

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **HARDIN**)
WIND ENERGY LLC for a Certificate to Site a)
 Wind-Powered Electric Generation Facility in)
 Hardin County, Ohio)

Case No. 09-479-EL-REN

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MOTION FOR WAIVERS

Applicant, Hardin Wind Energy LLC, pursuant to Ohio Administrative Code ("OAC") Rule 4906-01-03 and Rule 4906-7-12(C), respectfully moves the Ohio Power Siting Board ("Board") to grant the following waivers on an expedited basis:

- (1) From the one-year notice period as set forth in Ohio Revised Code Section ("R.C.") 4906.06(A)(6);
- (2) From providing an extensive site selection study to the extent that Applicant is not able to describe all the specific information listed in the site selection criteria as set forth in OAC Rule 4906-17-04(A); and
- (3) From filing Applicant's PJM system impact studies along with the application as set forth OAC Rule 4906-17-05(D)(2), and instead allow Applicant to late-file it immediately after it has been received.

Further support for these waiver requests is set forth in the Memorandum in Support below.

MEMORANDUM IN SUPPORT

I. BACKGROUND

Hardin Wind Energy LLC ("Applicant") is a subsidiary of Invenergy Wind Development LLC, a leading clean energy company focused on the development, ownership, operation and management of large-scale electricity generation assets in the North American and European markets. As one of the top five wind energy developers in North America (based on projects built in the last several years), Applicant's parent company is in the process of expanding its

portfolio of clean and renewable energy projects in North America by, among other measures, developing wind energy projects. Currently, Applicant's parent has more than \$1.5 billion invested in wind energy projects, resulting in more than 1200 MW of wind power being in operation and 300 MW in late-stage construction.

Expanding its wind operations into Ohio, Invenergy Wind Development LLC (through its affiliate, Hardin Wind Energy LLC) plans to submit an application to the Board in the near future for a Certificate to construct and operate a 300 megawatt wind generation facility to be located in Hardin County, Ohio (known as the "Hardin Wind Farm"). The proposed Hardin Wind Farm will consist of either 120 turbines, each with a 2.5 MW name-plate capacity, or 200 turbines, each with a 1.5 MW nameplate capacity, manufactured by General Electric,¹ and associated infrastructure (i.e. access roads, construction staging areas, operations and maintenance facilities). The wind turbine array will be spread across approximately 23,000 acres of leased land in Hardin County, located in portions of six (6) primarily agricultural townships (Lynn, Cessna, Marion, Roundhead, McDonald, and Taylor Creek). The permanent footprint of the Hardin Wind Project will be approximately 1 acre per wind turbine (including access roads and cabling regardless of the type used).

Based upon the unique nature of wind generation facilities, Hardin Wind Energy LLC is seeking waivers from certain requirements of R.C. 4906.06 and the new OAC Chapter 4906-17 governing wind applications. Applicant emphasizes, that assuming the Board grants its waiver requests, the application will contain information consistent with data that Invenergy entities have submitted in other states and, even more importantly, that it is sufficient for the Staff to recommend, and for the Board to find, that its application merits certification.

II. EXPEDITED RULING – OAC Rule 4906-7-12(C)

A ruling on this Motion is required in order for Applicant to complete an application in conformance with the applicable requirements in OAC Chapter 4906-17. Applicant plans to file its application at the beginning of July 2009. Meeting this filing date is necessary to allow Applicant to begin construction by not later than the fourth quarter of 2010 so that the project can commence operation in 2011. There has been widespread publicity about the impetus in the State of Ohio to promote wind power as a means to reinvigorate Ohio's economy.² Governor Strickland has emphasized the need for rapid development of the wind resources in Ohio and has sought to speed the regulatory process to put wind generation on line.³ Aware of this impetus, Applicant is developing the Hardin Wind Farm as an alternative energy resource to be in operation as soon as possible. Applicant plans to commit for use by Ohio utilities, power generated from the Hardin Wind Farm in 2011, an ambitious, but achievable schedule. However, in order to make this commitment, Applicant must be assured that the Board process will proceed on an expeditious schedule that supports the completion of its required nine to twelve-month wind farm construction period in 2011.

As set forth in this waiver request, and as will be evident in the application itself, Applicant has conducted the requisite analyses and studies⁴, obtained the necessary site commitments, and pre-ordered wind turbines and related equipment so that Applicant can meet

¹ The General Electric 2.5 MW xl wind turbine is being introduced to the market soon and if economic considerations are acceptable, Applicant will use this wind turbine. If the 2.5 MW xl wind turbine is not available or economically viable, however, Applicant will use the 1.5 MW xle wind turbine.

² Politicker.com, December 11, 2008 at www.politicker.com/ohio/1783/stickland-touts-component-parts-manufacturing-wind-energy-conference; see related article, *Husted Blasts PUCO Delay on Electricity Benchmarks*, Gongwer Statehouse News, March 24, 2009.

³ *Agreement Signed to Speed Wind Power Development, Establish Process to Protect Natural Resources*, May 8, 2009 at <http://www.dnr.state.oh.us/Default.aspx?tabid+18276&EntryID+1093>

⁴ Applicant has been informed by PJM that the two requisite impact studies for each of the proposed interconnection points will be received during the third quarter of 2009.

its ambitious, yet achievable, schedule. For these reasons, Applicant asks that the review of its waiver requests be undertaken on an expedited basis and urges the Board or Administrative Law Judge to decide this Motion on that basis.

III. WAIVER REQUESTS

A. RC 4906.06(A)(6): Waiver of the One Year Notice Period

Pursuant to RC 4906.06, an application for the siting of a wind generation facility must be filed “not less than one year nor more than five years prior to the planned date of commencement of construction.” The statute also allows the Board to waive these time limits for “good cause” shown. Applicant requests the Board to waive the one-year requirement between the dates an application is filed and construction is commenced.

Applicant plans to submit an application for this project in early July 2009. Through this waiver request, Applicant seeks the flexibility to begin construction-related activities prior to the commencement of the one-year milestone date contemplated by the statute. Applicant’s desire to take full advantage of the longest period possible of construction weather, and shorten the construction period as much as possible so as not to inconvenience affected property owners for more than one construction season, appears to satisfy the good cause required by the statute.

Furthermore, a waiver from the one year period is authorized by statute and the Board has routinely granted the waiver for at least the last decade.

B. OAC Rule 4906-17-04(A): Waiver of an Extensive Site Selection Study

As part of Applicant’s application, it will be providing a significant amount of information regarding the company’s selection of its site in Hardin County, Ohio. In Ohio, there are a limited number of areas that possess the wind resource necessary to support economical utility scale wind energy development. The convergence of sufficient wind resources, sufficient

transmission capacity and interested landowners willing to lease their land --- all are needed for a viable wind energy project. In order for Ohio utilities to meet the requirements for renewable energy mandated by the Ohio legislature, all viable Ohio wind sites must be considered as potential wind energy project sites. Each specific criterion set forth in OAC Rule 4906-17-04 may not apply, even though the site is an appropriate one for a wind energy project. OAC Rule 4906-17-04 contemplates extensive detail in a site selection study. Applicant will be providing a description of the project boundary; the rationale for selecting the site; a map of the general project area; a list and description of qualitative siting criteria (i.e. constraints such as setbacks, noise, etc.); and a constraint map. Applicant is aware that there is no approved form for a site selection study used in OAC Chapter 17 of the Board's rules. Moreover, as the Board recognized in promulgating the wind application rules, where an applicant limited its study to locations where there are potentially viable wind resources, it would be appropriate for the Board to grant a waiver from filing an extensive site selection study⁵. Assuming that Applicant files the site selection information indicated above, Applicant requests a waiver to the extent that each specific factor in OAC Rule 4906-17-04 (A) is not met⁶.

C. OAC Rule 4906-17-05(D) (2): Waiver to Allow Filing of PJM System Impact Study at a Later Date, Immediately After It Has Been Received

In order for the Board to make a completeness determination on a certificate application, the rule requires that an applicant provide the Board with a feasibility study and a system impact study from the regional transmission organization from which the applicant has requested interconnection. Applicant already is in the PJM interconnection queue and has received its feasibility studies for its two proposed points of interconnection: one on the smaller East Lima

⁵ Opinion and Order in Case No. 08-1024-EL-ORD issued October 28, 2008 at paragraph 56.

⁶ Applicant is unsure of the quantitative factors referenced in paragraph (A) (1) (c) that requires a "comprehensive list and description of all. . . quantitative siting criteria."

138 kV transmission line and one on the larger Marysville Substation- East Lima Substation 345 kV steel pole line. It is anticipated that the system impact studies for each of the interconnection points will be received soon, but Applicant is unsure whether the system impact studies will be received prior to the filing of its application, though PJM initially anticipated issuing them before now. As the Board noted in its rulemaking Opinion and Order,⁷ “[w]here the applicant has made the necessary requests for the studies, is in the queue, and expects to provide the study to the Board within a reasonable period of time after the application is filed, it is appropriate to ask for waiver of this provision, asking to allow the study to be filed later.” This is exactly the type of waiver that Applicant requests: the late-filing of the system impact studies as soon as they are received.

WHEREFORE, Applicant respectfully requests that the Board waive the requirements set forth above and grant such other and further relief to which it may be entitled.

Respectfully submitted on behalf of
HARDIN WIND ENERGY LLC


Sally W. Bloomfield
Matthew W. Warnock
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2368; 227-2388
Facsimile: (614) 227-2390
E-Mail: sbloomfield@bricker.com
mwarnock@bricker.com

⁷ *Id.* at paragraph 95