

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
BLACK FORK WIND ENERGY, LLC
REGARDING ITS CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED ISSUED IN CASE NO. 10-2865-
EL-BGN.

CASE No. 17-1148-EL-BGA

ORDER ON CERTIFICATE

Entered into the Journal on December 7, 2017

I. SUMMARY

{¶ 1} The Ohio Power Siting Board grants the application filed by Black Fork Wind Energy, LLC seeking a capacity increase to use the Vestas V110 turbine model with a 2.2 megawatt capacity and an extension of its certificate to January 23, 2020.

II. DISCUSSION

A. *Procedural History*

{¶ 2} All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906.

{¶ 3} Pursuant to R.C. 4906.10, the Board's authority applies to major utility facilities and provides that such facilities must be certified by the Board prior to the commencement of construction. The Board promulgated rules as set forth in Ohio Adm.Code Chapter 4906 prescribing regulations regarding applications for wind-powered electric generation facilities.

{¶ 4} Black Fork Wind Energy, LLC (Black Fork or Applicant) is a person under R.C. 4906.01(A) and is certificated to construct, operate, and maintain a major utility facility, in the form of a wind-powered electric generation facility.

{¶ 5} On January 23, 2012, the Board granted the application of Black Fork for a certificate to construct a wind-powered electric generation facility located in Crawford and

Richland counties, Ohio. *In re Black Fork Wind Energy, LLC*, Case No. 10-2865-EL-BGN (*Certificate Case*), Opinion, Order, and Certificate (Jan. 23, 2012). The Board granted Black Fork's application pursuant to a stipulation filed by Applicant, the Ohio Farm Bureau Federation (OFBF), and the Board Staff (Staff), subject to 80 conditions set forth in the stipulation. Black Fork was approved to construct a major utility facility in the form of a wind-powered electric generation facility with up to 91 wind turbines with a combined generation capacity of up to 200 megawatts (MW). The project area is located in Crawford and Richland counties, Ohio.

{¶ 6} On May 24, 2012, certain intervenors appealed the Board's decision to the Supreme Court of Ohio (Court). The Court affirmed the Board's decision on December 18, 2013.

{¶ 7} On September 12, 2014, in Case No. 14-1591-EL-BGA (14-1591), Black Fork filed an application to modify its certificate in order to utilize two additional turbine models, the Vestas V110 (2.0 MW) turbine and the GE 2.3-107 (2.3 MW) turbine for this project. The Board approved that application on August 27, 2015, over the objections of certain intervening parties.

{¶ 8} Additionally, on March 24, 2016, in the *Certificate Case* the Board approved Black Fork's September 12, 2014 motion to extend the term of the certificate from January 23, 2017 to January 23, 2019. Certain intervening parties appealed the Board's approval of the motion to extend the term of the certificate to the Court. That appeal is currently pending.

{¶ 9} On June 6, 2017, Black Fork filed an application in the above-captioned case proposing an additional modification to the certificate approved in the *Certificate Case* and modified in 14-1591. In its application, Black Fork seeks Board approval to use the 2.2 MW version of the Vestas V110 wind turbine. Additionally, Applicant seeks to extend its certificate first issued in the *Certificate Case* to January 23, 2020.

{¶ 10} Concurrent with the application, Black Fork filed proof of service of the application in this case. Notice of Black Fork's application was published in the *Bucyrus Telegraph Forum*, a newspaper of general circulation in Crawford County, and in the *Mansfield News Journal*, a newspaper of general circulation in Richland County, on June 9, 2017. Applicant filed proof of publication with the Board on June 12, 2017.

{¶ 11} On November 13, 2017, Staff filed a staff report of investigation evaluating the application (Staff Report).

B. Motion for Waiver

{¶ 12} Concurrent with the filing of the application, Black Fork filed a motion for a waiver of Ohio Adm.Code 4906-3-11-(B)(2)(a)(iii) which requires that a copy of the application be served upon "any property owner along the new route." In support of its request, Black Fork asserts that this application merely involves an increase in capacity for an already approved turbine model and that all significant features of the turbine remain the same including rotor diameter, hub height, and maximum operational sound output. Further, Black Fork notes that this application does not involved a "new" route as premised in the rule. Consequently, given the nature of the requested change and the time and expense of a mass mailing, Black Fork seeks a waiver from the rule requirement and proposes publishing newspaper notice instead. Applicant asserts that a similar motion was granted on April 25, 2016, in Case No. 16-725-EL-BGA and on September 9, 2016, in Case No. 16-1717-EL-BGA. No memoranda contra Black Fork's motion were filed.

{¶ 13} The Board determines that good cause has been presented by Black Fork to grant the requested waiver of Ohio Adm.Code 4906-3-11(B)(2)(a)(iii). Accordingly, the motion for waiver is granted.

C. Motions to Intervene

{¶ 14} On June 30, 2017, the OFBF filed a motion to intervene in this proceeding. No party filed memoranda contra the OFBF's motion to intervene.

{¶ 15} On July 7, 2017, a petition to intervene was filed on behalf of Gary J. Biglin, Karel A. Davis, Brett A. Heffner, Alan Price, Catherine Price, Margaret Rietschlin, and John Warrington (Property Owners). Property Owners describe themselves as non-participating residents and landowners adjacent to or near the proposed project. Property Owners assert that they have individually been granted intervenor status in either the *Certificate Case*, the 14-1591 case, or both cases. Property Owners submit that they meet all the requirements for intervention in this proceeding in accordance with R.C. 4906.08 and Ohio Adm.Code 4906-2-12(B)(1).

{¶ 16} Black Fork filed a memorandum contra Property Owners' petition to intervene on July 24, 2017. In its memorandum contra, Black Fork argues that two of the Property Owners do not reside within the project area and that, if intervention is granted at all, the Board should limit Property Owners' intervention to the turbine capacity issue. Property Owners filed a reply to the memorandum contra on July 31, 2017, essentially reasserting arguments in favor of intervention and disputing the contentions of Black Fork.

{¶ 17} In accordance with Ohio Adm.Code 4906-2-12(B)(1), the Board finds that the motions to intervene filed by OFBF and Property Owners (collectively, Intervenors) are reasonable to the extent they address Black Fork's request for a capacity increase to the Vestas V110 turbine model for this project. With this qualification, the Board finds that their motions to intervene should be granted. The motions to intervene should be denied, to the extent the Intervenors request intervention for the purpose of addressing irrelevant matters outside of this qualification and the identified scope of this application.

D. Summary of Application

{¶ 18} In its application, Black Fork proposes a capacity increase to the already-approved Vestas V110 turbine model. Black Fork explains that the manufacturer has made technological improvements to the Vestas V110 turbine model, allowing the capacity increase from 2.0 MW to 2.2 MW. Applicant further states that the turbine model's dimensions, including rotor diameter and hub height, remain the same. Black Fork affirms

that it will comply with all certificate conditions established in the *Certificate Case* and in 14-1591. Black Fork submits that the 200 MW nameplate capacity for the project would not change. Black Fork further states that all other information regarding the project previously approved by the Board remains unchanged, including the locations of the turbines, collector substation, access roads, and collection lines. (Application at 2-8.)

{¶ 19} Concurrent with this application, Black Fork seeks a one-year extension of its certificate from January 23, 2019 to January 23, 2020. Black Fork asserts that granting the extension request would afford it the same three-year extension period that other wind farm projects have received. Black Fork claims to have diligently pursued continued development of this project, however, changes in the energy market in Ohio and the Court appeals have impacted the Applicant's construction schedule. Applicant recognizes the Board's well-established practice of granting extensions by motion, however, given the pending litigation over the prior extension grant, Black Fork is requesting the certificate extension through this application. (Application at 5-7.)

E. Summary of Staff Report

{¶ 20} Staff reviewed the pending application and filed a Staff Report on November 13, 2017. The Staff Report reviews Black Fork's proposed modification to the certificate issued in the *Certificate Case*, as modified by 14-1591. Staff reports that since the dimensions of the turbine model do not change, the potential for impacts such as shadow flicker, blade shear, ice throw, and noise will remain unchanged. Staff also notes that there is no proposal to revise any turbine or associated facility locations in the pending application. Therefore, Staff concludes that, considering the proposed change in capacity, the original conditions for the certificate in the *Certificate Case*, as modified by 14-1591 are adequate. (Staff Report at 3-7.)

{¶ 21} In conclusion, Staff recommends that the Board approve the increase in capacity for the Vestas V110 2.2 MW wind turbine provided the Board conditions approval

on Black Fork adhering to all conditions set forth in the *Certificate Case* Order, as supplemented by 14-1591 (Staff Report at 7).

F. Board's Conclusion

{¶ 22} Initially, the Board notes that, in our Order in the *Certificate Case*, we determined that the stipulation entered into between the stipulating parties satisfies the criteria set forth in R.C. Chapter 4906, promotes the public interest and necessity, and does not violate any important regulatory principle or practice. Therefore, the Board approved the stipulation in the *Certificate Case*, authorizing Black Fork to construct this project in Crawford and Richland counties, Ohio.

{¶ 23} As stated previously, the stipulation in the *Certificate Case* established 80 conditions. Consistent with the *Certificate Case*, the acceptable turbine models for the project would be the Vestas V100 (1.8 MW), GE XLE (1.6 MW), and the Siemens SWT-2.3-101 (2.3 MW). Thereafter, in 14-1591, the Board approved an application that added the GE 2.3-107 (2.3 MW) and the Vestas V110 (2.0 MW) turbine models to the list of acceptable models to be used for this project.

{¶ 24} The application in the above-captioned proceeding would permit the increase in capacity for the Vestas V110 from 2.0 MW to 2.2 MW. The Board finds that Black Fork properly filed this case for our review and consideration, thereby providing for the necessary notice and due process afforded to applications regarding certificates issued by the Board.

{¶ 25} The Board finds that, as set forth in the application before us, and verified in the Staff Report, there is no material increase in any environmental impact of the facility and no change in any portion of the facility's location, including the location of the individual turbines, from what was originally certificated in the *Certificate Case*, as modified by 14-1591 (Staff Report at 7). Therefore, a hearing was not necessary to consider those factors. Moreover, the increase in capacity of the Vestas V110 2.2 turbine model does not affect our

conclusion from the *Certificate Case* that the project satisfies the criteria set forth in R.C. Chapter 4906, promotes the public interest, and does not violate any important regulatory principle or practice.

{¶ 26} As set forth in the application and verified in the Staff Report, the application merely seeks to permit the increase in capacity to include the Vestas V110 2.2 turbine model in order to take advantage of technological improvements. Further, as set forth in the application and verified in the Staff report, the proposed turbine model's dimensions and maximum sound power output remain virtually the same as the certificated models. (Application at 2-8; Staff Report at 6.) Additionally, according to the Staff Report, the Vestas V110 2.2 MW turbine model includes the same safety features to address potential issues in the event of high wind speeds, there will be no change to potential for impacts such as shadow flicker, blade shear, and ice throw, and no change to noise impacts. Further, the Staff Report finds that Black Fork's adherence to the conditions set forth in the *Certificate Case Order*, as supplemented by 14-1591, will adequately address safety considerations. Finally, no other aspects of the approved project are sought to be modified by the application. (Application at 2; Staff Report at 3.)

{¶ 27} Upon our deliberation of the specific request proposed by Black Fork in this application, as well as the recommendations set forth in the Staff Report, the Board finds that, based on the facts of this case, the application should be approved, subject to the conditions set forth in the *Certificate Case Order* as supplemented in 14-1591, and that the conditions set forth in the *Certificate Case Order* will adequately address the increase in capacity for the proposed Vestas V110 2.2 turbine model. In making the determination in this matter, the Board highlights that the current application merely seeks a capacity increase for a previously approved turbine model without any changes in turbine locations or turbine dimensions. Accordingly, based upon the circumstances presented by this case, the Board approves the application of Black Fork seeking approval of the increase in capacity for the Vestas V110 2.2 turbine model for this project.

{¶ 28} Regarding Black Fork's request for a one-year extension of the certificate, the Board notes that R.C. 4906.06 states that an application for a certificate shall be filed not more than five years prior to the planned date of commencement of construction. The statute continues, however, by stating that this five-year period may be waived by the Board for good cause shown. Similarly, the Board's rules in Ohio Adm.Code 4906-5-03(F) directs an applicant for a certificate to provide a proposed schedule covering all major activities and milestones for a electric generating facility project including construction of the facility and placement of the facility in service. This requirement may be waived upon application or motion of a party pursuant to Ohio Adm.Code 4906-5-01(B). As acknowledged by Black Fork in its application, the Board's long-standing practice has been to consider extensions of certificates through motions in the certificate case rather than through an application process. Upon consideration of Black Fork's request and being cognizant of similar extensions granted to other wind facility projects, the Board finds that Black Fork has established good cause for a one-year extension of the certificate in this matter.

G. Findings of Fact and Conclusions of Law

{¶ 29} Black Fork is a person under R.C. 4906.01(A).

{¶ 30} Black Fork's electric generation facility is a major utility facility under R.C. 4906.01(B)(1).

{¶ 31} On June 6, 2017, Black Fork filed an application in this proceeding regarding the certificate issued in the *Certificate Case*, as supplemented by 14-1591.

{¶ 32} The June 6, 2017 application proposes an increase in capacity for the Vestas V110 turbine model as suitable for this project.

{¶ 33} On June 6, 2017, Black Fork filed proof of service of the application in this case. Public notice of the proposed application was published in Crawford and Richland counties, Ohio on June 9, 2017, and filed with the Board on June 12, 2017.

{¶ 34} Motions to intervene have been filed on behalf of the OFBF and Property Owners in the area of the project.

{¶ 35} On November 13, 2017, Staff filed a report evaluating the application.

{¶ 36} The proposed changes to the certificated facility do not result in a substantial change in the location of the facility or any material increase in any social or environmental impact. Therefore, an evidentiary hearing is not necessary.

{¶ 37} Based on the record and in accordance with R.C. Chapter 4906, the application regarding the certificate of environmental compatibility and public need for Black Fork's electric generation facility, issued in the *Certificate Case*, as modified by 14-1591, should be approved, subject to the conditions set forth in the *Certificate Case*, and as supplemented by 14-1591 and this Order.

III. ORDER

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That Black Fork's application be approved subject to the conditions set forth in the Order in the *Certificate Case*, as supplemented in 14-1591 and this proceeding. It is, further,

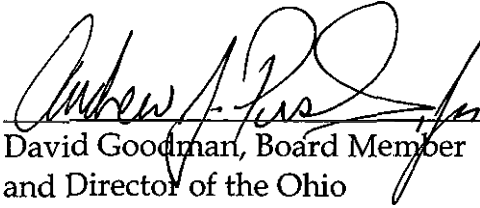
{¶ 40} ORDERED, That the motion to intervene filed by the OFBF and Property Owners be granted, to the extent set forth herein. It is, further,

{¶ 41} ORDERED, That a copy of this Order on Certificate be served upon all parties and interested persons of record.

THE OHIO POWER SITING BOARD



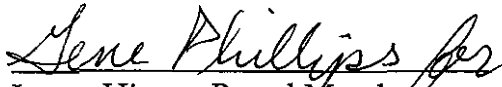
Asim Z. Haque, Chairman
Public Utilities Commission of Ohio



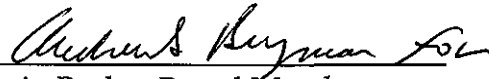
David Goodman, Board Member
and Director of the Ohio
Development Services Agency



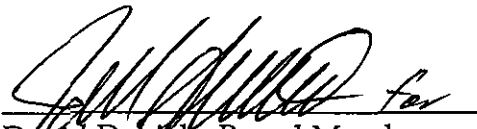
James Zehring, Board Member
and Director of the Ohio
Department of Natural Resources



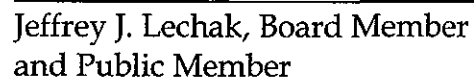
Lance Himes, Board Member
and Director of the Ohio
Department of Health



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

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Secretary