

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of 6011 )  
Greenwich Windpark, LLC for a )  
Certificate to Construct a Wind-Powered ) Case No. 13-990-EL-BGN  
Electric Generation Facility in Huron )  
County, Ohio. )

SECOND ENTRY ON REHEARING

The Ohio Power Siting Board, in considering the second application for rehearing filed by Omega Crop Co., LLC, hereby denies the request for rehearing of the Board's August 27, 2015 Entry on Rehearing, which denied Omega's first application for rehearing of the Board's Opinion, Order, and Certificate granting the application of 6011 Greenwich Windpark, LLC, to construct a wind-powered electric generation facility in Greenwich Township, Huron County, Ohio. Accordingly, the Board finds:

- (1) All proceedings before the Board are conducted in accordance with the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906.

History of the Proceeding

- (2) On December 23, 2013, and continuing through December 27, 2013, 6011 Greenwich Windpark, LLC (Greenwich) filed with the Board an application for a certificate to construct a wind-powered electric generation facility pursuant to R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-17 (Greenwich Facility).
- (3) Further, in accordance with the provisions in the Ohio Revised Code and the Ohio Administrative Code, a local public hearing was held on May 6, 2014, at South Central High School, in Greenwich, Ohio, and an evidentiary hearing was held on May 19, 2014, at the offices of the Board. Proof that the legal notice of the hearings was published in newspapers in Huron County was filed on March 25, 2014, and May 12, 2014.
- (4) On August 21, 2014, four months after the intervention deadline established in this case pursuant to statute and four days before the Order was scheduled for consideration by the Board, Omega Crop Co., LLC (Omega) submitted a late-filed motion to intervene. Greenwich filed a memorandum contra on August 22, 2014, and, on August 25, 2014, Omega filed a reply.

- (5) On August 25, 2014, the Board issued its Opinion, Order, and Certificate in this case (Order), which denied Omega's late-filed motion to intervene, approved the Stipulation entered into between Greenwich, Staff, and the Ohio Farm Bureau Federation (OFBF), and granted the application of Greenwich to construct a wind-powered electric generation facility in Greenwich Township, Huron County, Ohio, subject to 53 conditions. Order at 3-4, 48.

#### **Application for Rehearing Provisions**

- (6) R.C. 4906.12 states, in relevant part, that R.C. 4903.02 to 4903.16 and R.C. 4903.20 to 4903.23 apply to a proceeding or order of the Board as if the Board were the Public Utilities Commission of Ohio (Commission).
- (7) R.C. 4903.10 provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.
- (8) Further, Ohio Adm.Code 4906-7-17(D) states, in relevant part, that any party or affected person may file an application for rehearing within 30 days after the issuance of a Board order in the manner, form, and under the circumstances set forth in R.C. 4903.10.
- (9) Ohio Adm.Code 4906-7-17(I) provides that the administrative law judge (ALJ) may issue an order granting rehearing for the limited purpose of affording the Board more time to consider the issues raised in an application for rehearing.

#### **First Application for Rehearing**

- (10) On September 23, 2014, Omega filed an application for rehearing of the Board's August 25, 2014 Order (first application for rehearing). In its first application for rehearing, Omega raised six assignments of error. Greenwich filed a memorandum contra Omega's application for rehearing on October 2, 2014. On October 22, 2014, the ALJ issued an Entry on Rehearing granting rehearing for the limited purpose of giving the Board more time to consider the application for rehearing.
- (11) By Entry on Rehearing issued on August 27, 2015 (First Entry on Rehearing), the Board determined that Omega was only permitted to file rehearing for the limited purpose of requesting

reconsideration of the Board's denial of Omega's late-filed motion to intervene. Upon consideration of the arguments made on rehearing regarding Omega's late-filed intervention request, the Board affirmed its decision to deny Omega's late-filed motion for intervention.

- (12) In addition, notwithstanding the determination that Omega's right to file an application for rehearing was limited to its objection to the Board's denial of its late-filed motion for intervention, the Board proceeded in the First Entry on Rehearing to review and respond to the other arguments presented by Omega in its application for rehearing. The Board found that this analysis was consistent with previous rulings and considerations under similar circumstances. See *In re Ohio Edison Co., et al.*, Case No. 11-5201-EL-RDR, Entry on Rehearing (Sept. 18, 2013) at 4; Second Entry on Rehearing (Dec. 18, 2013). Upon review of the remaining issues raised by Omega, the Board found that Omega's arguments were without merit and determined that, even if they had been appropriate issues for rehearing, there was no merit to the arguments and they would have been denied.

### **Second Application for Rehearing**

- (13) In the First Entry on Rehearing, the Board found that Omega's argument concerning the minimum setback requirements set forth in R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-17 was among the issues raised by Omega in its first application for rehearing that was not related to the Board's Order denying Omega's late-filed motion to intervene; therefore, the argument was not appropriate for rehearing. However, the Board reviewed the issue and found that it was without merit, noting that R.C. 4906.20(B)(2) provides that the setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property. The Board clarified that R.C. 4906.20 does not grant to the Board or the ALJ the authority to waive the minimum setback requirement. If the necessary waivers are not obtained, Greenwich shall not build the turbine. Order at 13; First Entry on Rehearing at 14-15.
- (14) On September 24, 2015, Omega filed a second application for rehearing of the Board's August 27, 2015 First Entry on Rehearing, contesting the assertion in the First Entry on Rehearing that it is possible that Greenwich may commence construction once it secures minimum setback waivers.

Omega's sole assignment of error in its second application for rehearing relates to the minimum setback requirements set forth in R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-17.

- (15) On October 5, 2015, Greenwich and OFBF filed memoranda contra Omega's second application for rehearing. Greenwich submits that Omega seeks to raise issues in its second application for rehearing that are beyond the scope of the Board's First Entry on Rehearing. Similarly, OFBF argues Omega is not a proper party to this case and has no standing to file a second application for rehearing. Both Greenwich and OFBF further offer that Omega's interpretation of R.C. 4906.20(B)(2) is incorrect.
- (16) Initially, the Board emphasizes that Omega's late-filed intervention request was properly denied in our Order and such ruling was affirmed in the First Entry on Rehearing. Therefore, Omega is not a party to this proceeding. In our First Entry on Rehearing, we expressly limited the scope of Omega's first application for rehearing to the issue of the Board's denial of Omega's late-filed motion to intervene. Notwithstanding this determination, as is Board practice, we reviewed the other arguments raised by Omega and found no merit; therefore, further review of those arguments is neither warranted nor appropriate. Accordingly, we find no merit to Omega's second application for rehearing and it should be denied.

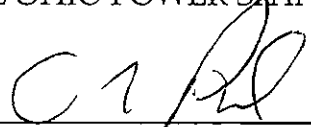
ORDER:

It is, therefore,


ORDERED, That Omega's second application for rehearing is denied.  
It is, further,

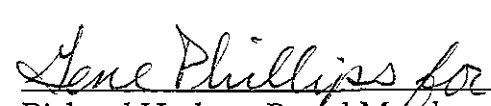
ORDERED, That a copy of this second Entry on Rehearing be served  
upon all parties and interested person of record.

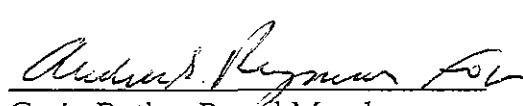
THE OHIO POWER SITING BOARD

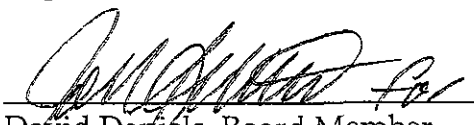
  
\_\_\_\_\_  
Andre T. Porter, Chairman  
Public Utilities Commission of Ohio

  
\_\_\_\_\_  
David Goodman, Board Member  
and Director of the Ohio  
Development Services Agency

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

  
\_\_\_\_\_  
Richard Hodges, Board Member  
and Director of the Ohio  
Department of Health

  
\_\_\_\_\_  
Craig Butler, Board Member  
and Director of the Ohio  
Environmental Protection Agency

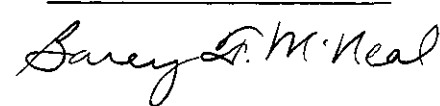
  
\_\_\_\_\_  
David Daniels, Board Member  
and Director of the Ohio  
Department of Agriculture

\_\_\_\_\_  
Jeffrey J. Lechak, Board Member  
and Public Member

SEF/dah

Entered in the Journal

**NOV 12 2015**

  
\_\_\_\_\_  
Barcy F. McNeal  
Secretary