

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **ASHTABULA**)
WIND ENERGY LLC for a Certificate to Site a)
Wind-Powered Electric Generation Facility in) Case No. 11-2400-EL-BGN
Putnam County, Ohio.)

SUPPLEMENTAL MOTION FOR WAIVERS

On April 14, 2011, as amended June 13, 2011, Ashtabula Wind Energy LLC (“Ashtabula Wind” or “Applicant”) filed a Motion for a Waiver of Ohio Revised Code Section (“R.C.”) 4906.06(A)(6). By Entry dated June 22, 2011 Ashtabula Wind’s motion was granted. Pursuant to Ohio Administrative Code (“OAC”) Rule 4906-01-03 and Rule 4906-7-12(C), Ashtabula Wind respectfully moves the Ohio Power Siting Board (the “Board”) to grant the following supplemental waivers on an expedited basis:

- (1) From providing an extensive site selection study to the extent that Applicant is not able to describe all the specific information listed in the site selection criteria as set forth in OAC Rule 4906-17-04(A);
- (2) From providing map of vegetative cover as set forth in OAC Rule 4906-17-05(A)(3)(g), and instead to allow the Applicant to provide a general narrative description of the vegetative cover that may be disturbed during construction;
- (3) From certain requirements relating to cross-sectional views and test borings and maps set forth in OAC Rule 4906-17-05(A)(4) and (B)(1)(a) respectively, and instead to allow the Applicant to submit this information once it determines the final location of turbines and other structures; and
- (4) From providing a map showing modifications in grade elevations during construction as set forth in OAC Rule 4906-17-05(B)(2)(h) and instead to allow Applicant to submit the proposed contour grade elevations at the time it submits its construction drawings.

Further support for these supplemental waiver requests is set forth in the Memorandum in

Support below.

MEMORANDUM IN SUPPORT

I. BACKGROUND

Ashtabula Wind is a wholly owned subsidiary of Apex Wind Energy Holdings, LLC (“Apex”). Apex is a national wind energy company formed to develop, build, own, and operate wind energy facilities. Founded in 2009 by Greenlight Energy Resources, Inc., a renewable energy investment company, Apex is based in Charlottesville, Virginia with regional offices throughout the country. The Apex team has more than 100 years of combined industry experience including the development, procurement, construction and financing of over \$10 billion of wind energy facilities now in commercial operation.

The proposed Ashtabula Wind project is designed as a “brownfield” project, and will be located on approximately 982 acres of industrial land in Ashtabula Township, Ashtabula County currently being used for various commercial purposes, including but not limited to manufacturing, environmental remediation and landfill waste disposal. The Wind Facility will consist of up to 19 wind turbine generators with a nameplate capacity rating of between 2.1 MW and 3 MW, for a total generating capacity of up to 50 MW.

Based upon the unique nature of wind generation facilities, Ashtabula Wind is seeking waivers from certain requirements of OAC Chapter 4906-17.

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

An expedited ruling on this Motion is required in order for Applicant to complete an application in conformance with the applicable requirements in OAC Chapter 4906-17. Applicant plans to file its application in the August or September of 2011. Meeting this filing

date is necessary to allow Applicant to begin construction by Spring of 2012 so that the project can commence commercial operation by no later than Fall of 2012.

As set forth in this waiver request, and as will be evident in the application itself, Applicant has conducted the requisite analyses and studies, and obtained the necessary site commitments, so that Applicant can meet its schedule. For these reasons, Applicant asks that the review of its waiver requests be undertaken on an expedited basis and urges the Board or the Administrative Law Judge to decide this Motion on such an expedited basis.

III. WAIVER REQUESTS

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

As part of the application, Ashtabula Wind will be providing a significant amount of information regarding the company's selection of its site in Ashtabula County, Ohio. Wind resource is extremely limited in Ohio; there are only a handful of project sites with the wind resource necessary to support a utility scale project. The convergence of sufficient wind resources, sufficient transmission capacity and interested landowners willing to lease their land – all are needed for a viable wind energy project. In order for Ohio utilities to meet the requirements for renewable energy mandated by the Ohio legislature, all viable Ohio wind sites must be considered as potential wind energy project sites. Each specific criterion set forth in OAC Rule 4906-17-04 may not apply even though the site is an appropriate one for a wind energy project.

OAC Rule 4906-17-04 contemplates extensive detail in a site selection study. Applicant will be providing a description of the project boundary; the rationale for selecting the site; a map of the general project area; a list and description of qualitative siting criteria (i.e. setbacks, noise constraints, etc.); and a constraint map. Applicant is aware that there is no approved form for a

site selection study used in OAC Chapter 4906-17. Moreover, as the Board recognized in promulgating its wind application rules, where an applicant limits its study to locations where there are potentially viable wind resources, it would be appropriate for the Board to grant a waiver from filing an extensive site selection study¹. However, in light of the recent Ohio Supreme Court decision in *In re Application of Middletown Coke Company*, (2010) 127 Ohio St. 3d 348, Applicant will provide sufficient information to support a finding that the site represents the minimum adverse environmental impact pursuant to R.C. 4906.10 (A)(3).

B. OAC 4906-17-05(A)(3)(g): Waiver to Allow Applicant to Provide a General Narrative Description of the Vegetative Cover that May be Disturbed During Construction, Rather than the Required Map.

OAC 4906-13-04(A)(3) requires Ashtabula Wind to submit a map showing, among other things, the vegetative cover that may be removed during construction. Applicant will provide a general description and provide a drawing of the vegetation that would be cleared in the project area (i.e., the disturbed area). However, an attempt to provide this detailed information for the massive acreage that comprises the project area (plus a five-mile buffer) would be cost prohibitive. In light of the fact that Applicant will provide the vegetation information within the limited disturbance area, additional data would serve no useful purpose because the Board and its Staff will have the relevant data for the impacted areas. Therefore Applicant proposes to provide in its application a general narrative description of the vegetative cover within the Project area and will estimate the quantity of specific vegetation that may be disturbed or removed during construction.

A similar waiver from this subsection was granted in *Buckeye Wind LLC*, Case No. 08-666-EL-BGN (Entry dated July 31, 2009) (hereinafter “*Buckeye Wind*”); *Heartland Wind, LLC*,

¹ *In the Matter of the Power Siting Board’s Adoption of Chapter 4906-17 of the Ohio Administrative Code*, Opinion and Order in Case No. 08-1024-EL-ORD issued October 28, 2008 at paragraph 56.

Case No. 09-1066-EL-BGN (Entry dated December 11, 2009) (hereinafter “*Heartland Wind*”); Glacier Ridge Wind Farm, LLC, Case No. 11-902-EL-BGN (Entry dated April 6, 2011) (hereinafter “*Glacier Ridge*”); and *Leipsic Wind, LLC*, Case No. 11-3676-EL-BGN (Entry dated July 25, 2011) (hereinafter “*Leipsic*”).

C. OAC 4906-17-05(A)(4): Waiver to Allow Applicant to Submit Information and a Map Relating to Cross-Sectional Views and Test Borings Once it Determines the Final Location of Turbines and Other Structures.

Ashtabula Wind requests a waiver from the requirement that it provide “maps and corresponding cross-sectional view(s) showing geological features of the proposed project area and the location of test borings” pursuant to Rule 4906-17-05(A)(4). Rule 4906-17-05(B)(1)(a) requires a layout of the test borings. As part of its application, Ashtabula Wind will provide a geological desktop study aid and a generalized cross-sectional view based on available information. Applicant proposes to merely defer this requirement, and later supplement its filing by providing a cross-sectional view and the location of test borings once the final turbine sites are determined.

Ashtabula Wind plans to perform geological tests (either bores or Cone Penetration Tests) at each of the final turbine location sites later in the process. As part of the final engineering design process, the results of the geological tests and cross sections will be provided to the Board Staff at a reasonable time prior to construction in accordance with Finding No. 66 of the Opinion and Order in Case No. 08-1024-EL-ORD, *In the Matter of the Power Siting Board’s Adoption of Chapter 4906-17 of the Ohio Administrative Code*, issued October 28, 2008. This type of waiver with the proposed deferral was granted in the *Buckeye Wind*, *Heartland Wind*, *Paulding Wind Farm LLC*, Case No. 09-980-EL-BGN (Entry dated February 23, 2010);

Paulding Wind Farm II, Case No. 10-369-EL-BGN (Entry dated June 21, 2010); and *Black Fork Wind Energy LLC*, Case No. 10-2865-EL-BGN (Entry dated May 3, 2011).

D. OAC Rule 4906-17-05(B)(2)(h): Waiver To Allow the Proposed Contour Grade Elevations To Be Submitted at the Time Applicant Submits Construction Drawings Rather Than Providing a Map Showing Modifications in Grade Elevations During Construction in the Application.

Rule 4906-17-05(B)(2)(h) requires an applicant to describe the layout and construction of the proposed site and a description of proposed major structures power generating site showing the grade elevations where modified during construction. There are two reasons why it is appropriate to delay providing the contour grade elevations with the application. Firstly, the final turbine site locations cannot be known with precision until later in the Board process and will be accurate as the final locations only when the Applicant submits its construction drawings at the preconstruction conference. Thus the grade elevations, if performed on the locations in the applications would have to be performed again when the final turbine site locations are known with absolute certainty. In addition, a wind turbine sits on a relatively small base, generally only 50 to 60 feet in diameter that is different from the situation of a large electric generating plant that rests on a large tract of contiguous acreage property. In the instance of turbine grading, 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 referenced rule, but proposes to provide the Staff the grading when it submits the final construction drawings. A similar request for waiver was granted in *Buckeye*, *Paulding Wind*, and *Paulding Wind II*.

IV. CONCLUSION

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

Respectfully submitted on behalf of
ASHTABULA WIND ENERGY LLC



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This foregoing document was electronically filed with the Public Utilities

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8/1/2011 4:43:57 PM

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Case No(s). 11-2400-EL-BGN

Summary: Motion for Waivers electronically filed by Teresa Orahood on behalf of Ashtabula Wind Energy LLC