BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of Hardin Wind LLC, for a Certificate to Construct a Wind-Powered Electric Generating Facility in Hardin County	)	Case No. 13-1177-EL-BGN
In the Matter of the Application of Hardin Wind LLC for a Certificate of Environmental Compatibility and Public Need for a Substation Project in Hardin County	)	Case No. 13-1767-EL-BSB
In the Matter of the Application of Hardin Wind LLC for a Certificate of Environmental Compatibility and Public Need for a 345kV Transmission Line in Hardin County	)	Case No. 13-1768-EL-BTX

HARDIN WIND LLC'S MEMORANDUM CONTRA
TO THE APPLICATION FOR REHEARING BY JOE GRANT

Hardin Wind LLC ("Hardin Wind" or "the Applicant") files this Memorandum Contra to the Application for Rehearing ("Application") by intervenor Joe Grant. As an initial point, Mr. Grant was not a party in Case Nos. 13-1767-EL-BSB and 13-1768-EL-BTX, did not intervene and has not filed for leave for rehearing in those cases. Mr. Grant only moved to intervene in Case No. 13-1177-EL-BGN, a motion that the Administrative Law Judge granted by Entry dated October 30, 2013 at paragraph 13. Accordingly, the Board should not consider Mr. Grant's application for rehearing to the extent it is intended to apply to Case Nos. 13-1767-EL-BSB and 13-1768-BTX.

As to Case No. 13-1177-EL-BGN, Mr. Grant raises five grounds for rehearing, all of which should be rejected by the Board because its decision was lawful and reasonable. Each of the grounds for rehearing raised by Mr. Grant is addressed below.

I. Potential Threats to the Indiana Bat were Analyzed and Addressed in the Application.

Mr. Grant alleges that the Opinion and Order is unlawful and unreasonable because the main threat to the Indiana bat was not addressed. (Rehearing Application at 3.) To the contrary, Hardin Wind thoroughly studied the surrounding habitat, the effects that siting the Scioto Ridge Wind Farm would have on the Indiana bat, and will address potential impacts to this species. *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN, Company Ex. 1 at 97, 104-116, 140. As explained in the application for the turbines, bat mist-netting surveys were conducted for the area and analyzed to determine whether the location is appropriate for siting the wind farm. (Company Ex. 1 at 115.) Based on a confirmed presence in the eastern part of the project area, Hardin Wind intends to begin working with the United States Fish and Wildlife Service to secure appropriate coverage under the Endangered Species Act. (*Id.*) In order to reduce potential negative impacts to the Indiana bat, Hardin Wind committed to seasonal tree cutting dates, which will protect the bats' habitat during the non-winter months. (*In re Hardin Wind LLC*, Case Nos. 13-1177-EL-BGN, Opinion, Order, and Certificate at 11-12; Company Ex. 13 at 12.) Further, Hardin Wind must submit a post-construction avian and bat monitoring plan for Staff and the ODNR Department of Wildlife review. (Certificate at 26.) The Opinion and Order appropriately addressed any threat to the Indiana bat, and therefore Mr. Grant's application for rehearing on this issue should be denied.

II. The Setbacks Approved by the Board are Lawful and Reasonable.

Mr. Grant alleges that the Opinion and Order is unlawful and unreasonable because the setbacks should be based from property lines, not residences. (Rehearing Application at 3.) The setbacks approved for the project, however, comply with ORC § 4906.20(B)(2) and OAC §

4906-17-07(C)(1)(c), which require the minimum distance from a turbine's base to the property line of the facility to be at least 1.1 times the total height of the turbine as measured from its base to the tip of the blade at its highest point. Using 492 feet as the maximum turbine height as proposed in the application, the nearest nonparticipating properly line must be at least 541 feet. The property line distances from the turbine bases vary from 549 to 2,367 feet, averaging 1,198 feet. (*See* Staff Ex. 1, Staff Report at 33; Certificate at 12.)

Further, the minimum distance from a wind turbine to the exterior of the nearest habitable residential structure located on an adjacent property, using the maximum blade lengths proposed in the application, must be at least 950 feet. The distances between the nearest non-participating residential structures and turbines range from 1,335 to 4,047, averaging 1,989 feet. *Id.*

Mr. Grant appears to acknowledge these facts in his application for rehearing, but claims that setbacks should be from property lines to ensure safety outside of occupied structures. (Rehearing Application at 3-4.) The record does not support his argument, as testimony at hearing established the low risk of ice throw and blade shear, conditions adopted by Hardin Wind address icing, and setbacks conform to turbine manufacturer setbacks. (*See* Company Ex. 3, at 11-12; TR. II at 31-34; and Company Ex. 13 at 17) Mr. Grant's request for rehearing on this basis should be denied.

III. Shadow Flicker from the Project will not be Excessive.

Mr. Grant alleges that the Opinion and Order is unlawful and unreasonable because there will be excessive shadow flicker from the project. (Rehearing Application at 4.) Hardin Wind comprehensively analyzed the spatial relationships between the wind turbine locations and receptors, along with weather characteristics to determine appropriate setbacks. (Company Ex. 1 at 90-97.) Hardin Wind determined which non-participating receptors may be affected and will

continue to work with the Staff in order to reduce shadow flicker to non-participating receptors below 30 hours per year through mitigation efforts. (Staff Ex. 1, Staff Report at 40-42.) In fact, Hardin Wind committed to operate the facility in a manner that does not result in shadow flicker levels that exceed 30 hours per year for any non-participating sensitive receptor, and also will implement a complaint resolution process for complaints regarding excessive shadow flicker. (Certificate at 27 *and see* Company Ex. 13 at 18-19.)

Mr. Grant expresses concern over an alleged cumulative effect of shadow flicker across his entire property. Hardin Wind witness Michael Speerschneider addressed this exact point, stating that "[i]n my experience, shadow flicker outside buildings, in open fields or along roads is less distinctive and has generally not caused impacts on human activity." (Company Ex. 3 at 10.) Mr. Grant's concerns regarding shadow flicker were appropriately addressed by Hardin Wind at the evidentiary hearing, and rehearing should not be granted on this issue.

IV. Noise from the Project will not be Excessive.

Mr. Grant alleges that the Opinion and Order is unlawful and unreasonable because the noise from the wind farm project will be excessive. (Rehearing Application at 5.) Noise from the Scioto Ridge Wind Farm will not be excessive. Mr. Grant cites Hardin Wind witness Ken Kaliski's testimony in which he acknowledged that it *might* be possible to hear noise from the wind turbines inside of a home depending on various conditions. (Application at 5; TR II at 46-47.) However, Mr. Grant failed to cite to testimony in which Mr. Kaliski expanded on his answer during redirect examination. Mr. Kaliski stated that there are many variables affecting whether or not it would be possible to hear turbine noise inside a home. (TR II at 55-56.) Mr. Kaliski testified that it is difficult to say under what circumstances a person might hear the sound inside their home, and noted that there are times when you can hear a car passing your home

from inside among other noises from outside, concluding that "it's not unusual for things that are heard outside the home to be heard inside as well." (TR II at 56.)

Mr. Kaliski, a professional engineer specializing in acoustics, also testified that turbines can be operated in noise-reduced operating mode or automatically curtailed if excessive levels of wind turbine noise arise after a project is in operation. (Company Ex. 10 at A.11.) He also testified in support of the complaint resolution condition, and that it provides "... a way to protect neighboring residences from any potential unexpected noise issues from the project." (*Id.* at A.16.) The Board considered Mr. Kaliksi's testimony, finding that "[t]he Applicant's proposed turbine layout, with the required turbines operating in noise reduction operation mode, is not likely to generate unacceptable levels of noise for nonparticipating residents." (Certificate at 17.)

The record shows that Hardin Wind has taken all appropriate steps to ensure noise will not be excessive. Hardin Wind undertook noise studies and modeling to understand the potential effect on the area in which the Scioto Ridge Wind Farm is proposed to be sited. Although Ohio law does not provide standards for allowable noise impacts from wind turbine projects, a threshold of five dBA over average nighttime ambient noise levels (L_{EQ}) has been applied in recent wind farm certificates in Ohio in order to limit noise impacts. *In re Black Fork Wind Energy LLC*, Case No. 10-2865-EL-BGN, Opinion, Order and Certificate at 44; *In re Champaign Wind LLC*, Case No. 12-160-EL-BGN, Opinion, Order and Certificate at 88.

Hardin Wind commissioned two acoustic surveys to determine the existing ambient noise level, and Hardin Wind is required by the Board's Certificates to operate the facility so that the noise contribution does not result in noise levels exceeding the project area ambient nighttime L_{EQ} by more than five dBA at nighttime, and at the same level or at the validly measured

ambient L_{EQ} plus five dBA during the daytime. (Certificate at 26.) As found by Staff and recognized in past Board decisions, these allowed potential increases in noise due to operation of the wind facility are appropriate and have been found to lead to limited complaints. (Staff Ex. 1, Staff Report at 39-40.)

Further, Hardin Wind will be implementing a complaint resolution process for any noise complaints. (Certificate at 27.) The Board's decision was not unlawful or unreasonable as it relates to noise and this ground for rehearing should be denied.

V. Hardin Wind Properly Notified Landowners of the Scioto Ridge Wind Farm Project.

Mr. Grant argues that the Opinion and Order is unlawful and unreasonable because he believes the majority of the residents within the project area are against it, and complains that they were not notified in a timely manner in order to voice their opposition. (Rehearing Application at 5.) Hardin Wind, however, properly complied with each and every requirement under Ohio law for notifying surrounding property owners. Two notices were published in the local newspapers, the *Bellefontaine Examiner* and *The Kenton Times* on November 9, 2013 and December 27, 2013, in accordance with OAC 4906-5-08. A local public hearing was held on January 8, 2014 before the Administrative Law Judge at which anyone was permitted to voice his or her opinion—for or against—the Scioto Ridge Wind Farm Project. Twenty-three public witnesses testified at the local public hearing to either support or speak out against the project. Additionally, multiple concerned landowners did intervene in the case upon hearing about the proposed project.

As is evident from the notices, meetings and information listed above, the public was put on notice and made aware of the Scioto Ridge Wind Farm Project well in advance of the

adjudicatory hearing to ensure time for the community to understand the project and receive information regarding the plans. There was nothing unlawful or unreasonable about the Board's Opinion and Order granting the Certificate Applications in this case. Mr. Grant has again identified a problem that he perceives with the laws and rules of the State of Ohio, rather than with Hardin Wind's compliance with those laws and rules. The appropriate forum to voice such a concern is with the legislature rather than in a certificate application proceeding. This ground for rehearing should also be denied.

VI. Conclusion

For the foregoing reasons, Mr. Grant's application for rehearing should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Summary: Memorandum Contra to the Application for Rehearing by Joe Grant electronically filed by Mr. Michael J. Settineri on behalf of Hardin Wind LLC