

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Blue)
Creek Wind Farm, LLC for a Second)
Amendment to its Certificate to Install) Case No. 11-3644-EL-BGA
a Wind-Powered Electric Generation)
Facility in the Counties of Van Wert)
and Paulding, Ohio.)

ORDER ON CERTIFICATE AMENDMENT

The Ohio Power Siting Board (Board), coming now to consider the above-entitled matter and having determined that a public hearing is not necessary, having reviewed the amendment application and being otherwise fully advised, hereby issues its order on certificate amendment in accordance with Chapter 4906, Revised Code.

APPEARANCES:

Bricker & Eckler LLP, by Sally W. Bloomfield and Matthew W. Warnock, 100 South Third Street, Columbus, Ohio 43215-4291, on behalf of Blue Creek Wind Farm, LLC.

Mike DeWine, Ohio Attorney General, John H. Jones, Assistant Section Chief, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Board.

OPINION:

A. History of the Proceeding:

On August 23, 2010, the Board issued an opinion, order, and certificate granting the application of Heartland Wind, LLC (Heartland) for a certificate to construct a wind-powered electric generating facility in Van Wert and Paulding Counties, Ohio, in Case No. 09-1066-EL-BGN (09-1066). The Board granted Heartland's application pursuant to a joint stipulation and recommendation filed by Heartland, the Ohio Farm Bureau Federation (OFBF), and the Board's Staff (Staff), which included 61 specific conditions. In 09-1066, the Board approved the construction of the facility consisting of 159 turbines. On November 18, 2010, the Board granted a joint application to transfer the certificate from Heartland to Blue Creek Wind Farm, LLC (Blue Creek).

On July 25, 2011, the Board granted Blue Creek's amendment application in Case No. 11-1995-EL-BGA (11-1995), to amend the certificate issued in 09-1066. In the order on certificate amendment approved in 11-1995, the Board approved Blue Creek's proposal to construct and operate eight additional Gamesa G-90 model, 2.0 megawatt (MW) wind turbines at the Blue Creek wind farm. The amendment increased the total

number of wind turbines at the Blue Creek wind farm from 159 to 167 and the amended project has an aggregate generating capacity of up to 334 MW with an annual production of between 520,000 to 1,170,000 MW hours.

On June 17, 2011, Blue Creek filed a second application to amend the certificate issued in 09-1066, as amended in 11-1995. In its amendment application, Blue Creek is seeking to amend Conditions 42 and 43 to its certificate as they address the maximum noise level permitted to be caused by the turbines at nonparticipating residences within the project boundary and within one mile of the entire project boundary. As currently written and approved in 09-1066, Conditions 42 and 43 provide that:

- (42) Any turbine forecasted prior to construction to exceed the ambient noise levels (L_{EQ}) by greater than five A-weighted decibels (dBA) under any operating conditions at the exterior of any nonparticipating 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, the applicant shall propose mitigation consisting of either reducing the impact so that the ambient L_{EQ} is not exceeded by greater than five dBA, or other measures acceptable to Staff in consultation with the affected receptor(s).
- (43) After construction, any turbine validly measured to exceed the ambient L_{EQ} by greater than five dBA under any operating conditions at the exterior of any nonparticipating residence within one mile of the project area shall be subject to further review of the impact and possible mitigation. If required, the applicant shall propose mitigation consisting of either reducing the impact so that the ambient L_{EQ} is not exceeded by greater than five dBA, or other measures acceptable to Staff in consultation with the affected receptor(s).

Blue Creek's requested amendment would define the ambient L_{EQ} referred to in Conditions 42 and 43 as 45 dBA.

As part of its application, Blue Creek also seeks a waiver of Rule 4906-5-10(B), Ohio Administrative Code (O.A.C.), which requires amendment applications to be submitted in the same form as an application for a certificate. In support of its request, Blue Creek explains that there is no additional information to submit that has not already been submitted in 09-1066 or 11-1995, and that it will comply with all other requirements of Rule 4906-5-10 (B), O.A.C., regarding notice and service. No one

intervened in this case or opposed Blue Creek's request for waiver. Upon consideration of Blue Creek's motion for wavier, the Board finds that it has sufficient information to review Blue Creek's amendment application; therefore, Blue Creek's request for a waiver of Rule 4906-5-10(B), O.A.C., should be granted.

In accordance with Rule 4906-5-10(B), O.A.C., Blue Creek served copies of the amendment application upon local officials. Blue Creek filed proof of service with the Board on June 21, 2011. Public notice of the proposed amendment was published on June 20, 2011, in *The Lima News*, and on June 22, 2011, in *The Paulding County Progress*, and *The Van Wert Times Bulletin*. Blue Creek filed proof of publication with the Board on June 24, 2011. The Board received public comment from three individuals voicing concern about any modification of the noise levels approved in 09-1066.

On September 23, 2011, as corrected September 26, 2011, Staff filed a report evaluating the amendment application. On September 30, 2011, as amended October 31, 2011, Blue Creek and Staff filed a Stipulation and Recommendation (Stipulation), which purports to resolve the issues in this case.

B. Applicable Law:

Blue Creek is a corporation and a person under Section 4906.01(A), Revised Code, and is certificated to construct, operate, and maintain a major utility facility under Section 4906.10, Revised Code, in accordance with the Board's order in 09-1066.

Pursuant to Section 4906.10, Revised Code, the Board's authority applies to major utility facilities and provides that such entities must be certified by the Board prior to commencing construction of a facility. In accordance with Chapter 4906, Revised Code, the Board promulgated rules, which are set forth in Chapter 4906-17, O.A.C., prescribing regulations regarding wind-powered electric generation facilities and associated facilities.

Section 4906.07, Revised Code, requires that, when considering an application for amendment of a certificate, the Board shall hold a hearing "if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility...." An applicant is required to provide notice of its application for amendment in accordance with Section 4906.06(B) and (C), Revised Code, and Rule 4906-5-10(B), O.A.C.

C. Staff Investigation of Proposed Amendment:

In its report, Staff represents that, in compliance with the filing requirements for an initial application, a baseline noise study was filed as part of 09-1066, which estimated the project area's actual ambient noise levels at nine survey locations. Staff explains that the noise impact of the wind farm is partially dependent on the existing ambient noise level of the project area. The study supplied to Staff demonstrated that the recorded L_{EQ} for nine sample locations ranged from 29 to 55 dBA. Staff concludes that, depending on the receptor, a noise level within the range of 29 to 55 dBA represents the ambient noise level for Blue Creek's current certificate conditions.

Staff further explains that, attached to the application filed in 11-1995, Blue Creek provided a new cumulative evaluation of the ambient L_{EQ} and operational noise levels which incorporate a different methodology than previously submitted. Through regression analysis of the acoustic data, Blue Creek determined that the project area ambient noise level is 42.3 dBA at the critical wind speed of 8.7 meters/second. According to Staff, the critical wind speed methodology takes into account the ambient noise level only at times when the wind is sufficient for generation and accounts for the increased ambient noise caused by the wind blowing at that speed. Staff explains that this means Blue Creek is not held to a lower baseline requirement if the wind speeds are not sufficient to power the turbine. An allowance would have to be made for nonparticipating receptors that already have a measured ambient noise level that exceeds the baseline average.

Staff states that the proposed definition of ambient L_{EQ} of 45 dBA is not supported by materials previously presented in 09-1066 or 11-1995. Moreover, Staff explains that applying the plus 5 dBA adjustment from Conditions 42 and 43 to Blue Creek's proposed 45 dBA baseline would result in an actual increase to 50 dBA. In its report, Staff states that it is not in favor of an increase to 50 dBA for the project site because Blue Creek's underlying definition of the ambient L_{EQ} in reaching the 45 dBA level is not supported by the record in this case.

In reaching its conclusion in the report, Staff explains that noise standards are not defined by statute or by rule. However, according to Staff, examples of existing recommendations and guidelines in other jurisdictions indicate that, for nonindustrial settings, the noise level should not exceed ambient noise by more than six dBA at a receptor and an increase of six dBA may cause complaints. Staff concludes that utilization of the project area nighttime L_{EQ} of 42.3 dBA as the baseline to which Blue Creek would be permitted to add five dBA under operating conditions represents the minimum adverse impact to the project area.

Based on its investigation, Staff recommends the following modification to Condition 43:

After commencement of commercial operation and upon receipt of a project noise complaint from a nonparticipating residence, Blue Creek shall conduct further review of the project's operational noise impact. Mitigation shall be required if the project contribution at the exterior of a nonparticipating residence within one mile of the project boundary exceeds the greater of: (1) the project ambient nighttime L_{EQ} (42.3 dBA) plus five dBA; or (2) the validly measured ambient plus five dBA. The sound measurements must be conducted at the same time as identified in the complaint. Mitigation shall be reviewed by and acceptable to Staff in coordination with the affected receptors.

D. Stipulation and Recommendation:

As mentioned previously, Staff and Blue Creek filed a stipulation on September 30, 2011, as amended October 31, 2011. In the Stipulation, the parties agree and recommend that the Board issue an amended certificate subject to a modified definition of ambient L_{EQ} . No party opposed the Stipulation. The following is Conditions 42 and 43 as agreed to by the stipulating parties:

- (42) Any turbine levels forecasted prior to construction to exceed the greater of (1) the project ambient nighttime L_{EQ} (43.6) by greater than five dBA or (2) the validly measured ambient L_{EQ} plus 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 the potential impact and possible mitigation prior to construction. If required, the applicant shall propose mitigation consisting of either reducing the impact so that the ambient L_{EQ} is not exceeded by greater of (1) the project ambient nighttime L_{EQ} (43.6) by greater than five dBA or (2) the validly measured ambient L_{EQ} plus five dBA, or other measures acceptable to staff in consultation with the affected receptor(s).
- (43) That after the commencement of commercial operation and upon receipt of a project noise complaint from a non-participating residence, the Applicant shall conduct further review of the project's noise impacts. Mitigation shall be required if the project contribution at the exterior of a non-participating residence within one mile of the project

boundary exceeds the greater of (1) the project ambient nighttime L_{EQ} (43.6 dBA) plus five dBA; or (2) the validly measured ambient plus five dBA. The sound measurements must be conducted at the same time as identified in the complaint. Mitigation shall be reviewed by and acceptable to OPSB Staff in coordination with the affected receptor(s).

CONCLUSION:

According to the Stipulation, the signatory parties agree that the Stipulation is the product of lengthy, serious bargaining among knowledgeable and capable parties. Furthermore, the signatory parties assert that the Stipulation is supported by adequate data and information, represents a just and reasonable resolution of the issues in this proceeding, violates no regulatory principle or precedent, and is in the public interest. Moreover, the signatory parties agree that the stipulated nighttime L_{EQ} of 43.6 does not result in any material increase or significant adverse environmental impact of the certified facility. Although not binding upon the Board, stipulations are given careful scrutiny and consideration.

Upon review of the record, the Board finds, pursuant to Section 4906.07, Revised Code, that the proposed amendment to the certificate issued in 09-1066, with the adoption of the stipulated modification to Conditions 42 and 43, does not result in any material increase in any social or environmental impact, or a substantial change in the location of the certificated facility. Therefore, the Board finds that a hearing is not necessary under the circumstances presented in this case. Accordingly, the Board concludes that Blue Creek's 09-1066 certificate should be amended to permit Blue Creek to define the ambient nighttime L_{EQ} as 43.6 dBA. Further, Blue Creek's certificate conditions adopted in 09-1066 should be amended to incorporate the recommended Conditions 42 and 43 as set forth in the Stipulation filed on September 30, 2011, as amended October 31, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Blue Creek is a corporation and a person under Section 4906.01(A), Revised Code.
- (2) Blue Creek's wind-powered electric generation facility is a major utility facility under Section 4906.01(B)(1), Revised Code.
- (3) On June 17, 2011, Blue Creek filed an application to amend the certificate issued in 09-1066, in accordance with Rule 4906-5-10, O.A.C.

- (4) Along with its application, Blue Creek also requested a waiver of Rule 4906-5-10(B), O.A.C., which requires an amendment application to be filed in the same manner as an initial application which is granted. Blue Creek's request should be granted.
- (5) The proposed amendment constitutes a modification of the noise standard applicable to Blue Creek's wind farm such that the ambient L_{EQ} for the project would be defined as 45 dBA.
- (6) In accordance with Section 4906.06, Revised Code, and Rule 4906-5-10(B), O.A.C., copies of the amendment application were served upon local government officials and public notice of the amendment was published in Van Wert and Paulding Counties. On June 21, 2011, Blue Creek filed its proof of publication.
- (7) On September 23, 2011, as corrected September 26, 2011, Staff filed a report evaluating the amendment application.
- (8) Staff and Blue Creek filed a Stipulation on September 30, 2011, as amended October 31, 2011, and agree and recommend that the Board issue an amended certificate subject to a modified definition of ambient L_{EQ} . The Stipulation defines the nighttime ambient L_{EQ} as 43.6 dBA. No party opposed the Stipulation.
- (9) The proposed changes to the certificated facility do not result in any material increase in any social or environmental impact, or a substantial change in the location of the facility; therefore, in accordance with Section 4906.07, Revised Code, a hearing is not necessary.
- (10) Based on the record, in accordance with Chapter 4906, Revised Code, the certificate of environmental compatibility and public need issued in 09-1066 for Blue Creek's wind-powered electric generation facility should be amended to permit the nighttime ambient L_{EQ} to be defined as 43.6 dBA

ORDER:

It is, therefore,


ORDERED, That Blue Creek's request for a waiver of Rule 4906-5-10 (B), O.A.C., be granted. It is, further,

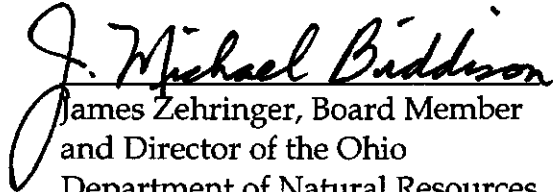
ORDERED, That the application filed by Blue Creek to amend the certificate issued in 09-1066 be granted, as described in this order and subject to the conditions set forth in 09-1066 and this order. It is, further,

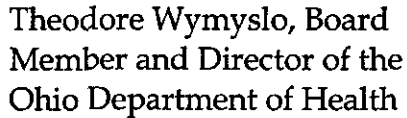
ORDERED, That a copy of this order on certificate amendment be served upon all interested persons of record.


THE OHIO POWER SITING BOARD



Todd A. Snitchler, Chairman
Public Utilities Commission of Ohio


Christiane Schmenk, Board
Member and Director of the Ohio
Department of Development


James Zehringer, Board Member
and Director of the Ohio
Department of Natural Resources


Theodore Wymyslo, Board
Member and Director of the
Ohio Department of Health


Scott Nally, Board Member
and Director of the Ohio
Environmental Protection Agency

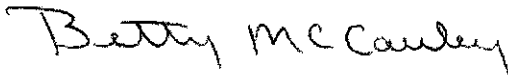

Tony Forshey, DVM, Board
Member and Interim Director of the
Ohio Department of Agriculture


Ali Keyhani, Ph.D., Board Member
and Public Member

KLS/dah

Entered in the Journal

NOV 28 2011


Betty McCauley
Secretary