

FILE

9

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application)
of Paulding Wind Farm II LLC for a)
Certificate to Install Numerous)
Electricity Generating Wind Turbines in)
Paulding County, Ohio)

Case No. 10-369-EL-BGN

PUCO

2010 MAY 13 PM 4:39

RECEIVED-DOCKETING DIV

MOTION FOR WAIVERS

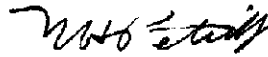
Pursuant to Section 4906.06(A)(6), Revised Code and Rule 4906-1-03 of the Ohio Administrative Code, Paulding Wind Farm II LLC ("Paulding Wind II" or "the Applicant"), moves the Ohio Power Siting Board ("Power Siting Board") to grant waivers from Section 4906.06(A)(6), Revised Code and from Chapter 4906-17 of the Ohio Administrative Code for the reasons detailed in the following Memorandum in Support.

Paulding Wind II will be filing an application for a wind-powered electric generation facility of more than 5 MW in the above styled docket. Although the application is being filed in accordance with Chapter 4906-17 of the Ohio Administrative Code, Paulding Wind II seeks certain waivers primarily based on the unique nature of a wind-powered electric generation facility. The requested waivers will not impact the Power Siting Board's review and analysis of the proposed generation facility.

WHEREFORE, Paulding Wind respectfully requests that the Power Siting Board grant a waiver from the one-year notice provision of Section 4906.06(A)(6), Revised Code and waivers in part or in whole from Rules 4906-17-05(A)(4), 4906-17-05(B)(2)(h), 4906-17-08(A)(3), 4906-17-08(B)(2)(a), 4906-17-08(C)(2)(c) and 4906-17-08(D)(2) of the Ohio Administrative Code.

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business
Technician _____ Date Processed MAY 13 2010

Respectfully submitted,



M. Howard Petricoff (0008287)
Stephen M. Howard (0022421)
Michael J. Settineri (0073369)

VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5414
(614) 719-4904 (fax)
mhpetricoff@vorys.com
smhoward@vorys.com
mjsettineri@vorys.com

Attorneys for Paulding Wind Farm II LLC

MEMORANDUM IN SUPPORT

I. Introduction

Paulding Wind Farm II LLC, a wholly owned subsidiary of Horizon Wind Energy LLC (hereafter referred to as “the Applicant” or “Paulding Wind”) is proposing to construct a wind-powered electric generation facility located in Paulding County known as the Timber Road II Wind Farm. The energy generated at the Timber Road II Wind Farm, hereafter referred to as the “Project” or the “Facility,” will collect to a transmission line and electric substation operated by the Ohio Power Company. The proposed Project consists of up to 109 wind turbines capable of generating no more than 150.4 MW and associated infrastructure including a new interconnection switch yard and Project Substation which will be owned by the Ohio Power Company. The electricity generated by the Facility will be transferred to the transmission grid operated by PJM Interconnection LLC for sale at wholesale or under a purchase power agreement.

Through this motion, Paulding Wind is seeking waivers from certain requirements of the Revised Code and Chapter 4906-17 of the Ohio Administrative Code. These waivers are necessary given that Paulding Wind is not a public utility and given the unique nature of the proposed Timber Road II Wind Farm. For example, Rule 4906-17-05(B)(2)(h) requires the Applicant to supply a map of the proposed electric power generating site showing the grade elevations where modified during construction. However, because of the number and small footprint of the wind turbines as compared to a conventional electric generating plant, the information on grade elevations modified during construction will not be definitively available until after construction (i.e., as-built surveys). Therefore, a waiver is being sought from the requirement to provide maps showing grade elevations resulting from construction. A similar

motion was granted in the case of In re Paulding Wind Farm LLC, Case No. 09-980-EL-BGN, Entry, February 23, 2010.

Accordingly, as more fully set forth below, Paulding Wind seeks a waiver from the one-year notice provision of Section 4906.06(A)(6), Revised Code and waivers in part or in whole from Rules 4906-17-05(A)(4), 4906-17-05(B)(2)(h), 4906-17-08(B)(2)(a), 4906-17-08(C)(2)(c) and 4906-17-08(D)(2) of the Ohio Administrative Code.

II. Section 4906.06(A)(6), Revised Code

Section 4906.06(A)(6), Revised Code indicates that an application filed with the Ohio Power Siting Board ("Power Siting Board") must be filed not less than one year nor more than five years prior to the planned date of commencement of construction. Either period may be waived by the Board for good cause shown. The one-year requirement was associated with electric generation facilities of public utilities -- the financial risk of which under Section 4909.18, Revised Code and the monopoly franchise provision of Section 4933.81, Revised Code rests with the general public who are served in the franchised service area. Since the financial risk of generation facilities owned by independent power producers rests with the non-utility owner, the one year time frame to assess the public need for the facility is not required. The Power Siting Board for that reason has routinely waived the one-year requirement for such generation facilities.¹

The Applicant intends to begin construction of the Facility as soon as it is authorized by the Power Siting Board. Without the waiver of the one-year notice provision, Paulding Wind

¹ See In re: Rolling Hills Generating, LLC, a Subsidiary of Dynegy Power, Case No. 00-1616-EL-BGN, Entry, December 8, 2000; In re: Sun Coke Company, a Division of Sunoco, Case No. 04-1254-EL-BGN, Entry, April 26, 2005; In re: Middletown Coke Company, a Subsidiary of Sun Coke Energy, Case No. 08-281-EL-BGN, Entry, May 28, 2008; In re: Buckeye Wind LLC, Case No. 08-0666-EL-BGN, Entry dated July 31, 2009; In re: Hardin Energy LLC, Case No. 09-479-EL-BGN, Entry dated July 17, 2009; and In re: Paulding Wind Farm LLC, Case No. 09-980-EL-BGN, Entry dated February 23, 2010.

will not be permitted to commence construction at that time. Further, the General Assembly has set a yearly goal of renewable energy, totaling 12.5% by 2025 of which half is to be sited in Ohio. Failure to grant waivers of the one year minimum for this and similar projects could impair reaching the statutory goal of 6.25% Ohio based renewable generation. Thus, good cause exists for granting the requested waiver.

III. Rule 4906-17-05(A)(4) of the Ohio Administrative Code (Cross-Sectional View and Test Borings)

Rule 4901-17-05(A)(4) of the OAC requires the Applicant to provide a map(s) of suitable scale and a corresponding cross-sectional view, showing the geological features of the proposed project area and the location of proposed test borings. The Applicant will provide a cross-sectional view with geological features as part of the Application, but not in relation to the test boring locations. The locations of the test borings will be provided subsequent to the filing of the Application. The delay will permit the geotechnical engineer to review all available desktop information and determine the number and location of the borings to be drilled. In addition, the Applicant anticipates that the County Engineer will want road borings done. The location and timing of road borings will be done in concert with the Paulding County Engineer.

Thus, the Applicant respectfully requests that the Power Siting Board grant a waiver from the above cited rule requirement that a map containing the cross-sectional view also provide the location of the test borings at the time of the initial Application. The Applicant will provide responsive information to this requirement and other related data requests when the final selection of ground and road borings are made. A similar request for waiver was granted in the matter of In re: Buckeye Wind LLC, Case No. 08-666-EL-BGN, Entry dated July 31, 2009 and

in the matter of In re: Paulding Wind Farm LLC, Case No. 09-980-EL-BGN, Entry dated February 23, 2010.

IV. Rule 4906-17-05(B)(2)(h) of the Ohio Administrative Code (Grade Elevations Where Modified During Construction)

Rule 4906-17-05(B)(2)(h) requires an applicant to supply a map of the proposed electric power generating site showing the grade elevations where modified during construction. Unlike a conventional electric generating plant in which a large tract of contiguous acreage property must be graded in order to properly site the generation facility, a wind turbine sits on a relatively small base generally only 50 to 60 feet in diameter. The impact of the grading will be minimal and possibly not known until after construction of the pedestal. Thus, the Applicant requests a waiver of the above cited rule and agrees in lieu of the rule to generate proposed contours/grade modifications during preparation of the Facility construction drawings, which can be provided to the Staff of the Power Siting Board when available. A similar request for waiver was granted in the matter of In re: Buckeye Wind LLC, Case No. 08-666-EL-BGN, Entry dated July 31, 2009 and in the matter of In re: Paulding Wind Farm LLC, Case No. 09-980-EL-BGN, Entry dated February 23, 2010.

V. Rule 4906-17-08(A)(3) (Impact of Construction and Operation to Public and Private Water Supplies)

Rule 4906-17-08(A)(3) requires that the Applicant estimate the impact to public and private water supplies due to construction and operation of the proposed facility. The Applicant has done so using a desktop review of available hydrogeology and geotechnical information for the proposed Facility which will be attached to the Application as Exhibit G. The Applicant's consultant, Hull & Associates, Inc. also mailed a brief well survey to landowners that were under contract with the Applicant at the time of mailing in March, 2010. The well survey results will not be attached to the Application because an inadequate number of responses have been

received at this time. Provided a sufficient number of responses are received, the Applicant anticipates that the survey results will be submitted to Staff by June 15, 2010. Accordingly, the Applicant respectfully requests for a temporary waiver until June 15, 2010 to submit to the Staff the report setting forth the results of the well survey.

VI. Rule 4906-17-08(B)(2) (Impact of Construction)

Rule 4906-17-08(B)(2) requires the Applicant to estimate the impact of construction on areas within a half-mile radius from the proposed facility, such as undeveloped or abandoned land such as wetlands. To identify and evaluate potential wetlands and surface waters that could be affected by the Facility, the Applicant's consultant, JFNew, conducted a reference map, desktop analysis and a brief site reconnaissance to identify jurisdictional status and approximate impact areas of wetlands, streams, and water bodies that occur in the vicinity of the Project area that will be attached to the application as Exhibit K. However, no differentiation between wetlands and streams has yet been made since the site overview was conducted during winter months, and vegetation was not yet entirely visible. Therefore, a site-specific wetland and stream delineation will be conducted during the 2010 growing season to confirm and/or refine JFNew's preliminary findings. The formal delineation will be based on the methodology described in the USACE Wetland Delineation Manual and the corresponding Draft Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region. Once the site-specific wetland delineation is complete, a report will be prepared describing all observed wetlands on-site and any refinements to the projected impacts to jurisdictional and non-jurisdictional wetlands. It is anticipated that this report would be provided to the OPSB Staff by July 15, 2010.

The Applicant respectfully requests for a temporary waiver until July 15, 2010 to submit to the Staff the site-specific wetland delineation report.

VII. Rule 4906-17-08(C)(2)(c) of the Ohio Administrative Code (Increase in Tax Revenues)

Rule 4906-17-08(C)(2)(c) requires an applicant to estimate the increase in county, township, city, and school district tax revenue accruing from the facility. The Applicant seeks a temporary waiver from this requirement because agreements regarding tax or payment in lieu of taxes are currently being negotiated, so no values are available to report at this time. However, an estimate of the increase to county, township, city and school district tax revenue will be supplied upon finalization of all agreements. Accordingly, the Applicant seeks a temporary waiver to supply the information required by Rule 4906-17-08(C)(2) no later than eight weeks prior to the public hearing.

VIII. Rule 4906-17-08(D)(2) (Impact to Landmarks)

Rule 4906-17-08(D)(2) of the OAC requires the Applicant to estimate the impact of the proposed facility on the preservation and continued meaningfulness of landmarks and to describe plans to mitigate any adverse impact. The Applicant will satisfy that requirement in its Application. Above and beyond the requirements of Rule 4906-17-08(D)(2), the Applicant has initiated an archaeological reconnaissance survey and a historical architecture survey because literature reviews indicated that the Project Area had not been systematically surveyed for cultural resources. The Applicant would like to submit the results of these studies when complete. Accordingly, the Applicant seeks leave to submit the results of these studies no later than eight weeks prior to the public hearing in this matter. In the event the Administrative Law Judge believes a waiver is required, the Applicant seeks a temporary waiver from Rule 4906-17-08(D)(2) to allow for the submittal of the study results.

IX. Conclusion

Good cause exists for granting the waivers. Paulding Wind II respectfully requests that the Power Siting Board grant a waiver from the one-year notice provision of Section 4906.06(A)(6), Revised Code and waivers in part or in whole from Rules 4906-17-05(A)(4), 4906-17-05(B)(2)(h), 4906-17-08(A)(3), 4906-17-08(B)(2), 4906-17-08(C)(2)(c) and 4906-17-08(D)(2) of the Ohio Administrative Code.

Respectfully submitted,



M. Howard Petricoff (0008287)
Stephen M. Howard (0022421)
Michael J. Settineri (0073369)

VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5414
(614) 719-4904 (fax)
mhpetricoff@vorys.com
smhoward@vorys.com
mjsettineri@vorys.com

Attorneys for Paulding Wind Farm II LLC