicted in sufficient detail to implement appropriate and reasonable avoidance and mitigation measures. After construction, the Applicant shall mitigate all observed impacts of the project to microwave paths, and licensed communication systems within seven days or within a longer time period acceptable to Staff. Avoidance and mitigation for any known point-to-point microwave paths, and licensed communication systems shall consist of measures acceptable to Staff, the Applicant, and the affected path owner, operator, or licensee. If interference with an omni-directional or multi-point system is observed after construction, mitigation would be required only for affected receptors.

The signatory parties accepted this recommendation in the Stipulation and Recommendation.

Residents complain that this condition does not “specifically state that Firelands must pay for monthly subscription fees for cable or satellite television service if such a mitigation measure is necessary.” Residents’ Post-Hearing Brief at 39. This may a course of mitigation that the Applicant may choose. If so, this may be a reasonable expectation.

Indeed, Staff witness Conway acknowledged that paying for such a service could be required “if it’s determined that it’s an appropriate and reasonable avoidance or mitigation measure.” Tr. V at 711.

This does not mean, however, that the Board should require payment of subscription cable services as part of the condition. As Mr. Conway further noted, Staff agreed with the Applicant’s proposal to investigate methods of improving television reception, and that any appropriate and reasonable measure – and not solely subscription cable service – would satisfy the condition. *Id.* at 708-709. It may not be necessary in every, or indeed any, circumstance to resort to subscription cable service. The condition gives the Applicant a reasonable opportunity to determine the best means of redressing the impact. Requiring a specific resolution is simply unnecessary.

Residents further ask the Board to extend Condition #38 to all real-time kinematic GPS locator (“RTK”) systems. Residents’ Post-Hearing Brief at 40. The evidence of record indicates that there is one farmer affected by the project who uses an RTK system. Although Mr. Wensink is a party to this case, he did not testify. Nor did Residents offer any testimony of evidence that RTK systems are adversely affected by wind turbines.

Company witness Evans testified that, in his opinion, “wind turbines are unlikely to cause adverse operational impacts to RTK GPS locator systems.” Direct Testimony of B. Benjamin Evans, Applicant Ex. 44 at 4. On examination, Mr. Evans testified that he was unable “to find anything which said that RTK systems were adversely affected by wind turbines.” Tr. Vol. III at 410.

Even if the project were to impact Mr. Wensink's RTK system, and there is absolutely no evidence of record that it either would or could, Condition #38 would require the Applicant to provide appropriate and reasonable mitigation. Applicant witness Evans acknowledged that Mr. Wensink's system is licensed by the Federal Communications Commission. Tr. III at 425. Condition #38 requires that "the Applicant shall mitigate all observed impacts of the project to . . . licensed communication systems . . . consist[ing] of measures acceptable to Staff, the Applicant, and the affected . . . licensee." The condition adequately protects Mr. Wensink, and no further modification of the condition is necessary.

B. R.C. 4906.10(A)(3) – Minimum Adverse Environmental Impact

As stated in the Staff Report, Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact and therefore complies with R.C. 4906.10(A)(3). Staff Report, Staff Ex. 1 at 58-59.

As explained in the Staff Report, the facility was designed to minimize potential impacts. The proposed facility is consistent with regional development plans, and would not significantly impact agricultural production. The Applicant has executed a programmatic agreement (PA) with the Ohio Historic Preservation Office (OHPO). That agreement contains a commitment for the Applicant to mitigate impacts to whatever may be discovered during planned archeological and architectural fieldwork. Tr. Vol. V at 730. The Applicant has committed to using horizontal directional drilling (HDD), with a frac-out contingency plan, to install the underground electric collection cable. It has

committed to coordinate with the U.S. Fish and Wildlife Service and the Ohio Department of Natural Resources on minimizing wildlife impacts. It will maintain minimum required setbacks unless appropriate waivers are obtained. Safety control technologies will be employed to minimize the potential for blade shear and ice thrown. It has committed to minimizing noise and shadow flicker effects. Staff Report, Staff Ex. 1 at 57-58.

Although the project would result in both temporary and permanent impacts, Staff concluded, based on the low potential for adverse impacts, along with Staff's recommended conditions, that there would be low potential to impact land use, cultural resources, streams, wetlands, transportation, and communications. Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact. The Board should find that this criterion has been satisfied.

C. R.C. 4906.10(A)(4) – Electric Grid

The Board must determine that the proposed electric facilities are 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 facilities would serve the interests of electric system economy and reliability. As Staff noted in its Brief, PJM analyzed the bulk electric system (BPS) with the facility interconnected to the BPS, for compliance with NERC reliability standards and PJM reliability criteria. The PJM studies indicated that only one reliability violation, easily resolvable, would occur during a multiple contingency condition. The intermittent nature of wind as an energy source does not,

contrary to Residents' claim, thereby make it "unreliable" for purposes of the statutory criterion.

The facility would provide additional electrical generation to the regional transmission grid, would be consistent with plans for expansion of the regional power system, and would serve the interests of electric system economy and reliability. Staff recommends a Board finding that this criterion has been met.

D. The Joint Stipulation and Recommendation

Residents addressed none of the criteria that the Board has used to evaluate stipulations. Staff respectfully submits that the Joint Stipulation here satisfies these reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

III. CONCLUSION

Staff has concluded that the proposed project would introduce both temporary and permanent impacts on the surrounding community. After an exhaustive investigation, the Staff has developed a number of conditions that would minimize environmental and other impacts to the project area. To the extent that those conditions were modified by the Joint Stipulation, Staff concurs in those modifications, and urges the Board to adopt them as proposed. Additionally, Emerson Creek's proposal faces close scrutiny in related permitting cases before various federal and state agencies. It is expected that, if granted, these permits would result in additional conditions and requirements upon the Applicant.

Based upon the foregoing, the Staff believes that the record in this case supports an affirmative Board finding on each of the criteria in R.C. 4906.10. The Staff recommends that, if a certificate is issued to applicant for this project, the Board require applicant to comply with all of the recommended conditions contained in the Joint Stipulation.

Respectfully submitted,

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*On Behalf of the Staff of the
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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief, submitted on behalf of the Staff of the Ohio Power Siting Board, was served by regular U.S. mail, postage prepaid, hand-delivered, or delivered via electronic mail, upon the following parties of record, this 4th day of December, 2020.

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