

**BEFORE  
THE OHIO POWER SITING BOARD**

<b>In the Matter of the Application of</b>	)	
<b>Paulding Wind Farm III LLC for a</b>	)	
<b>Certificate of Environmental Compatibility</b>	)	<b>Case No. 15-1737-EL-BTX</b>
<b>and Public Need for the Timber Road III</b>	)	
<b>Transmission Line</b>	)	

**JOINT STIPULATION AND RECOMMENDATION**

**I. INTRODUCTION**

Applicant Paulding Wind Farm III LLC (“Paulding Wind” or “Applicant”), the Ohio Farm Bureau Federation and the Staff of the Ohio Power Siting Board (“OPSB Staff”), at times collectively referred to as the “Parties,” submit this Joint Stipulation and Recommendation (“Stipulation”) for adoption by the Ohio Power Siting Board (the “Board”). This Stipulation is intended by the Parties to resolve all matters pertinent to the certification and construction of the proposed Timber Road III Transmission Line.

The proposed Preferred Route of the Timber Road III Transmission Line would be approximately 8.5 miles long and is located just west of the Village of Payne in Harrison and Benton Townships in Paulding County, Ohio. The Application for the proposed Timber Road III Transmission Line was filed on December 8, 2015 and originally sought authority to not only own, operate and maintain the transmission line but also to construct and operate the Timber Road III Point of Interconnection (“POI”) switchyard. However, on February 22, 2016, the Applicant filed an application in Case No. 16-353-EL-BLN to obtain authorization through the letter of notification process to obtain a certificate to construct, operate and maintain the Timber Road III POI switchyard. On March 22, 2016, the Board approved the Timber Road III POI switchyard through its automatic letter of notification certificate approval process in Case No. 16-353-EL-BLN.

Under the Application that is now pending before the Board, the Applicant would own, operate and maintain the transmission line which is needed to deliver energy produced by the Timber Road I and III wind farm projects to the electric grid via the Timber Road III POI switchyard.

By Entry of December 9, 2015, the Administrative Law Judge granted Paulding Wind Farm III's motion for a waiver of certain requirements and granted the motion for protective order. By Entry of February 29, 2016, the Administrative Law Judge ordered that hearings in this matter be scheduled and that the Staff issue its Staff Report of Investigation. The Entry also granted the motion to intervene of the Ohio Farm Bureau Federation.

On April 4, 2016, the Staff Report of Investigation was filed. A local public hearing was held as scheduled on April 21, 2016 at 6:00 p.m. at Wayne Trace Junior/Senior High School, 4915 U.S. 127, Haviland, Ohio 45851. An adjudicatory hearing is scheduled to be held on April 28, 2016 at 10:00 a.m. at the offices of the Public Utilities Commission of Ohio, 180 E. Broad St., Columbus, Ohio 43215-3793.

This Stipulation results from discussions between the Parties who acknowledge that this agreement is amply supported by the record and thus is entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the proposed Timber Road III Transmission Line.

## **II. STIPULATION AND RECOMMENDATION**

### **A. Recommended Conditions**

- (1) The facility shall be installed at the Applicant's Preferred Route as presented in the application and supplemental filing and further clarified by recommendations in the April 4, 2016 Staff Report of Investigation.
- (2) The Applicant shall utilize the equipment and construction practices as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the April 4, 2016 Staff Report of Investigation.

- (3) The Applicant shall implement the mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the April 4, 2016 Staff Report of Investigation.
- (4) The Applicant shall conduct a pre-construction conference prior to the start of any construction activities. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may conduct separate pre-construction meetings for each stage of construction.
- (5) At least 30 days prior to the pre-construction conference, the Applicant shall have in place a complaint resolution procedure to address potential public grievances resulting from project construction and operation. The resolution procedure must provide that the Applicant will work to mitigate or resolve any issues with those who submit either a formal or informal complaint and that the Applicant will immediately forward all complaints to Staff. The Applicant shall provide the complaint resolution procedure to Staff, for review and confirmation that it complies with this condition, prior to the pre-construction conference.
- (6) At least 30 days before the pre-construction conference, the Applicant shall submit to Staff one set of detailed engineering drawings of the final project design, including temporary and permanent access roads, and construction staging areas, so that Staff can determine that the final project design is in compliance with the terms of the certificate. The final design shall include all conditions of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate.
- (7) If the Applicant makes any changes to the project layout after the submission of final engineering drawings, the Applicant shall provide all such changes to Staff in hard copy and as geographically-referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally-sensitive areas will be subject to Staff review to ensure compliance with all conditions of the certificate, prior to construction in those areas.
- (8) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (9) Prior to the commencement of construction activities that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide

copies of permits and authorizations including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant.

- (10) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.
- (11) As the information becomes known, the Applicant shall provide to Staff the date on which the construction will begin, the date on which construction was completed, and the date on which the facility began commercial operation.
- (12) Prior to commencement of construction, the Applicant shall develop a public information program that informs affected property owners of the nature of the project, specific contact information of Applicant personnel who are familiar with the project, the proposed timeframe for project construction and a schedule for restoration activities. The Applicant shall give notification to property owners at least 30 days prior to work on the affected property.
- (13) The Applicant shall avoid, where possible, or minimize to the maximum extent practicable, any damage to field tile drainage systems and soils resulting from construction, operation, and/or maintenance of the facility in agricultural areas. The Applicant shall promptly repair damaged field tile systems to at least original conditions at the Applicant's expense. If applicable, the Applicant shall segregate and restore excavated topsoil in accordance with the Applicant's lease agreement with the landowner. The Applicant shall plow or otherwise de-compact severely compacted soils, if necessary, to restore them to original conditions unless otherwise agreed to by the landowner.
- (14) If either route is certificated by the Board, then prior to construction the Applicant shall conduct a Phase I archaeological survey along that route. If the archaeological survey discloses a find of cultural or historic significance, or a site that could be eligible for inclusion in the NRHP, then the Applicant shall submit an amendment modification, or mitigation plan. The Applicant shall develop any such mitigation effort in coordination with the Ohio Historic Preservation Office and submitted to Staff to ensure compliance with this condition.
- (15) The Applicant shall have a streamside vegetation restoration plan for the clearing of any riparian vegetation along Flatrock Creek for the placement of the electric transmission line that minimizes impacts associated with such activity. At least 30 days prior to the commencement of clearing activities, the Applicant shall submit such plan to Staff for review to ensure compliance with this condition.
- (16) The Applicant shall not conduct mechanical clearing within 25 feet of any stream channel.
- (17) The Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for removal of trees, unless coordination efforts within the Ohio Department of Natural Resources and the US Fish and Wildlife Service allow a different course of action.

- (18) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the County Engineer, ODOT, local law enforcement, and health and safety officials. The Applicant shall detail this coordination as part of a final traffic plan submitted to Staff prior to the pre-construction conference for review and confirmation that it complies with this condition.
- (19) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. or until dusk when sunset occurs after 7:00 p.m. Impact driving, hoe ram and blasting operations, if required, shall be limited to the hours between 10:00 a.m. and 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels of sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm. Code 4906-5-08(C)(3) (2014), of upcoming construction activities including potential for nighttime construction activities.
- (20) The Applicant shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities as weather permits unless otherwise requested by the landowner. The Applicant shall restore impacted areas to pre-construction conditions in compliance with the NPDES permit(s) obtained for the project and the approved SWPPP created for this project.
- (21) The Applicant shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. All construction debris and all contaminated soil shall be promptly removed and properly disposed of in accordance with Ohio's EPA regulations.
- (22) The Applicant shall comply with any drinking water source protection plan for any part of the facility that is located within drinking water source protection areas of the local villages and cities.
- (23) The Applicant must meet all recommended and prescribed FAA and ODOT Office of Aviation requirements to construct an object that may affect navigable airspace.
- (24) All applicable structures, including construction equipment, shall be lit in accordance with FAA Circular 707460-1 K Change 2. *Obstruction Marking and Lighting*, or as otherwise prescribed by the FAA. This includes all cranes and construction equipment.
- (25) At least 30 days prior to any construction, the Applicant shall notify in writing, any owner of an airport located within 20 miles of the facility boundary, whether

public or private, whose operations, operating thresholds minimums, landing approach procedures and/or vectors are expected to be altered by the siting, operation, or maintenance of the facility.

- (26) The Applicant shall coordinate, as necessary, with the FAA and ODOT once final pole locations and heights are determined for the project and inform Staff of whether coordination is necessary. If the proposed pole locations and heights constitute a hazard to air navigation, then further coordination with Staff shall be necessary before construction can commence.
- (27) At least seven days before the pre-construction conference, the Applicant shall submit to Staff for review, a copy of all NPDES permits, including its approved SWPP, approved SPCC procedures, and its erosion and sediment control plan. The Applicant must address any soil issues through project design and adherence to the Ohio EPA BMP related to erosion and sedimentation control.

**B. Other Terms and Conditions**

(1) This Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially modifies all or part of this Stipulation or imposes additional conditions or requirements upon the Parties, each party shall have the right, within thirty (30) days of the Board's order, to file an application for rehearing with the Board. Upon rehearing by the Board, each party shall have the right, within ten (10) days of the Board's order on rehearing, to file a notice of termination of, and withdrawal from, the Stipulation. Upon notice of termination and withdrawal of the Stipulation by any party, pursuant to the above provisions, the Stipulation shall immediately become null and void. In such an event, a hearing shall go forward, and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

(2) The Parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation as factual or legal precedent on any issue. The Parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the parties in entering into this Stipulation.

### III. FINDINGS

The Parties agree that the record in this case, provided the Board approves the conditions in this Stipulation, contains sufficient probative evidence for the Board to find and determine, as Findings of Fact and Conclusions of Law, that:

#### A. Findings of Fact

- (1) Paulding Wind Farm III LLC is a wholly-owned subsidiary of EDP Renewables North America, LLC and is licensed to do business in the State of Ohio.
- (2) The Timber Road III Transmission Line qualifies as a major utility facility as defined in 4906.01(B)(1) of the Ohio Revised Code and an electric powered transmission line as defined in OAC Rule 4906-17-01(S).
- (3) On October 9, 2015, the Applicant filed a pre-application notice of a public informational meeting in Case No. 15-1737-EL-BTX.
- (4) On October 23, 2015, the Applicant filed Proof of Publication made on October 14, 2015 in *The Paulding Progress* of the public informational meeting held in Case No. 15-1737-EL-BTX on October 26, 2015 in accordance with OAC Rule 4906-05-08.
- (5) The Applicant held the public informational meeting in Case No. 15-1737-EL-BTX at the Paulding County AG Extension Office, Paulding County Fairgrounds, 503 Fairground Drive, Paulding, Ohio 45879 on October 26, 2015 from 6:00 PM to 8:00 PM.
- (6) On December 1, 2015, the Applicant filed a motion for waivers of certain filing requirements in OAC Chapter 4906-17 in Case No. 15-1757-EL-BTX. On December 8, 2015, the Staff filed comments regarding the Applicant's motion for waivers.
- (7) The Applicant formally submitted its application in Case No. 15-1757-EL-BTX to construct the Timber Road III Transmission Line on December 8, 2015.
- (8) The Administrative Law Judge, by Entry dated December 9, 2015, granted the Applicant's motion for waivers and its motion for protective order.
- (9) On December 21, 2015, the Ohio Farm Bureau Federation filed a motion to intervene in this matter.
- (10) On February 5, 2016, the Applicant filed a supplement to its application.
- (11) On February 5, 2016, the Chairman of the Board issued a letter to the Applicant stating that the application was found to comply with OAC Chapter 4906.

- (12) On February 9, 2016, the Applicant filed a Certificate of Service indicating that copies of the applications were served upon local public officials and libraries and also filed a Proof of Payment of application fees.
- (13) On February 29, 2016, the Campaign for American Affordable and Reliable Energy (CAARE) filed a motion to intervene in this matter. The Applicant filed a memorandum contra to the petition to intervene on March 15, 2016 and CAARE filed its reply on March 21, 2016.
- (14) On February 29, 2016, the Administrative Law Judge issued an Entry scheduling a local public hearing for these cases on April 21, 2016 at 6:00 p.m., at Wayne Trace Junior-Senior High School, 4915 U.S. Route 127, Haviland, Ohio 45851; and an adjudicatory hearing for April 28, 2016 at 10:00 a.m., at the offices of the PUCO; and found the effective date of the filing of the application was to be February 29, 2016.
- (15) On March 22, 2016, the Applicant filed a proof of publication indicating that Notice of the Proposed Major Utility Facility was published in *The Paulding Progress*, a newspaper of general circulation in Paulding County, on March 9, 2016. Notice was also published in The Crescent-News on March 4, 2016. A corrected affidavit regarding the Proof of Publication was also filed on March 31, 2016.
- (16) The Staff Report was filed on April 4, 2016.
- (17) By Entry of April 6, 2016, the motion to intervene of CAARE was denied.
- (18) On April 13, 2016, the Applicant filed a sample letter sent to approximately 109 Ohio property owners and affected tenants which was mailed December 9, 2013 by first class mail. The complete list of property owners was included as an attachment to the filings. The April 13, 2016 mailing complies with former OAC Rule 4906-5-08(C)(3).
- (19) On April 13, 2016, the Applicant filed the second set of Proofs of Publication indicating that notice was published in *The Paulding Progress* on April 6, 2016, describing the applications and listing the hearing dates in accordance with OAC former Rule 4906-5-08(C)(2).
- (20) A local public hearing was held on April 21, 2016, as scheduled.
- (21) An adjudicatory hearing is scheduled to commence on April 28, 2016, in Columbus, Ohio.
- (22) Adequate data on the Timber Road III Transmission Line has been provided to determine the need requirement in Section 4906.10(A)(1) of the Ohio Revised Code.



- (23) Adequate data on the Timber Road III Transmission Line has been provided to determine the nature of the probable environmental impact as required by Section 4906.10(A)(2) of the Ohio Revised Code.
- (24) Adequate data on the Timber Road III Transmission Line has been provided to determine that the facilities described in the Applications and supplemental filings, and subject to the conditions in this Stipulation represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by Section 4906.10(A)(3) of the Ohio Revised Code.
- (25) Adequate data on the Timber Road III Transmission Line has been provided to determine that the proposed electric transmission line is consistent with regional plans for expansion of the electric power grid of the electric systems serving the State of Ohio and interconnected utility systems, that the facilities will serve the interests of electric system economy and reliability, and the requirements of Section 4906.10(A)(4) of the Ohio Revised Code are met.
- (26) Adequate data on the Timber Road III Transmission Line has been provided to determine that this facility will either comply with, or are not subject to, the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, air navigation, and all regulations there under, as required by Section 4906.10(A)(5) of the Ohio Revised Code.
- (27) Adequate data on the Timber Road III Transmission Line has been provided to determine that the facilities will serve the public interest, convenience, and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.
- (28) Adequate data on the Timber Road III Transmission Line has been provided to determine what the facilities' impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the site of the proposed facilities, as required by Section 4906.10(A)(7) of the Ohio Revised Code.
- (29) Adequate data on the Timber Road III Transmission Line has been provided to determine that the facilities as proposed incorporate maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives as required by Section 4906.10(A)(8) of the Ohio Revised Code.
- (30) The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

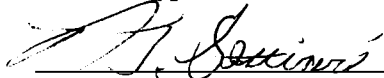
**B. Conclusions of Law**

- (1) Paulding Wind Farm III LLC is a "person" under Section 4906.01(A) of the Ohio Revised Code.

- (2) The proposed Timber Road III Transmission Line is a major utility facility as defined in Section 4906.01(B)(1) of the Ohio Revised Code.
- (3) Paulding Wind's Application complies with the requirements of Chapters 4906-17, 4906-15 and 4906-05 of the Ohio Administrative Code.
- (4) The record established the need for the proposed Timber Road III Transmission Line under Section 4906.10(A)(1) of the Ohio Revised Code.
- (5) The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the Timber Road III Transmission Line under Section 4906.10(A)(2) of the Ohio Revised Code.
- (6) The record establishes that the Timber Road III Transmission Line described in the Application and supplemental filings, and subject to the conditions in this Stipulation represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under Section 4906.10(A)(3) of the Ohio Revised Code.
- (7) The record establishes that the Timber Road III Transmission Line is consistent with regional plans for expansion of the electric power grid of the electric systems serving the State of Ohio and interconnected utility systems, and will serve the interests of electric system economy and reliability as required by Section 4906.10(A)(4) of the Ohio Revised Code.
- (8) The record establishes, as required by Section 4906.10(A)(5) of the Ohio Revised Code, that to the extent that it is applicable, construction of the proposed Timber Road III Transmission Line will comply with the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, air navigation, and all rules and standards adopted under the relevant Chapters of the Ohio Revised Code.
- (9) The record establishes that the Timber Road III Transmission Line described in the Applications and subject to the conditions in this Stipulation will serve the public interest, convenience and necessity under Section 4906.10(A)(6) of the Ohio Revised Code.
- (10) The impact of the Timber Road III Transmission Line on the viability as agricultural land of any land in an existing agricultural district has been determined under Section 4906.10(A)(7) of the Ohio Revised Code.
- (11) The record establishes that the Timber Road III Transmission Line would incorporate maximum feasible water conservation practices under Section 4906.10(A)(8) of the Ohio Revised Code.

- (12) Based on the record, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation, and maintenance of the Timber Road III Transmission Line.

The undersigned hereby stipulate, agree and represent that they are authorized to enter into this Joint Stipulation and Recommendation on this 26th day of April, 2016. Furthermore, the parties expressly agree that this Joint Stipulation and Recommendation may be amended and/or supplemented in a writing executed by the Parties.



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## APPENDIX A ACRONYMS

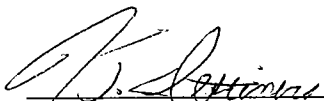
**BES** Bulk Electric System  
**BMP** best management practices  
**dBA** decibels (A-weighted)  
**DOW** ODNR Division of Wildlife  
**FAA** Federal Aviation Administration  
**HDD** horizontal directional drill(ing)  
**Hz** hertz  
**kV** kilovolts  
**MW** megawatts  
**NPDES** National Pollutant Discharge Elimination System  
**NRHP** National Register of Historic Places  
**OAC** Ohio Administrative Code  
**ODA** Ohio Department of Agriculture  
**ODSA** Ohio Development Services Agency  
**ODH** Ohio Department of Health  
**ODNR** Ohio Department of Natural Resources  
**ODOT** Ohio Department of Transportation  
**Ohio EPA** Ohio Environmental Protection Agency  
**OHPO** Ohio Historic Preservation Office  
**OPSB** Ohio Power Siting Board  
**ORC** Ohio Revised Code  
**PUCO** Public Utilities Commission of Ohio  
**SPCC** Spill Prevention, Containment, and Countermeasure  
**SWPPP** Storm Water Pollution Prevention Plan  
**USFWS** U.S. Fish and Wildlife Service

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronically upon the following persons this 26th day of April, 2016:

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Summary: Stipulation Joint Stipulation and Recommendation electronically filed by Mr. Ryan D. Elliott on behalf of Paulding Wind Farm III LLC