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BEFORE
THE OHIO POWER SITING BOARD

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In the Matter of an Application by Hardin Wind)
Energy LLC for a Certificate of Environmental)
Compatibility and Public Need for the Hardin Wind) Case No. 09-0479-EL-BGN
Farm)

MEMORANDUM CONTRA
MOTION OF MID-OHIO ENERGY COOPERATIVE, INC. FOR LEAVE TO FILE AN
APPLICATION FOR REHEARING AND
TO ITS APPLICATION FOR REHEARING
BY HARDIN WIND ENERGY LLC

On April 21, 2010, Mid-Ohio Energy Cooperative, Inc. ("Mid-Ohio") filed both a motion for leave to file an application for rehearing (the "Motion") of Condition 47 in the Opinion, Order and Certificate issued to Hardin Wind Energy LLC ("Hardin Wind") on March 22, 2010, as well as an application for rehearing (the "Application for Rehearing"). Mid-Ohio's Motion and Application for Rehearing, however, not only rely on inaccurate information, but fail to satisfy the statutory prerequisites in Ohio Revised Code Section ("R.C.") 4903.10 for the filing of an application for rehearing. For these reasons, Mid-Ohio's Motion should be rejected and its accompanying Application for Rehearing be denied.

I. CORRECTED STATEMENT OF PERTINENT FACTS

Hardin Wind formally submitted its application for a certificate to construct a proposed 300 MW wind-powered electric generating facility in Hardin County, Ohio on July 10, 2009. An amended application subsequently was filed on September 18, 2009. Following the filing of the amended application, the Ohio Power Siting Board ("OPSB") Staff submitted a number of data requests to Hardin Wind. On November 20, 2009, Hardin Wind filed in the public docket its responses to the majority of these data requests.

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Among Hardin Wind's responses was a Licensed Microwave Report prepared by Comsearch dated November 13, 2009 (the "November 2009 Microwave Report"). The November 2009 Microwave Report analyzed the eight (8) licensed microwave paths identified within Hardin Wind's proposed project area, and specifically included the 11 GHz microwave path licensed to Mid-Ohio.¹ Based on the turbine layout analyzed within the November 2009 Microwave Report, which included microwave path information calculated from coordinates on file with the Federal Communications Commission ("FCC") from Mid-Ohio's FCC Application for Radio Service Authorization, Comsearch concluded that turbines 38 (at latitude 40.66599127, longitude -83.80137919) and 180 (at latitude 40.65752202, longitude -83.71443710) could cause potential obstruction to Mid-Ohio's 11 GHz licensed microwave path.²

Contrary to the conclusions drawn within the publicly filed November 2009 Microwave Report, the Motion filed by Mid-Ohio inaccurately claims that the "11 GHz path identified in the Mid-Ohio Microwave Report [dated February 9, 2010] is a licensed path that should have been identified in the November Microwave Report, but was not." (Motion at 6).³ A review of both reports shows clearly that Mid-Ohio's licensed microwave path was indeed considered in the November 2009 Microwave Report. As a result, Mid-Ohio had at least constructive notice of potential impacts to its licensed microwave path as early as November 20, 2009, when the

¹ The November Microwave Report specifically identifies Mid-Ohio's licensed microwave path as having two site names (KNETON TWR and W NEWTON TWR) and a Worst Case Fresnal Zone (WCFZ) of 12.78.

² Mid-Ohio's microwave path was the only potentially impacted microwave path identified in the November Microwave Report.

³ Notably, Mid-Ohio also makes this erroneous assertion at least two other times in its Motion (on pages 3 and 7) as well as on page 4 of its Application for Rehearing.

November 2009 Microwave Report was filed in the above-captioned docket—and nearly two months before Mid-Ohio first contacted Hardin Wind representatives about its concerns.⁴

On December 21, 2009, the OPSB Staff recognized the conclusions from the November 2009 Microwave Report on page 17 of its Staff Report: “Based upon the calculated worst-case scenario and subsequent analysis, it was determined that turbines 38 and 180 have the potential to interfere with microwave transmission.” For this reason, the parties agreed to Condition 47 in the Joint Stipulation executed on January 12, 2010, which required: “That the Applicant conduct an in-depth vertical Fresnel-Zone analysis to determine if turbines 38 and 180 will cause microwave interference. Pursuant to OPSB Staff review and approval, the Applicant shall shift the location of, or eliminate, turbines 38 and 180, based on the results of the aforementioned study.”⁵

Following the execution of the Joint Stipulation, Mid-Ohio’s President and CEO, John Metcalf, contacted Hardin Wind representatives about his concerns regarding the impact of Hardin Wind’s turbine locations on Mid-Ohio’s licensed and unlicensed microwave paths. To remedy this problem, Mr. Metcalf provided Hardin Wind representatives with the Mid-Ohio microwave data that was to be the subject of the additional review of the turbine locations and the analysis of any potential impacts to Mid-Ohio’s already considered licensed microwave path as well as four unlicensed microwave paths. (Motion at 4-5). Notably, the information provided

⁴ Hardin representatives were first contacted by Mid-Ohio’s President and CEO, John Metcalf, in late January 2010.

⁵ Notably, Condition 47 remained unchanged in the Opinion, Order and Certificate issued on March 22, 2010.

by Mid-Ohio included coordinates for the Kenton Tower and West Newton Sub Tower that differed from the coordinates obtained from the FCC and used as the basis for calculations in the November 2009 Microwave Report.

Utilizing the Mid-Ohio provided information, Hardin Wind commissioned two new studies from Comsearch: the first to specifically analyze the four (4) unlicensed microwave paths belonging to Mid-Ohio and to analyze the same 11 GHz licensed microwave path previously analyzed in the November Microwave Report; and the second to analyze Mid-Ohio's land mobile radio base station repeaters. Comsearch's analyses resulted in the "Wind Power GeoPlanner™ Mid-Ohio Energy Microwave Report Hardin" dated February 9, 2010 (the "February 2010 Microwave Report"), and the "Mid-Ohio Energy Special Land Mobile Radio ("LMR") Report Hardin".

The February 2010 Microwave Report confirmed that only the 11 GHz microwave path licensed to Mid-Ohio could potentially be obstructed by Hardin Wind's proposed turbine locations. More specifically, the report identified four turbine locations with the potential to obstruct Mid-Ohio's 11 GHz licensed microwave path (turbine numbers 33, 39, 54, and 181). The results differed from the November 2009 Microwave Report because Mid-Ohio provided different coordinates to Hardin in January 2010 than the coordinates on file with the FCC.

Coordinates from FCC Application (used in the November 2009 Microwave Report)

	Latitude			Longitude		
	Degrees	Minutes	Seconds	Degrees	Minutes	Seconds
Kenton Tower	40	38	50.0	83	36	58.0
West Newton Sub Tower	40	40	34.0	83	54	10.3

Coordinates from Mid-Ohio (used in the February 2010 Microwave Report)

	Latitude			Longitude		
	Degrees	Minutes	Seconds	Degrees	Minutes	Seconds
Kenton Tower	40	38	<u>46.8</u>	83	36	<u>56.99</u>
West Newton Sub Tower	40	40	<u>25.6</u>	83	54	<u>7.08</u>

As a result of these different sets of coordinates (the ones on file with the FCC and the ones provided in January by Mid-Ohio), the microwave path in the February 2010 Microwave Report was shown in a different location than the path shown in the November 2009 Microwave Report, with the result that four turbines, rather than two turbines, were identified that may cause potential obstructions to Mid-Ohio's 11 GHz licensed microwave path (assuming that the Mid-Ohio coordinates, not the FCC coordinates, are correct).

On March 19, 2010, Hardin Wind provided copies of the February 2010 Microwave Report to Mid-Ohio—three days prior to the issuance of the Opinion, Order and Certificate (the "Certificate") in this proceeding.

II. MID-OHIO FAILED TO SATISFY THE REQUIREMENTS IN R.C. 4903.10

Because Mid-Ohio failed to timely intervene or otherwise participate in this proceeding, its participation through the filing of an application for rehearing is prohibited unless it establishes that the applicant's: 1) "failure to enter an appearance prior to the entry upon the journal of the commission of the order complained of was due to just cause;" and 2) that its "interests . . . were not adequately considered in the proceeding" (O.R.C. 4903.10). Mid-Ohio,

however, fails to satisfy either of these prerequisites. For this reason, its Motion should be denied.

1. Mid-Ohio offers no legitimate reason for failing to appear prior to the OPSB's issuance of the Certificate to Hardin Wind.

Mid-Ohio's sole reason for failing to enter an appearance in this proceeding is that it would have "filed a motion to intervene or taken other action had it believed its concerns were not being fully addressed by Hardin" (Motion at 6). Rather than identify how Hardin failed to address its concerns, Mid-Ohio devotes nearly three pages of its Motion to describing the extraordinary efforts undertaken by Mr. Adum and the Hardin development team to address the concerns raised by Mr. Metcalf. (Motion at 4-6). This recitation of events underscores Hardin Wind's efforts to resolve Mid-Ohio's concerns and supports Hardin Wind's position that Mid-Ohio participated informally in the application process. To the extent that Mid-Ohio believed that its concerns were unsatisfied, it should have intervened prior to the OPSB's decision. Needless to say, the facts are entirely insufficient to warrant the OPSB's consideration of Mid-Ohio's Application for Rehearing.

Perhaps more importantly, it is undisputed that Mr. Adum repeatedly agreed to address the concerns raised by Mid-Ohio. In fact, Mid-Ohio acknowledged that Mr. Adum agreed by telephone and e-mail to "take into consideration the identified obstructions to Mid-Ohio's communications systems" in revising the turbine layout (Motion at 6)—a task that the Order does not require to be completed until 30 days prior to the start of construction. In addition, Hardin Wind incurred the additional expense of commissioning a second microwave study devoted solely to Mid-Ohio's communications systems after the execution of the Joint Stipulation, after the completion of the November Microwave Report, and long after the

November 26, 2009, deadline for intervention in this proceeding. As a result, Mid-Ohio fails to establish just cause for failing to enter an appearance in this proceeding.

2. The interests of Mid-Ohio pertaining to its licensed microwave paths were adequately considered in this proceeding.

Toward the end of its Motion, Mid-Ohio finally explains that it seeks rehearing “out of an abundance of caution” to “ensure its concerns are addressed and to request modification of the Order to extend condition 47 of the Stipulation to include Mid-Ohio’s communications systems.” (Motion at 6). More specifically, Mid-Ohio’s lone issue is its inaccurate allegation that the November 2009 Microwave Report “failed to identify one of Mid-Ohio’s licensed microwave paths.” (Motion at 7). In reality, this represents Mid-Ohio’s unsuccessful last-ditch effort to participate in this proceeding to raise issues already addressed by the both Hardin Wind (through two separate microwave analyses) and the OPSB (in Condition 47 of the Certificate).

As previously explained, a review of the publicly-filed November 2009 Microwave Report clearly shows that Mid-Ohio’s licensed microwave path was indeed considered and analyzed. In fact, the initial Comsearch report identified an 11 GHz microwave path as being licensed to Mid-Ohio, identifying the two site names (KNETON TWR and W NEWTON TWR) associated with the microwave path, and a calculated Worst Case Fresnal Zone (WCFZ) of 12.78-meters. If Mid-Ohio somehow overlooked this obvious reference to its licensed microwave path, it would have been nearly impossible to ignore Comsearch’s conclusion that turbines 38 (at latitude 40.66599127, longitude -83.80137919) and 180 (at latitude 40.65752202, longitude -83.71443710) could possibly cause obstruction to the Mid-Ohio’s 11 GHz licensed microwave path. Furthermore, had Mid-Ohio fully analyzed the conclusion in the November 2009 Microwave Report, it would have been readily apparent that Condition 47 in both the Joint Stipulation and Certificate was predicated on the identification of potential obstruction of Mid-

Ohio's 11 GHz licensed microwave path within the November 2009 Microwave Report that specifically addressed Mid-Ohio's licensed microwave path. Therefore, Hardin Wind and the OPSB addressed Mid-Ohio's concerns in the publicly-filed November 2009 Microwave Report, Joint Stipulation, and March 22, 2010 Certificate—not to mention the special microwave study conducted on Mid-Ohio's licensed and unlicensed microwave paths in February 2010. [The February 2010 Microwave Report concluded that there were no obstructions to Mid-Ohio's unlicensed microwave paths.]

III. MID-OHIO'S SUBSTANTIVE ARGUMENTS IN ITS APPLICATION FOR REHEARING LACK MERIT

Assuming for the sake of argument that the OPSB accepts the Application for Rehearing for its review, Mid-Ohio fails to identify any reason why the OPSB's Order was unreasonable or unlawful, as required by R.C. 4903.10. Instead, Mid-Ohio:

seeks rehearing. . . solely for the purpose of requiring Hardin to a) shift or eliminate the four turbines acknowledged by Hardin on March 19, 2010, as having the potential to obstruct Mid-Ohio's microwave paths, b) avoid interference with Mid-Ohio's 900 MHz omni-directional non-licensed sites used to control its down line distribution equipment, and c) work with Mid-Ohio to determine whether Hardin's turbines will cause any additional interference with Mid-Ohio's communications systems, in ways that have not yet been identified, and make any necessary revisions to the turbine layout to avoid such interference. (emphasis in original).

(Application for Rehearing at 4). Not only does Mid-Ohio fail to identify any manner in which the Certificate is unlawful or unreasonable, but its substantive requests lack merit.

First, and as already acknowledged by Mid-Ohio, "at the adjudicatory hearing, Mr. Adum confirmed Hardin's willingness to change turbine locations" to mitigate any interference (Motion at 8). In addition, Mid-Ohio acknowledges that the OPSB itself already "required Hardin to shift the location of, or eliminate, turbines that have been identified as potentially causing microwave

interference with the licensed microwave paths identified during the proceeding.” (Application for Rehearing at 7). This very condition relates to the same licensed 11 GHz microwave path that Mid-Ohio is concerned about, thereby rendering Mid-Ohio’s initial concern moot. Regardless, Hardin Wind is committed to working with Mid-Ohio to address any identified obstructions to Mid-Ohio’s licensed and unlicensed microwave paths caused by the relocation of turbines prior to the submission of the final turbine layout.

Second, the February 2010 LMR Report identified no potential interference to Mid-Ohio’s unlicensed omni-directional 900 MHz communications systems. More specifically, the report stated that “the wind turbine installation at the Hardin Wind Energy Project will not have a degrading affect on the operation of the Mid Ohio Energy LMR network operating on the towers or the mobile units in the area.” For this reason, Mid-Ohio’s concerns are entirely misplaced and contrary to the conclusive results of an official microwave study that was based upon information supplied by Mid-Ohio.


Finally, Mid-Ohio makes the assertion that Hardin Wind should work with Mid-Ohio to address entirely speculative and unidentified future interferences with its microwave paths. Based on the results of both the November 2009 and February 2010 Microwave Reports completed by Comsearch, it is apparent that only Mid-Ohio’s 11 GHz licensed microwave path could even potentially be obstructed by Hardin Wind’s turbine locations. It would be entirely unreasonable for Hardin to commit to avoidance of Mid-Ohio microwave systems not currently in existence. For this reason, Mid-Ohio’s overreaching request should be denied.

IV. CONCLUSION

For the reasons identified above, Mid-Ohio should not be granted leave to file an application for rehearing and/or its application for rehearing should be denied. Furthermore,

Hardin Wind remains committed to addressing Mid-Ohio's concerns as part of its preparation of a final turbine layout. As Hardin Wind has repeated stated, as part of its preparation activities, it will reevaluate any microwave and/or LMR interference, and account for such interference in its final turbine layout.

Respectfully submitted on behalf of
HARDIN WIND ENERGY LLC


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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon the following parties of record via regular U.S. Mail and/or by electronic mail this 29th day of April 2010.


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