

FILE

BEFORE THE OHIO POWER SITING BOARD

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

Case Number 09-277-EL-BGN

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JOINT STIPULATION AND RECOMMENDATION

1. INTRODUCTION

Applicant JW Great Lakes Wind LLC, or its designees, successors, or assigns, ("JWGL" or "Applicant") and the Staff of the Ohio Power Siting Board ("Staff"), at times collectively referred to as the parties, submit this Joint Stipulation and Recommendation ("Stipulation") for adoption by the Ohio Power Siting Board (the "Board"). This Stipulation is intended by the parties to resolve all matters pertinent to the certification and construction of a wind farm comprised of 19, 21, or 27 wind turbines with a nameplate capacity of 2.5 MW, 2.3 MW or 1.8 MW each, respectively, (hereinafter referred to as the "Facility") located in Washington Township, Hardin County, approximately three miles east of Ada, Ohio, and immediately to the west of Dola, Ohio. The entire project area includes 3,371 acres of primarily agricultural land.

The Facility is more fully described in JWGL's application filed with the Board on August 14, 2009, and supplemented on September 15, 2009, and October 9, 2009 ("Application"). The Application was deemed to comply with the requirements of Ohio Administrative Code ("OAC") Sections 4906-01, *et seq.*, on October 13, 2009, by the Chairman of the Board.

The Ohio Farm Bureau Federation filed the only motion to intervene in this proceeding on August 29, 2009. The Motion to Intervene was granted on September 18, 2009. The Ohio Farm Bureau Federation supports and is a signatory to this Stipulation.

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The Staff Report was issued on January 12, 2010. A local public hearing was held at the Ada Depot in Ada, Ohio on January 27, 2010. The adjudicatory hearing scheduled February 1, 2010 was continued until February 12, 2010.

This Stipulation results from discussions between the Staff and the Applicant who acknowledge that this agreement is amply supported by the record and thus is entitled to careful consideration by the Board. Accordingly, the parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Facility consistent with this Stipulation.

II. STIPULATION AND RECOMMENDATION

The parties recommend that the Board issue the Certificate of Environmental Compatibility and Public Need requested by JWGL subject to the following Conditions:

A. Recommended Conditions

1. That the facility be installed at the Applicant's proposed site as presented in the application filed on August 14, 2009, and as modified and/or clarified by the Applicant's supplemental filings.
2. That the Applicant shall utilize the equipment and construction practices as described in the application and as modified in supplemental filings, replies to data requests, and these recommended conditions.
3. That the Applicant shall implement the mitigative measures described in the application, any supplemental filings, and these recommended conditions.
4. That the Applicant shall conduct a pre-construction conference prior to the start of any construction activities, which the Staff shall attend, to discuss how environmental concerns will be satisfactorily addressed.
5. That the Applicant shall properly install and maintain erosion and sedimentation control measures in accordance with the following requirements:
 - a. During construction of the facility, seed all disturbed soil, except within actively cultivated agricultural fields, within seven days of final grading with a seed mixture acceptable to the appropriate County Cooperative Extension Service. Denuded areas, including spoils piles, shall be seeded and stabilized within seven days, if they will be

undisturbed for more than 21 days. Reseeding shall be done within seven days of emergence of seedlings as necessary until sufficient vegetation in all areas has been established.

- b. Inspect and repair all erosion control measures after each rainfall event of one-half of an inch or greater over a 24 hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.
 - c. Obtain NPDES permits for storm water discharges during construction of the facility. A copy of each permit or authorization, including terms and conditions, shall be provided to the Staff within seven days of receipt.
6. That the Applicant shall employ the following construction methods in proximity to any watercourses:
- a. All watercourses, including wetlands, shall be delineated by fencing, flagging, or other prominent means.
 - b. All construction equipment shall avoid watercourses, including wetlands, except at specific locations where Staff has approved construction.
 - c. Storage, stockpiling, and/or disposal of equipment and materials in these sensitive areas shall be prohibited.
 - d. Structures shall be located outside of identified watercourses, including wetlands, except at specific locations where Staff has approved construction.
 - e. All storm water runoff is to be diverted away from fill slopes and other exposed surfaces to the greatest extent possible, and directed instead to appropriate catchment structures, sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.
7. That the Applicant shall employ best management practices when working near environmentally sensitive areas. This includes, but is not limited to, the installation of silt fencing or a similarly effective tool prior to initiating construction near streams and wetlands. The installation shall be done in accordance with generally accepted construction methods and shall be inspected regularly.
8. That the Applicant shall have an environmental specialist on site at all times that construction, including vegetation clearing, is being performed in or near a sensitive area such as a designated wetland, stream, river, or in the vicinity of identified threatened and endangered species or their identified habitat. The environmental specialist be familiar with water quality protection issues, and able to field-identify threatened and endangered species of plants and animals that may be encountered during project construction.

9. That the Applicant shall adhere to all terms and conditions as outlined in the ODNR-DOW Cooperative Agreement, to which the Applicant is a signatory; provided, however, that nothing in this Stipulation shall be construed to add to or diminish the terms and conditions of such Cooperative Agreement. In the event that the Applicant and/or ODNR chooses to exercise their option to terminate the Agreement, the Applicant shall utilize best management practices as referenced in the Cooperative Agreement and shall adhere to the condition that turbines will not operate at wind speeds ≤ 4 meters per second (as measured within the rotor swept area) from dusk to dawn, July 1 to October 31 annually. Furthermore, the Applicant shall adhere to the mitigation measures in ODNR's On-Shore Bird and Bat Pre- and Post-Construction Monitoring Protocol for Commercial Wind Energy Facilities in Ohio, as also referenced in the ODNR-DOW Cooperative Agreement.
10. That the Applicant shall develop a post-construction avian and bat mortality monitoring plan in conjunction with methodologies outlined in ODNR's On-Shore Bird and Bat Pre- and Post- Construction Monitoring Protocol for Commercial Wind Energy Facilities in Ohio, for Staff review and approval. The monitoring shall be conducted for a minimum of one year (1 April to 15 November) with the possibility of a second season of monitoring at the discretion of the Staff and ODNR-DOW.
11. That the Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for removal of suitable Indiana bat habitat, if avoidance measures cannot be achieved.
12. That Staff, the ODNR, and the USFWS shall be immediately contacted if threatened or endangered species are encountered on site during construction and operation activities. Construction activities that could adversely impact the identified plants or animals will be halted until an appropriate course of action has been agreed upon by the Applicant, Staff and ODNR, in coordination with USFWS. If threatened or endangered species are encountered during operation activities, then only the above referenced notification is required. Nothing in this provision, however, shall preclude agencies having jurisdiction over the Facility with respect to threatened or endangered species from exercising their legal authority over the Facility consistent with law, this Stipulation and the Cooperative Agreement.
13. That the Applicant shall assure compliance with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
14. That the Applicant conform to any drinking water source protection plan, if it exists, for turbines located within the drinking water source protection areas of the local villages.
15. That the Applicant shall become a member of the Ohio Utilities Protection Service prior to commencement of operation of the facility. Notification of membership shall be provided to Staff prior to commencement of operation of the facility.
16. That the Applicant shall complete a full geotechnical investigation to confirm that there are no issues to preclude development of the wind farm. The geotechnical investigation shall include borings at each turbine location to provide subsurface soil properties and

recommendations needed for the final design and construction of each wind turbine foundation, as well as the final location of the transformer substation and interconnection substation. All boreholes must be filled and borehole abandonment must comply with state and local regulations. The Applicant shall provide copies of all geotechnical boring logs to Staff and to the ODNR Division of Geological Survey prior to construction.

17. That at least 30 days before the pre-construction conference, the Applicant shall submit to the Staff, for review and approval, the final turbine foundation design for each turbine location.
18. That at least 30 days before the pre-construction conference, the Applicant shall submit to the Staff for review a fire protection and medical emergency plan, to be developed in consultation with the fire department having jurisdiction over the area.
19. That the Applicant shall provide the final delivery route plan and the results of any traffic studies to Staff and to the Hardin County Engineer at least 30 days prior to the pre-construction conference. The Applicant shall complete a study on the final equipment delivery route to determine what improvements will be needed in order to transport equipment to the wind turbine construction sites. The Applicant's study and delivery route plan shall consider, but not be limited to, the following:
 - a. Perform a survey of the final delivery routes to determine the exact locations of vertical constraints where the roadway profile will exceed the allowable bump and dip specifications.
 - b. Identify locations along the final delivery routes where overhead utility lines may not be high enough for over-height permit loads and coordinate with the appropriate utility company if lines are required to be raised.
 - c. Identify upgrades to any roads and bridges that are not able to support the projected loads from delivery of the wind turbines and other facility components.
 - d. Describe the restoration of locations where wide turns may impact the road facilities and surrounding areas, and where any roads or bridges are damaged, to their original condition.
20. That the Applicant shall obtain all required Hardin County transportation permits and all necessary permits from ODOT. Any temporary or permanent road closures necessary for construction and operation of the proposed facility shall be coordinated with the appropriate entities including, but not limited to, the Hardin County Engineer, the ODOT, local law enforcement, and health and safety officials.
21. That the Applicant shall avoid, where possible, or minimize to the maximum extent practicable, any damage to field tile drainage systems and soils resulting from construction, operation, and maintenance of the facility in agricultural areas. Damaged field tile systems shall be promptly repaired to at least original conditions at the Applicant's expense. Excavated topsoil shall be segregated and restored upon backfilling. Severely compacted

soils shall be plowed or otherwise de-compacted, if necessary, to restore them to original conditions.

22. That the Applicant comply with all of the requirements of the Hardin County Engineer on repairing damage to any roads and/or bridges caused by construction activity. Any damage will be repaired to its pre-construction state by the Applicant and will be outlined in a written agreement between the Applicant and the Hardin County Engineer. If this cannot be agreed upon, then the Applicant must post a surety bond to cover any damages to Interstate roads and all state, county, and township roads and bridges that may occur while transporting wind turbines and other facility components to and from the wind farm site and during all construction activities. At its expense, the Applicant shall promptly repair all impacted roads and bridges following construction to at least their condition prior to the initiation of construction activities.
23. That prior to construction, the Applicant shall prepare a Phase I cultural resources survey program acceptable to Staff for archaeological work at known or probable kame sites/topographic rises, turbine locations, access roads, substation and laydown sites, and collection lines. If the resulting survey work discloses a find of cultural or archaeological significance, or a site that is likely to be eligible for inclusion on the National Register of Historic Places, then the Applicant shall submit an amendment, modification, or mitigation plan for Staff's acceptance. Any such mitigation effort shall be developed in coordination with the Ohio Historic Preservation Office, with input from the Hardin County Historical Society, and submitted to Staff for review and acceptance.
24. That prior to the commencement of construction, the Applicant shall conduct an architectural survey of the project area consistent with the work program submitted to the Staff on February 4, 2010, and subsequently filed on the docket of this proceeding. The work program has a focus starting in the project boundary in Washington Township, the community of Dola, and the outlying areas in Dunkirk and Ada, closest to the project site. If the architectural survey discloses a find of cultural or architectural significance, or a structure that is likely to be eligible for inclusion on the National Register of Historic Places, then the Applicant shall submit an amendment, modification, or mitigation plan for Staff's acceptance. Any such mitigation effort shall be developed in coordination with the Ohio Historic Preservation Office, with input from the Hardin County Historical Society, and submitted to Staff for review and acceptance.
25. That the Applicant shall provide to Staff its final 69kV interconnection line route, no later than 30 days prior to the pre-construction conference and obtain Staff concurrence on any portion of the route that is located within the project area boundary.
26. That the Applicant shall remove all temporary gravel and other construction staging area and access road materials after completing construction, but no later than 60 days after the start of commercial operation, unless otherwise directed by the participating landowner, and restore the impacted areas to substantially preconstruction conditions, in compliance with the Ohio NPDES permit(s) obtained for the project and the approved Storm Water Pollution Prevention Plan (SWPPP) created for this project.

27. That the Applicant shall not dispose of gravel or any other construction materials during or following construction of the facility by spreading such material on agricultural land. All construction debris and all contaminated soil shall be promptly removed and properly disposed of in accordance with Ohio EPA regulations.
28. That after one year of operation, the Applicant shall provide Staff with the actual shadow flicker amounts generated by each turbine for that year of operation. Actual shadow flicker should be modeled at each receptor within 1,000 meters using each turbine's operational statistics, actual wind speed and direction values, and solar data for the year.
29. That after construction, any turbine validly measured to create in excess of 30 hours per year of shadow flicker at a non-participating receptor within 1,000 meters shall be subject to mitigation. Applicant shall propose, and upon agreement among the Applicant, the receptor(s), and the Staff, implement, mitigation consisting of either reducing the turbine's impact to no more than 30 hours per year, or other measures acceptable to the affected receptor(s) and Staff.
30. That any turbine(s) forecasted prior to construction to exceed the ambient daytime L_{EQ} (measured between the hours of 7:00 AM and 10:00 PM) by greater than five dBA under any operating conditions at the exterior of any non-participating residence within one mile of the project area shall be subject to further study of potential impact and possible mitigation prior to construction. If required, Applicant shall propose, and upon agreement among the Applicant, the receptor(s), and the Staff, implement, mitigation consisting of either reducing the impact so that the ambient daytime L_{EQ} is not exceeded by greater than five dBA, or other measures acceptable to the affected receptor(s) and Staff.
31. That after construction, any turbine(s) validly measured to exceed the ambient daytime L_{EQ} (measured between the hours of 7:00 AM and 10:00 PM) by greater than five dBA under any operating conditions at the exterior of any non-participating residence within one mile of the project area shall be subject to further review of the impact and possible mitigation. If required, Applicant shall propose, and upon agreement among the Applicant, the receptor(s), and the Staff, implement, mitigation consisting of either reducing the impact so that the ambient daytime L_{EQ} is not exceeded by greater than five dBA, or other measures acceptable to the affected receptor(s) and Staff.
32. That construction activities shall generally be limited to daylight hours. Impact pile driving and blasting operations, if needed, shall be limited to the hours between 7:00 a.m. to 7:00 p.m., Monday through Friday. Construction activities that do not involve noise or light increases above ambient levels at sensitive receptors are permitted at any time.
33. That at least 30 days prior to the pre-construction conference and subject to Staff review and approval, the Applicant shall create a complaint resolution procedure in order to address potential operational noise and shadow flicker concerns experienced by the public. The Applicant shall work to mitigate and resolve any issues with those who file a complaint. Any complaint submitted must be immediately copied to the Staff.

34. That the siting of any concrete batch plant shall be subject to Staff review and approval.
35. That the Applicant must meet all FAA and ODOT Office of Aviation requirements to construct an object that may affect navigable airspace. This includes submitting all turbine locations for ODOT Office of Aviation and FAA review, and the non-penetration of any FAA *Part 77* surfaces.
36. That at least 90 days prior to any construction, the Applicant shall notify, in writing, any airport owner, whether public or private, whose operations, operating thresholds/minimums, landing/approach procedures and/or vectors are altered, or are expected to be altered by the siting, operation, maintenance, or decommissioning of a wind generation facility.
37. That all structures be lit in accordance with FAA circular 70/7460-1 K Change 2, *Obstruction Marking and Lighting*; Chapters 4, 12, and 13 (Turbines); or as otherwise prescribed by the FAA.
39. That, prior to construction, the Applicant shall submit the final layout and turbine locations to the FAA and the ODOT Office of Aviation for review and approval. Further, that the Applicant shall provide the FAA and ODOT Office of Aviation determinations for turbines 5 and 22 to Staff for review and approval.
40. That the Applicant must meet all FAA and federal agency requirements to construct an object that may affect local and/or long-range radar, and mitigate any effects or degradation caused by wind turbine operation, up to and including removal of afflicting turbine(s).
41. That if any turbine(s) are determined to cause NEXRAD interference, the Applicant shall propose a technical or administrative work plan (protecting proprietary interests in wind speed data) that provides for the release of real-time meteorological data to the National Weather Service office in Wilmington, Ohio. If an uncontrollable event should render this data temporarily unavailable, the Applicant shall exert reasonable effort to restore connectivity in a timely manner.
42. That, prior to construction, the Applicant shall submit the final layout and turbine locations to the National Telecommunications and Information Administration for review and approval.
43. That the Applicant must meet all Federal Communications Commission and other federal agency requirements to construct an object that may affect communications and, subject to Staff approval, mitigate any effects or degradation caused by wind turbine operation. For any residence that is shown to experience a total loss of TV reception due to the facility operation, the Applicant shall provide, at its own expense, cable or direct broadcast satellite TV service.
44. That the Applicant shall comply with the turbine manufacturer's safety manual and shall maintain a copy of the safety manual in the O&M building of the facility.

45. That the Applicant shall restrict public access to the site with appropriately placed warning signs or other necessary measures.
46. That the Applicant shall instruct workers on potential hazards of ice conditions on wind turbines.
47. That, prior to construction, the Applicant shall file a letter with the Board that identifies which of the three turbine models listed in the application has been selected.
48. That the Applicant shall comply with the following conditions regarding decommissioning:
- a. That pursuant to OAC 4906-17-08 (E)(6), the Applicant shall provide a final draft of a decommissioning plan to Staff and the Hardin County Engineer for review and for OPSB Staff approval at least 30 days prior to the pre-construction conference. In this plan, the Applicant shall:
 - i. Identify lands in the project area that a reconnaissance inspection suggests may be prime farmlands. A soil survey shall be made or obtained according to standards established by the Secretary of the United States Department of Agriculture and/or the Ohio Department of Agriculture in order to confirm the exact location of the prime farmlands, if any. The results of this study shall be submitted to Staff for review and approval. Any confirmed *Prime Farmlands* should be reclaimed to such standards after site decommissioning.
 - ii. Indicate the future use that is proposed to be made of the land following reclamation.
 - iii. Describe the following: engineering techniques proposed to be used in decommissioning and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; and, a plan, where appropriate, for backfilling, soil stabilization, compacting and grading. This plan shall be subject to review and approval by Staff.
 - iv. Describe how the Applicant will implement best management practices to control impacts to surface or ground water resources. If necessary, Applicant will obtain permits from the Ohio EPA and/or the U.S. Army Corps of Engineers.
 - v. Provide a detailed timetable for the accomplishment of each major step in the decommissioning plan; the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards; and a description of the degree to which the decommissioning plan is consistent with the local physical, environmental and climatological conditions. This timetable shall be subject to Staff review and approval.

- b. At the end of the project's life, the wind turbines may either be "re-powered" with new nacelles, towers, and/or blades; or, the wind-powered electric generating Facility shall be decommissioned at the expense of the Facility owner or operator. In the event that the Facility or individual wind turbines are decommissioned, such decommissioning shall be completed within twelve (12) months after the end of the useful life of the Facility or individual wind turbines. The Facility, or individual turbines, shall be decommissioned if (1) the Board finds that the public health, safety, or welfare is substantially imperiled from the state of disrepair of the Facility or individual turbines, or if (2) the Facility or individual turbine(s) fail(s) to produce electricity for 12 consecutive months. The aforementioned 12 month period may be extended upon a showing of good cause by the Applicant. Any extension request shall be made in writing and shall be deemed approved unless otherwise ordered by the Board.
- c. That decommissioning shall include the removal of all physical material pertaining to the wind energy facility to a depth of at least thirty-six (36) inches beneath the soil surface and restoration of the disturbed area to a condition substantially similar to the same physical condition that existed before erection of the Facility. The foundation for each wind turbine shall be removed to the depth of thirty-six (36) inches or to the top of the foundation spread footing, whichever depth is greater. Decommissioning shall include the restoration of roads and bridges to substantially the same physical condition that existed before decommissioning; the removal and transportation of the wind turbines off-site; and removal of buildings, cabling, electrical components, access roads, and any other associated facilities. Disturbed earth shall be re-graded, re-seeded, and restored to conditions substantially consistent with surrounding land use at the time of decommissioning. Damaged field tile systems shall be repaired to at least original conditions. The participating landowner may request that the Applicant not decommission access roads.
- d. That if the owner of the proposed wind-powered electric generating facility does not complete decommissioning within the period prescribed in these conditions, the OPSB may take action as necessary to complete decommissioning, including requiring forfeiture of financial securities. The entry into a participating landowner agreement constitutes agreement and consent of the parties to the agreement, their respective heirs, successors and assigns, that the Board may take action that may be necessary to implement the decommissioning plan, including the exercise by the Board, Board Staff, and contractors, of the right of ingress and egress for the purpose of decommissioning the wind-powered electric generating facility.
- e. The decommissioning funds or financial assurance shall be released by the holder of the funds or financial assurance when the facility owner has demonstrated, and the Board concurs, that decommissioning has been satisfactorily completed, or upon written approval of the Board in order to implement the decommissioning plan.
- f. That during construction, operation, and decommissioning, all recyclable materials salvaged and non-salvaged shall be recycled to the furthest extent possible. All other

non-recyclable waste materials shall be disposed of in accordance with state and federal law.

- g. That the Applicant shall leave intact any improvements made to the electrical infrastructure, pending approval by the concerned utility.
- h. That subject to approval by Board Staff, and within five years after the start date of commercial operation, an independent and registered Professional Engineer, licensed to practice engineering in the State of Ohio, shall be retained by the wind generation facility owner to estimate the total cost of decommissioning in current dollars , without regard to salvage value of the equipment (Decommissioning Costs), and the cost of decommissioning net salvage value of the equipment (Net Decommissioning Costs). Said estimate shall include: (1) an analysis of the physical activities necessary to implement the approved reclamation plan, with physical construction and demolition costs based on ODOT's Procedure for Budget Estimating and RS Means material and labor cost indices; (2) the number of units required to perform each of the activities; (3) an amount to cover contingency costs, not to exceed 10 percent of the above calculated reclamation cost. Said estimate should be on a per-turbine basis and shall be submitted for Staff review and approval after five years of facility operation and every fifth year thereafter. The owner shall post and maintain decommissioning funds or financial assurance in an amount equal to the following schedule:
 - i. From years one through five: five thousand dollars (\$5,000) per constructed wind turbine
 - ii. From year six through the end of the life of the project: the greater of (a) ten thousand dollars (\$10,000) per constructed wind turbine, (b) fifteen (15) percent of the Decommissioning Costs, or (c) one hundred twenty (120) percent of the Net Decommissioning Costs.

The form of financial assurance will be a financial instrument mutually agreed upon by OPSB Staff and the Applicant and conditioned on the faithful performance of all requirements and conditions of this application's approved decommissioning and reclamation plan. Once the financial assurance is provided, the Applicant shall maintain such funds or assurance throughout the remainder of the applicable term and shall adjust the amount of the assurance, if necessary, to offset any increase or decrease in the decommissioning costs at the end of the applicable term. The value of salvaged steel and copper, at the end of the five-year term and for any other revisions of this report thereafter, shall be calculated based on the five-year annual average for the years preceding the anniversary of such reports.

- 49. That prior to the commencement of construction, the Applicant shall obtain and comply with all applicable permits and authorizations as required by federal and state laws and regulations for any activities where such permit or authorization is required. Copies of permits and authorizations, including all supporting documentation, shall be provided to Staff within seven days of issuance or receipt by the Applicant.

50. That the Applicant shall not commence construction of the facility until it has a signed Interconnection Service Agreement with PJM, which includes construction, operation, and maintenance of system upgrades necessary to reliably and safely integrate the proposed generating facility into the regional transmission system. The Applicant shall provide a letter stating that the Agreement has been signed or a copy of the signed Interconnection Service Agreement to the Board Staff.
51. That at least seven days before the pre-construction conference, the Applicant shall submit to the Staff a copy of its SWPPP and its erosion and sediment control plan for review and approval.
52. That at least 30 days before the pre-construction conference, the Applicant shall submit to the Staff, for review and approval, the following documents:
- a. One set of detailed engineering drawings for the final project design, including all turbine locations, collection lines, access roads, permanent meteorological towers, substations, construction staging areas, and other associated facilities and access points, so that the Staff can determine that the final project design is in compliance with the terms of the certification. The final plan shall include both temporary and permanent access routes as well as the measures to be used for restoring the area around all temporary sections, and a description of any long-term stabilization required along permanent access routes. The access plan shall consider the location of streams, wetlands, wooded areas, and sensitive plant species as identified by the ODNR-DNAP, and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The Applicant shall use reasonable efforts to provide drawings in both hard copy and GIS/AutoCAD formats, if available.
 - b. A tree clearing plan describing how trees and shrubs around turbines, along access routes, in electric collection line corridors, at construction staging areas, and in proximity to any other project facilities will be protected from damage during construction, and, where clearing cannot be avoided, how such clearing work will be done so as to minimize removal of woody vegetation. Priority should be given to protecting mature trees throughout the project area, and all woody vegetation in wetlands and riparian areas, both during construction and during subsequent operation and maintenance of all facilities.
 - c. A detailed frac-out contingency plan for stream and ditch crossings that are expected to be completed via HDD. Such contingency plan can be incorporated within the required stream and/or ditch crossing plan.
53. That within sixty (60) days after the commercial operation date, the Applicant shall submit to the OPSB Staff a copy of the as-built specifications for the entire Facility to the extent they have been completed. The Applicant may request of the OPSB Staff additional time

to complete the as-built drawings if they have not been completed within the sixty (60) day period.

54. That the certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.

55. That the Applicant shall provide to the Staff the following information as it becomes known:

- a. The date on which construction will begin;
- b. The date on which construction was completed;
- c. The date on which the facility began commercial operation.

B. Exhibits

Subject to the terms and conditions of this Stipulation, the Applicant, Farm Bureau Federation, and Staff agree, stipulate and recommend that the following exhibits submitted in this docket be marked and admitted into the record in this proceeding, and that cross-examination is waived thereon:

1. This Joint Stipulation and Recommendation, executed by all parties.
2. The approved Architectural Survey Plan submitted by Applicant on February 3, 2010 pursuant to Condition 24.
3. Staff Report filed January 12, 2010.
4. Correspondence containing statement and maps concerning minor turbine changes filed by P. Endres on behalf of J W Great Lakes Wind, LLC on January 8, 2010.
5. Correspondence on behalf of JW Great Lakes Wind LLC including sample letter and list of landowners regarding referenced project, filed by P. Endres on December 23, 2009.
6. Proof of Publication filed on behalf of JW Great Lakes Wind LLC filed by P. Endres on November 24, 2009.
6. Notice of Service of application on local public officials and libraries filed by D. Nash on behalf of JW Great Lakes Wind LLC on October 21, 2009.

7. Supplemental information to application for a certificate of environmental compatibility and public need filed on behalf of J W Great Lakes Wind, LLC by P. Endres on October 13, 2009.
8. Response letter to Mr. Richard A. Zachariason filed on behalf of OPSB by A. Schriber on October 13, 2009.
9. Chiropteran Risk Assessment filed on behalf of J W Great Lakes Wind, Hardin County North Wind Farm on October 9, 2009.
10. Preliminary map, draft of substation design filed on behalf of J W Great Lakes Wind, Hardin County North Wind Farm on October 9, 2009.
11. Summary: Historic Structures and Landmarks review filed on behalf of JW (Great Lakes Wind, LLC, Hardin County North Wind Farm on October 9, 2009.
12. Archaeological survey approach filed on behalf of J W Great Lakes Wind LLC, Hardin County North Wind Farm Service Notice on October 9, 2009.
13. Financial data filed by D. Nash on behalf of JW Great Lakes Wind LLC on September 15, 2009.
14. Confidential Document Target: Business confidential financial data filed by P. Endres on behalf of JW Great Lakes Wind LLC on August 14, 2009. (7 PAGES)
15. Application continued, filed August 14, 2009. (PART 3)
16. Application continued, filed August 14, 2009. (PART 2)
17. Application of JW Great Lakes Wind LLC a wholly-owned subsidiary of juwi Wind GmbH, for a certificate of environmental compatibility and public need filed by P. Endres on August 14, 2009. (PART 1)
18. Cooperative Agreement between ODNR-DOW and Applicant, dated May 5, 2009.

C. Other Terms and Conditions

1. This Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially modifies all or part of this Stipulation or imposes additional conditions or requirements upon the parties, each party shall have the right, within thirty (30) days of the Board's order, to file an application for rehearing with the Board.
2. Upon rehearing by the Board, each party shall have the right, within ten (10) days of the Board's order on rehearing, to file a notice of termination of, and withdrawal from, the Stipulation. Upon notice of termination and withdrawal of the Stipulation by any party,

pursuant to the above provisions, the Stipulation shall immediately become null and void. In such an event, a hearing shall go forward, and the parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

3. The parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation as factual or legal precedent on any issue. The parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the parties in entering into this Stipulation.

The signatory parties agree that this settlement is a product of serious bargaining among capable, knowledgeable parties. This agreement is the product of an open process in which the parties, all of whom support certification of this project, were represented by able counsel and technical consultants. The Stipulation represents a comprehensive compromise of issues and, the parties believe, presents sufficient information and recommendations to enable the OPSB to make all requisite statutory findings to support certification of the Project. There is no opposition to this Stipulation and Recommendation.

The signatory parties further agree that the settlement, as a package, promotes the public interest. If constructed, the project will benefit the local economy through added jobs and payroll as well as additional tax revenues. In the larger picture, certification and construction of the project will result in creation of a new, in-state renewable energy supply that will assist Ohio electric utilities in meeting statutory renewable energy requirements.

The signatory parties agree that the settlement package does not violate any important regulatory principle or practice. To the contrary, it promotes development of alternative energy sources in furtherance of Ohio law and important state policies promoting renewable energy resources.

III. FINDINGS

The parties agree that the record in this case, provided the Board approves the conditions in this Stipulation, contains sufficient probative evidence for the Board to find and determine, as findings of fact and conclusions of law, that:

A. Findings of Fact

1. Prior to formally submitting an application, the Applicant consulted with the Staff regarding application procedures.
2. On June 23, 2009, the Applicant held a public informational meeting in Ada, Ohio regarding the proposed wind-powered electric generating facility.
3. On August 14, 2009, the Applicant filed its application for a certificate to construct the proposed wind-powered electric generating facility in Hardin County, Ohio. In addition, the Applicant filed a Motion of Protective Order and a Motion for Waivers.
4. On August 26, 2009, the Ohio Farm Bureau Federation made a motion to intervene in the case.
5. On September 18, 2009, the Board granted the motion to intervene.
6. On October 9, 2009, the Applicant filed additional information to supplement its application.
7. On October 13, 2009, the Chairman of the Board issued a letter to the Applicant stating that the application, filed on August 14, 2009, as supplemented with subsequent filings on September 15, 2009 and October 9, 2009, had been found to comply with the requirements of Chapter 4906-01, et seq., OAC.
8. On November 5, 2009, the Administrative Law Judge issued an Entry scheduling a local public hearing for this case to take place on Wednesday, January 27, 2010, at 6:00 p.m., at the Ada Depot, 112 Central Avenue, Ada, Ohio 45810. The adjudicatory hearing was to commence on Monday, February 1, 2010, at 10:00 a.m., 11th floor, hearing room C, at the office of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.
9. A local public hearing was held on January 27, 2010 in Ada, Hardin County, Ohio.
10. An adjudicatory hearing was scheduled for February 1, 2010 and continued to February 12, 2010, in Columbus, Ohio.
11. The basis of need requirement in Section 4906.10(A)(1) of the Ohio Revised Code is inapplicable to this project.
12. Adequate data on the project has been provided to determine the nature of the probable environmental impact as required by Section 4906.10(A)(2) of the Ohio Revised Code.
13. Adequate data on the project has been provided to determine that the Facility described in the Amended Application represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by Section 4906.10 (A)(3) of the Ohio Revised Code.

14. Adequate data on the project has been provided to determine that, because the project is an electric generation facility, the proposed electric generating facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the State of Ohio and interconnected utility systems, that the Facility will serve the interests of electric system economy and reliability, and the requirements of Section 4906.10(A)(4) of the Ohio Revised Code are met.
15. Adequate data on the project has been provided to determine that the wind farm project will either comply with, or is not subject to, the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation, and all regulations thereunder, as required by Section 4906.10(A)(5) of the Ohio Revised Code.
16. Adequate data on the project has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.
17. Adequate data on the project has been provided to determine what the Facility's impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the site of the proposed Facility, as required by Section 4906.10(A)(7) of the Ohio Revised Code.
18. Adequate data on the project has been provided to determine that the Facility as proposed incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives as required by Section 4906.10(A)(8) of the Ohio Revised Code.
19. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

B. Conclusions of Law

1. JWGL is a "person" under Section 4906.01(A) of the Ohio Revised Code.
2. The proposed Facility is an economically significant wind farm as defined in Section 4906.13 of the Ohio Revised Code.
3. JWGL's Application complies with the requirements of OAC Chapter 4906-17.
4. The requirement for the need for the Facility under Section 4906.10(A)(1) of the Ohio Revised Code is inapplicable.
5. The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the Facility under Section 4906.10(A)(2) of the Ohio Revised Code.


6. The record establishes 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 under Section 4906.10(A)(3) of the Ohio Revised Code.
7. The record establishes that the Facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the State of Ohio and interconnected utility systems, and will serve the interests of electric system economy and reliability as required by Section 4906.10(A)(4) of the Ohio Revised Code.
8. The record establishes, as required by Section 4906.10(A)(5) of the Ohio Revised Code, that to the extent that any of them are applicable, construction of the proposed Facility will comply with the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation, and all rules and standards adopted under the relevant Chapters of the Ohio Revised Code.
9. The record establishes that the Facility will serve the public interest, convenience and necessity under Section 4906.10(A)(6) of the Ohio Revised Code.
10. The Facility's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under Section 4906.10(A)(7) of the Ohio Revised Code.
11. The record establishes that the Facility would incorporate maximum feasible water conservation practices under Section 4906.10(A)(8) of the Ohio Revised Code.
12. Based on the record, the parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the Facility.

[REST OF PAGE INTENTIONALLY LEFT BLANK—SIGNATURE PAGE FOLLOWS]

The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this Joint Stipulation and Recommendation on this ___ day of February, 2010.

Respectfully submitted on behalf of:

THE STAFF OF THE OHIO POWER
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