

FILE

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the Application)
of Black Fork Wind Energy, LLC for)
a Certificate to Install Numerous)
Electricity Generating Wind Turbines in)
Crawford and Richland Counties, Ohio)

Case No. 10-2865-EL-BGN

MOTION FOR WAIVERS

Pursuant to Section 4906.06(A)(6), Revised Code and Rule 4906-1-03 of the Ohio Administrative Code, Black Fork Wind Energy, LLC ("Black Fork" 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.

Black Fork 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, Black Fork 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, Black Fork 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 4906-17-04; 4906-17-05(A)(4); 4906-17-05(B)(2)(h) and (i);

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4906-17-06(B)(2); 4906-17-06(C)(2); 4906-17-08(A)(1); 4906-17-08(C)(2)(c); and
4906-17-08(E)(4) of the Ohio Administrative Code.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. Introduction

Black Fork Wind Energy, LLC, a wholly owned subsidiary of Element Power US, LLC (hereafter referred to as “the Applicant” or “Black Fork”) is proposing to construct a wind-powered electric generation facility located in Crawford and Richland Counties. The proposed project consists of up to 91 wind turbines capable of generating up to 200 megawatts (“MW”) and associated infrastructure including a new interconnection switch yard and substation. 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 power purchase agreement.

Through this motion, Black Fork 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 Black Fork is not a public utility and given the unique nature of the proposed 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 and in the case of In re Paulding Wind Farm II LLC, Case No. 10-369-EL-BGN, Entry, June 21, 2010.

Accordingly, as more fully set forth below, Black Fork 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 4906-17-04; 4906-17-05(A)(4); 4906-17-05(B)(2)(h) and (i); 4906-17-06(B)(2); 4906-17-06(C)(2); 4906-17-08(A)(1); 4906-17-08(C)(2)(c); and 4906-17-08(E)(4) 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 Power Siting 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, Black Fork 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.

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; In re: Paulding Wind Farm LLC, Case No. 09-980-EL-BGN, Entry dated February 23, 2010; In re Paulding Wind Farm II LLC, Case No. 10-369-EL-BGN, Entry dated June 21, 2010.

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 4906-17-04 of the Ohio Administrative Code (Project Area Site Selection Study and Related Requirements)

Rule 4906-17-04 of the Ohio Administrative Code requires an applicant to conduct a project area site selection study prior to submitting an application for a wind-powered electric generation facility. The study is to be designed to evaluate all practicable project area sites for the proposed facility, in essence an alternative site analysis.

Unlike conventional generating plants, wind-powered generation facilities consist of multiple turbines sited over thousands of acres with siting limited by many factors including available wind resources, environmental constraints and available land. Alternative site analyses are typically not performed for wind-generation facilities given the siting constraints for turbines. Just as important, it is simply not practicable to procure land contracts and to perform environmental and engineering studies to develop alternative sites for wind-powered generation facilities. The Power Siting Board has routinely granted alternative site analyses waivers for the wind generation applications it has reviewed² and recently determined that no waiver is necessary in regards to an alternative site analysis under Rule 4906-17-04.³

In lieu of a project area analyses that would include alternative project area sites, the Applicant will provide a discussion of its site selection process, including information detailing the factors that were used to evaluate the potential project area and how final siting of infrastructure at the proposed project site was determined. The Applicant will also provide a

² See In re: Buckeye Wind LLC, Case No. 08-0666-EL-BGN, Entry dated July 31, 2009; In re: Harden Energy LLC, Case No. 09-479-EL-BGN, Entry dated July 17, 2009.

³ In re: Paulding Wind Farm, LLC, Case No. 09-980-EL-BGN, Entry dated Feb. 23, 2010, finding 3(c).

discussion of the criteria that were evaluated in determining whether to proceed with the acquisition of the project and a description of the process used to micro-site the project within the project area.

Accordingly, considering the unique nature of siting wind projects, the Applicant respectfully requests that the Power Siting Board grant a waiver under Rule 4906-17-04 as to the requirement for a site selection study and any other alternative site requirements under the rule.

IV. Rule 4906-17-05(A)(4) of the Ohio Administrative Code (Test Borings)

Rule 4906-17-05(A)(4) of the Ohio Administrative Code requires the Applicant to provide a map(s) of suitable scale showing the location of proposed test borings. 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 Engineers will want road borings done. The location and timing of road borings will be done in concert with the Crawford County Engineer and the Richland County Engineer.

Thus, the Applicant respectfully requests that the Power Siting Board grant a waiver from the above cited rule requirement that the location of the test borings be shown on a map. 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. The Power Siting Board has granted similar requests for waiver in other proceedings.⁴

⁴ See In re: Buckeye Wind LLC, Case No. 08-666-EL-BGN, Entry dated July 31, 2009; In re: Paulding Wind Farm LLC, Case No. 09-980-EL-BGN, Entry dated February 23, 2010; and In re: Paulding Wind Farm II LLC, Case No. 10-369-EL-BGN, Entry dated June 21, 2010.

V. 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. The Power Siting Board has granted similar requests for waiver in other proceedings.⁵

VI. Rule 4906-17-05(B)(2)(i) (Location of Permanent Meteorological Towers)

Rule 4906-17-05(B)(2)(i) requires an applicant to supply a map of the proposed electric power generating site showing other pertinent facilities. At this time, the Applicant anticipates installing three permanent meteorological towers. The towers will be 80 meters in height with no guy wires. The impact area for each permanent meteorological tower will be small, estimated to be 25 feet in diameter. The Applicant, however, has not finalized the location and number of meteorological towers for the project, preferring to complete this design work after a turbine model has been selected and in consultation with the selected turbine manufacturer. Doing so will ensure optimum placement of the meteorological towers with the selected turbine and final project layout. It will also ensure meteorological towers are placed at locations satisfactory to

⁵ See In re: Buckeye Wind LLC, Case No. 08-666-EL-BGN, Entry dated July 31, 2009; In re: Paulding Wind Farm LLC, Case No. 09-980-EL-BGN, Entry dated February 23, 2010; and In re: Paulding Wind Farm II LLC, Case No. 10-369-EL-BGN, Entry dated June 21, 2010.

the turbine manufacturer for warranty purposes. All meteorological towers will be installed within areas studied for impact and near turbine locations. Therefore, because permanent meteorological towers can be considered "other pertinent installations," the Applicant requests a waiver from the above cited rule and agrees in lieu of the rule to show the location of all permanent meteorological towers on the project's final engineering drawings that will be submitted to Staff for its review and approval no later than thirty days prior to the preconstruction conference.

VII. Rule 4906-17-06(B)(2) and (C)(2) of the Ohio Administrative Code (Cost Comparison Between Similar Facilities)

Rule 4906-17-06(B)(2) requires the applicant to compare the total costs per kilowatt with the applicant's similar facilities. Subsection (C)(2) requires the applicant to compare the total operation and maintenance costs per kilowatt with the applicant's similar facilities. Although the Applicant's personnel have successfully developed projects across the United States, the Applicant does not have any projects currently in commercial operation so no comparisons between the current project's cost estimates and the Applicant's "similar facilities" can be made. Instead, the Applicant will utilize the national costs prepared by the U.S. Department of Energy Lawrence Berkeley National Laboratory to provide a comparison for this project. Accordingly, the Applicant respectfully requests that the Power Siting Board grant a waiver allowing the Applicant to compare the cost estimates for the proposed facility with costs for similar facilities using data from the U.S. Department of Energy Lawrence Berkeley National Laboratory.

VIII. Rule 4906-17-08(A)(1) of the Ohio Administrative Code (Ten Year Population Projection for Townships, Cities and Villages)

Rule 4906-17-08(A)(1) of the Ohio Administrative Code requires the Applicant to provide ten years of projected population estimates for communities within five miles of the proposed site. The Applicant has provided population estimates for communities within five miles of the proposed site through 2020. The ten year projected population estimate required under the rule technically should be through March 2021. However 2021 census data is not available. Accordingly, the Applicant respectfully requests that the Power Siting Board grant a waiver allowing the Applicant to submit its population estimates for the period from 2010 through 2020.

IX. 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 waiver from this requirement. No values are available to report at this time as the Applicant is considering available options such as entering into agreements regarding tax or payment in lieu of taxes. The Applicant will supply an estimate of the increase to county, township, city and school district tax revenue after it elects a tax option. Accordingly, the Applicant seeks a waiver allowing the Applicant to supply the information required by Rule 4906-17-08(C)(2)(c) to Staff no later than eight weeks prior to the public hearing. The Power Siting Board granted a similar waivers in the matter of Paulding Wind Farm, LLC, Case No. 09-980-EL-BGN, Entry dated Feb. 23, 2010, finding 3(b).

X. Rule 4906-17-08(E)(4) of the Ohio Administrative Code (Military Radar Installations)

Rule 4906-17-08(E)(4) of the Ohio Administrative Code requires the Applicant to evaluate and describe the potential for the facility to interfere with military radar systems. There are no known military radar systems in the project area; however, due to security concerns, the locations of some military radar systems are not available to the public. The Applicant has submitted a request for a review by the National Telecommunications and Information Administration ("NITA") which is responsible for coordinating with other federal agencies to determine whether there is a potential for interference to military radar systems. The Applicant estimates it will receive a response from NITA by April 18, 2011, and therefore requests a waiver allowing for the submittal of the NITA report no later than eight weeks prior to the public hearing in this matter to confirm the Applicant's estimate that there will be no impact on military radar systems in the project area.

XI. Conclusion

As good cause exists for granting the waivers, Black Fork 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 4906-17-04; 4906-17-05(A)(4); 4906-17-05(B)(2)(h) and (i); 4906-17-06(B)(2); 4906-17-06(C)(2); 4906-17-08(A)(1); 4906-17-

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