

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Hardin Wind

LLC to Amend its Certificate Issued in Case

No. 13-1177-EL-BGN

.....

Case No. 14-1557-EL-BGA

PETITION TO INTERVENE

Pursuant to Ohio Administrative Code (“OAC”) rule 4906-7-04, James Klink respectfully petitions the Ohio Power Siting Board for leave to intervene in the above captioned proceeding. The reasons in support of intervention are set forth in the accompanying Memorandum in Support.

James Klink

MEMORANDUM IN SUPPORT

James Klink respectfully petitions the Ohio Power Siting Board (the “Board”) for leave to intervene in the proceeding initiated by Hardin Wind LLC, a wholly owned subsidiary of EverPower Wind Holdings, Inc. (the “Applicant”) requesting approval to amend its certificate to construct the Scioto Ridge Wind Farm (the “Amendment”) issued by the Board on March 17, 2014 in Case Nos. 13-1177-EL-BGN, 13-1767-EL-BSB, 13-1768-EL-BTX. Rule 4906-7-04(A)(2) provides that persons may petition for leave to intervene by:

- (a) Preparing a petition for leave to intervene setting forth the grounds for the proposed intervention and the interest of the petitioner in the proceedings.
- (b) Filing said petition within thirty days after the date of publication of the notice required in accordance with paragraph (C)(1) of rule 4906-5-08 of the Administrative Code or in accordance with division (B) of section 4906.08 of the Revised Code.

For purposes of considering requests for leave to intervene in a Board proceeding, the OAC provides that administrative law judge or the Board may consider:

- (a) the nature and the extent of the person's interest; (b) the extent to which the person's interest is represented by existing parties; (c) the person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding;
- (d) whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party. OAC 4906-7-04(B)(1)(a)-(d).

#### A. The nature and extent of Mr. Klink's interest.

Mr. Klink is a full time resident of Indian Lake. His family home, located near the eastern shores of the lake, is located in very close proximity to the proposed wind project. Hardin Wind's Amendment to its certificate noted that in section 2.2.8 of Everpower's Amend application it states that no State or Federal listed species were observed during field efforts conducted by Cardno in 2014. The US fish and wildlife Eagle conservation plan guidance states that not only will field observations be conducted but also review of "Technical literature, agency files, on-line biological databases, data from nearby projects, industry reports, geodatabases and experts. The ODNr notes that "Indian Lake is an important resting stop for birds such as Canada geese, ducks, grebes, swans, egrets and herons. Many stay over the summer to nest. Bald eagles have nested near the lake in recent years." It is one of many sources that document the nesting pair of Bald eagles that have been at the lake since 2009.

Ever power also stated it conducted a 5 mile search of the siting project in 2013. This nest has been occupied since 2009 and within a 2 mile radius of up to 24 proposed wind turbine sites. These facts would make the these turbines a Category 1 or 2 site per the US Wildlife Eagle conservation plan, Module 1 – Land based wind energy, version 2. "The Bald and Golden Eagle Protection Act (BGEPA) is the primary law protecting eagles. BGEPA prohibits "take" of eagles without a permit (16 USC 668-668c). BGEPA defines "take" to include "pursue, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb," and prohibits take of individuals and their parts, nests, or eggs. The Service expanded this definition by regulation to include the term "destroy" to ensure that "take" includes destruction of eagle nests. The term "disturb" is further defined by regulation as "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause,....injury to an eagle, a decrease in productivity, or nest abandonment" (50 CFR 22.3). Wind project operators are not legally required to seek or obtain an eagle take permit. However, the take of an eagle without a permit is a violation of BGEPA, and could result in prosecution.

#### " 9. Relationship of Eagle Guidelines (ECPG) to the Wind Energy Guidelines (WEG)

The ECPG is intended to be implemented in conjunction with other actions recommended in the WEG that assess impacts to wildlife species and their habitats. The WEG recommends a five-tier process for such assessments, and the ECPG fits within that framework. The ECPG focuses on just eagles to facilitate collection of information that could support an eagle take permit decision. The ECPG uses a five-stage approach like the WEG; the relationship between the ECPG stages and the WEG tiers is shown in Fig. 1. Tiers 1 and 2 of the WEG (Stage 1 of the ECPG) could provide sufficient evidence to demonstrate that a project poses very low risk to eagles. Provided this assessment is robust, eagles may not warrant further

consideration in subsequent WEG tiers, and Stages 2 through 5 of the ECPG and pursuit of an eagle take permit might be unnecessary. A similar conclusion could be reached at the end of Stage 2, 3, or 4. In such cases, if unpermitted eagle take subsequently occurs, the wind project proponent should consult with the U.S. Fish and Wildlife Service to determine how to proceed, possibly by obtaining an eagle take permit. The following sections describe the general approach envisioned for assessing wind project impacts to eagles (also see the Stage Overview Table at the end of the Executive Summary).

#### Tiers 1 and 2 of the WEG, Stage 1 of the ECPG

Tier 1 of the WEG is the preliminary site evaluation (landscape-scale screening of possible project sites). Tier 2 is site characterization (broad characterization of one or more potential project sites). These correspond with Stage 1 of the ECPG, the site-assessment stage. As part of the Tiers 1 and 2 process, project developers should carry out Stage 1 of the ECPG and evaluate broad geographic areas to assess the relative importance of various areas to resident breeding and non-breeding eagles, and to migrant and wintering eagles. During Stage 1, the project developer or operator should gather existing information from publicly available literature, databases, and other sources, and use those data to judge the appropriateness of various potential project sites, balancing suitability for development with potential risk to eagles.

To increase the probability of meeting the regulatory requirements for a programmatic take permit, biological advice from the Service and other jurisdictional wildlife agencies should be requested as early as possible in the developer's planning process and should be as inclusive as possible to ensure all issues are being addressed at the same time and in a coordinated manner. Ideally, consultation with the Service, and state and tribal wildlife agencies is done before wind developers make any substantial financial commitment or finalize lease agreements.”

#### “10. Site Categorization Based on Mortality Risk to Eagles

Beginning at the end of Stage 1, and continuing at the end of Stages 2, 3, and 4, we recommend the approach outlined below be used to assess the likelihood that a wind project will take eagles, and if so, that the project will meet standards in 50 CFR 22.26 for issuance of a programmatic eagle take permit.

Category 1 – High risk to eagles, potential to avoid or mitigate impacts is low

A project is in this category if it:

- (1) has an important eagle-use area or migration concentration site within the project footprint; or
- (2) has an annual eagle fatality estimate (average number of eagles predicted to be taken annually) > 5% of the estimated local-area population size; or
- (3) causes the cumulative annual take for the local-area population to exceed 5% of the estimated local-area population size. In addition, projects that have eagle nests within ½ the mean project-area inter-nest distance of the project footprint should be carefully evaluated. If it is likely eagles occupying these territories use or pass through the project footprint, category 1 designation may be appropriate.

Projects or alternatives in category 1 should be substantially redesigned to at least meet the category 2 criteria. The Service recommends that project developers not build projects at sites in category 1 because the project would likely not meet the regulatory requirements. The recommended approach for assessing the percentage of the local-area population predicted to be taken is described in Appendix F.”

B. The extent to which the person's interest is represented by existing parties.

James Klink's interests are not represented by existing parties in the proceeding.

C. James Kink's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.

Mr. Klink will contribute to the just and expeditious resolution of the issues involved in the proceeding. Mr. Klink has limited issues that he seeks to raise in the Amendment proceeding, which can be best addressed at a public administrative hearing. Mr. Klink also is on record of opposing this siting and has publicly commented on the same issue on 2/10/13 on the Ohio siting board Case Nos. 13-1177-EL-BGN, 13-1767-EL-BSB, 13-1768-EL-BTX

D. Granting the requested intervention will not unduly delay the proceeding or unjustly prejudice an existing party. Only the Turbines siting's with in a 2 mile radius of the existing active eagles nest are in question. Allowing Mr. Klink to intervene in the proceeding will not delay the proceeding or unjustly prejudice an existing party. Hardin Wind filed its Amendment on September 11, 2014. To date, the Board has not issued a procedural schedule or otherwise ruled in this proceeding. As such, Mr. Klink's intervention is timely and will not delay the forthcoming proceedings or prejudice Hardin Wind.

#### CONCLUSION

For the reasons set forth above, Mr. Klink respectfully requests that the Commission grant this Motion to Intervene.

James Klink

Direct: (419) 236-2364

Email: jm\_klink@yahoo.com

Case No(s). 14-1557-EL-BGA

Summary: Petition to Intervene and Memorandum in Support electronically filed by James Klink

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**10/10/2014 11:18:25 AM**

**in**

**Case No(s). 13-1177-EL-BGN, 14-1557-EL-BGA**

Summary: Petition In the Matter of the Application of Hardin Wind LLC to amend its Certificate issued in case 13-1177-EL-BGN electronically filed by James E Klink on behalf of Mr. James E Klink