

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)
NORTHWEST OHIO WIND ENERGY for a) Case No. 13-197-EL-BGN
Certificate to Site Wind-Powered Electric)
Generation Facilities in Paulding County, Ohio)

MOTION FOR WAIVERS

Applicant, Northwest Ohio Wind Energy pursuant to Ohio Administrative Code (“OAC”) Rule 4906-01-03 and Rule 4906-7-12(C), respectfully moves the Ohio Power Siting Board (“Board”) to grant the following 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 4906-17-05(A)(3)(g), and instead allow the Applicant to provide a general narrative description of the vegetative cover that may be disturbed during construction; and
- (3) From certain requirements relating to cross-sectional views and test borings and maps set forth in OAC 4906-17-05(A)(4), and instead permit Applicant to submit the appropriate test borings prior to construction.
- (4) From providing grade elevations around the turbine pedestals and 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 pedestal grade elevations and contour grade elevations at the time it submits its construction drawings.

Further support for these waiver requests is set forth in the Memorandum in Support below.

MEMORANDUM IN SUPPORT

I. BACKGROUND

Northwest Ohio Wind Energy, LLC (“Applicant” or “Northwest”) is wholly owned subsidiary of Trishe Wind Energy Holdings Inc., the parent company of National Wind. Currently, National Wind has seven utility-scale wind projects under development in the United States.

The proposed wind farm will consist of approximately 50 turbines expected to generate up to 100 MWs. The wind farm will have associated infrastructure (i.e. access roads, electrical collection system, construction staging area, operations and maintenance facilities and substations). The wind turbine array will be spread across approximately 9,300 acres of leased land within portions of Blue Creek and Latty Townships in Paulding County.

Applicant is seeking waivers from certain requirements of OAC Chapter 4906-17 governing wind applications.

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 by approximately mid-May 2013. Meeting this filing date is necessary to allow Applicant to begin construction by the end of late fall 2013 so that the project can commence commercial operation by no later than mid-July 2014.

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 Administrative Law Judge to decide this Motion on that basis.

III. WAIVER REQUESTS

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

As part of Applicant's application, it will be providing a significant amount of information regarding the company's selection of its site in Paulding 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, compatible land uses 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. constraints such as setbacks, noise, etc.); and a constraint map. Applicant is aware that there is no approved form for a site selection study used in Chapter 4906-17 of the Board's rules. Moreover, as the Board recognized in promulgating the wind application rules, where an applicant limited 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; 939 N.E.2d 1210, Applicant will provide sufficient information to support a finding that the site represents the minimum adverse environmental impact pursuant to RC 4906.10 (A)(3).

This waiver request is not novel: waivers from this subsection have been granted in a number of recent wind cases. *Buckeye Wind LLC*, Case No. 08-666-EL-BGN (Entry dated July 31, 2009) (hereinafter "*Buckeye Wind*"); *Hardin Wind Energy LLC*, Case No. 09-479-EL-BGN (Entry dated July 17, 2009) (hereinafter "*Hardin Wind*"); *JW Great Lakes Wind, LLC*, Case No. 09-277-EL-BGN (Entry dated September 18, 2009) (hereinafter "*JW Great Lakes*"); *Heartland*

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.

Wind, LLC, Case No. 09-1066-EL-BGN (Entry dated December 11, 2009) (hereinafter “*Blue Creek*”); *Paulling Wind Farm LLC*, Case No. 09-980 (Entry dated February 23, 2010) (hereinafter *Paulling*) and Case No. 10-369-EL-BGN (Entry dated June 21, 2010) (hereinafter “*Paulling Wind II*”); *Black Fork Wind Energy LLC*, Case No. 09-546-EL-BGN (Entry dated October 1, 2009) (hereinafter *Blackfork*) and Case No. 10-2865-EL-BGN (Entry dated May 3, 2011) (hereinafter “*Blackfork II*”); *Glacier Ridge Wind Farm, LLC*, Case No. 11-902-EL-BGN (Entry dated April 6, 2011) (hereinafter “*Glacier Ridge*”); *Ashtabula Wind*, Case No. 11-2400-E:-BGN (Entry dated June 22, 2011) (hereinafter “*Ashtabula*”); *Leipsic Wind*, Case No. 11-3676-EL-BGN (Entry dated July 25, 2011) (hereinafter “*Leipsic*”); *Honey Creek*, Case No. 11-4886-EL-BGN (Entry dated November 1, 2011) (hereinafter “*Honey Creek*”) and *Republic Wind, LLC*, Case No. 12-2933-EL-BGN (entry dated January 22, 2013) (hereinafter “*Republic Wind*”).

Assuming that Applicant files the site selection information indicated above, Applicant requests a waiver to the extent that each specific factor in OAC Rule 4906-17-04 (A) is not met.

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 Applicant 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 and would require cooperation and land access from landowners who are not participants in the project. Additionally, because of the potential for project infrastructure locations and construction methods to change somewhat, prior to construction, a detailed

vegetative analysis of the current layout may not reflect the final impacts. In light of the fact that Applicant will provide the vegetation information within the limited disturbance areas, additional data would serve no useful purpose because the Board and its Staff will have the relevant data for the impacted areas. Moreover, the project area is intensely farmed and the vast majority of the surface vegetation consists of corn, soybeans, winter wheat and alfalfa. 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 the *Buckeye Wind*, *Blue Creek*, *Glacier Ridge*, *Ashtabula*, *Leipsic*, *Honey Creek* and *Republic Wind* cases.

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.

Applicant 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). As part of its application, Applicant will provide a geological desktop study aid and a generalized cross-sectional view based on available information. Applicant proposes defer providing the location of the test borings until after the certificate issues and the final turbine sites have been established.

Applicant plans to perform geological tests (either bores or Cone Penetration Tests) at each of the final turbine location sites once the final sites are determined which cannot be known until the certificate is issued. Applicant proposes to submit the results of the geological tests and cross sections to the Board Staff at a reasonable time prior to construction. This type of waiver with the proposed deferral was granted in *Buckeye Wind*, *JW Great Lakes*, *Blue Creek*, *Paulding*

Black Fork, Glacier Ridg, Ashtabula, Leipsic, Honey Creek, Champaign Wind, LLC, Case No. 12-160-EL-BGN (Entry dated August 2, 2012) and *Republic Wind*.

D. OAC Rule 4906-17-05(B)(2)(h): Waiver To Allow the Proposed Contour Grade Elevations and Grade Elevations around Pedestals To Be Submitted at the Time Applicant Submits Construction Drawings Rather Than Providing a Map Showing Modifications in Grade Elevations and Pedestal 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 several reasons why it is appropriate to delay providing the contour grade elevations with the application. First, 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 application 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, Paulding Wind II, Glacier Ridge, Ashtabula Wind, Honey Creek*, and *Champaign*.

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
NORTHWEST OHIO WIND ENERGY



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Summary: Motion for Waivers by Northwest Ohio Wind Energy electronically filed by Teresa Orahod on behalf of Sally Bloomfield