

## THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF  
REPUBLIC WIND, LLC FOR A  
CERTIFICATE TO SITE WIND-POWERED  
ELECTRIC GENERATION FACILITIES IN  
SENECA AND SANDUSKY COUNTIES,  
OHIO.

CASE No. 17-2295-EL-BGN

### ENTRY

Entered in the Journal on August 21, 2018

### I. SUMMARY

{¶ 1} The administrative law judge grants the motions to intervene filed by Duane and Deb Hay, Gary and Dawn Hoepf, Greg and Laura Jess, Mike and Tiffany Kessler, Kevin and Jennifer Oney, Tom and Lori Scheele, David P. Hoover, Jeffrey A. Hoover, Doug and Jennifer Myers, Chris and Danielle Zeman, the Ohio Farm Bureau Federation, Adams Township, Pleasant Township, Reed Township, Scipio Township, and York Township, but denies intervention to Carol Burkholder, Rita and Jerry Cantu, Duane Robinson, and John and Lisa Wilson.

### II. DISCUSSION

#### A. *Procedural History*

{¶ 2} Republic Wind, LLC (Republic or Applicant) is a person as defined in R.C. 4906.01.

{¶ 3} R.C. 4906.04 provides that no person shall construct a major utility facility in the state without obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 4} On November 13, 2017, Republic filed a pre-application notification letter with the Board regarding its proposed windfarm with up to 200 megawatt (MW) electric generating capacity in Seneca and Sandusky counties, Ohio. According to the letter, the proposed site will consist of approximately 35,000 acres of leased land in Adams, Pleasant,

Reed, Scipio, and Thompson townships in Seneca County and York Township in Sandusky County.

{¶ 5} On February 2, 2018, as amended on March 27, 2018, Republic filed an application with the Board for a certificate of environmental compatibility and public need to construct between 55 and 58 wind turbine generators, each with a nameplate capacity rating of 3.3 MW to 3.63 MW, depending on the final turbine model selected. The total generating capacity of the facility will not exceed 200 MW.

{¶ 6} On May 30, 2018, Republic filed its certificate of service of its accepted and complete application, in accordance with the requirements of Ohio Adm.Code 4906-3-07. On June 25, 2018, Republic submitted the application fee to the Board, pursuant to Ohio Adm.Code 4906-3-12.

{¶ 7} By Entry issued on July 18, 2018, a procedural schedule was established for this matter including an intervention deadline of 30 days following publication of the notice required by Ohio Adm.Code 4906-3-09.

**B. *Motions to Intervene***

{¶ 8} An administrative law judge (ALJ) may grant intervention, pursuant to Ohio Adm.Code 4906-2-12, upon a showing of good cause, which the Board has historically held is shown when the person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties. *In re Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010). Further, R.C. 4903.08(A) and Ohio Adm.Code 4906-2-12(B) provide that, in deciding whether to permit timely intervention, the following factors may be considered: the nature and extent of the prospective intervenor's interest; the extent to which the prospective intervenor's interest is represented by existing parties; the prospective intervenor's potential contribution to a just and expeditious resolution of the issues involved

in the proceeding; the legal position advanced by the prospective intervenor and its probable relation to the merits of the case; and whether the intervention by the prospective intervenor will unduly delay the proceeding or unjustly prejudice an existing party. Pursuant to Ohio Adm.Code 4906-2-12(B), the ALJ may grant an untimely filed petition to intervene only upon a showing of extraordinary circumstances and good cause, in addition to the petitioner agreeing to be bound by matters previously decided in the proceeding and providing a statement of good cause for failing to timely file its petition.

**1. SENECA COUNTY RESIDENTS' MOTION TO INTEVENE**

{¶ 9} On June 19, 2018, as amended on June 22, 2018, the following Seneca County residents filed a motion to intervene in this proceeding: Chris and Danielle Zeman, Carol Burkholder, Duane and Deb Hay, Gary and Dawn Hoepf, David Hoover, Jeff Hoover, Greg and Laura Jess, Mike and Tiffany Kessler, Doug and Jenifer Myers, Kevin and Jennifer Oney, Duane Robinson, John and Lisa Wilson, Rita and Jerry Cantu, and Tom and Lori Scheele (collectively, Seneca County Residents).

{¶ 10} Seneca County Residents contend that they have a real and substantial interest in this proceeding and that their interests are not already adequately represented by existing parties in this proceeding. They submit that their intervention will contribute to a just and expeditious resolution of issues raised in this proceeding and that their intervention will neither delay this proceeding nor prejudice parties.

{¶ 11} According to Seneca County Residents, they seek to intervene in this proceeding in order to protect their personal interests that they allege will be detrimentally affected if Republic is permitted to construct its proposed project in close proximity to their homes. Specifically, Seneca County Residents represent that they are long-time residents who own property and live in Seneca County. They contend that their homes will be subjected to excessive noise and shadow flicker caused by Republic's wind turbines. Additionally, they assert that birds, bats, and bald eagles will be harmed and killed as a

result of the wind turbines. Further, Seneca County Residents opine that the proposed project will negatively impact the local viewshed and diminish the value of their homes.

{¶ 12} In support of their motion to intervene, Seneca County Residents allege that more than 560 non-participating residences, including many of their own, may be subject to continual noise from Republic's wind turbines at volumes exceeding the World Health Organization's 40 dBA threshold for nighttime noise that causes deleterious health effects. According to Seneca County Residents, this is especially true when a 3 dBA margin of error is added to Republic's own sound modeling calculations. Additionally, Seneca County Residents contend that Republic manipulated its measurement of the average ambient nighttime noise to inflate its existing average ambient nighttime noise level in the project area.

{¶ 13} Seneca County Residents opine that the boundaries of the project area are artificial in nature and represent nothing more than the exterior boundary lines of the properties for which Republic has obtained a lease to site proposed turbines. While recognizing that some of the movants do not reside within the project area, Seneca County Residents argue that some of these individuals may live closer to the proposed wind turbines than residents within the project area. Additionally, Jeff Hoover, David Hoover, Chris and Danielle Zeman, and Doug and Jennifer Myers live immediately adjacent to the project area. Seneca County Residents submit that each of them live in close proximity to the proposed wind turbines and will be adversely affected by the noise and shadow flicker created by the turbines and the negative impact on their viewshed and wild life. Finally, Seneca County Residents state that because they are all represented by the same counsel, the granting of intervention of those outside the project area will not unduly delay this proceeding.

{¶ 14} Seneca County Residents also opine that the cost of electricity generated by the proposed project will be higher than competitively-bid electricity sold to the PJM system from other generators, notwithstanding the use of taxpayer funds to subsidize construction

of the project. Seneca County Residents submit that this market distortion harms all ratepayers including themselves.

{¶ 15} On July 3, 2018, Republic filed its memorandum contra Seneca County Residents' motion to intervene. According to Republic, only those property owners who will experience legitimate impacts from the project have standing to raise concerns in this proceeding. Republic contends that none of the residents should be allowed to raise generalized claims regarding potential impacts without showing that their particular property is affected. Republic submits that living in the same county as the proposed project area is not sufficient to establish a legitimate interest in this proceeding. It therefore opposes the intervention of Jennifer and Doug Myers, Danielle and Chris Zeman, Lisa and John Wilson, Duane Robinson, Carol Burkholder, David Hoover, Jeffrey Hoover, and Rita and Jerry Cantu based on the assertion that the properties are not located within the project area near the proposed turbine locations and, therefore, will not experience any appreciable impacts due to the proposed project.

{¶ 16} In support of its position, Republic states that a number of these residents live a substantial distance away from any of the proposed turbine locations. In particular, Republic submits that Carol Burkholder lives approximately two miles from any of the proposed turbine locations. The Wilsons and Duane Robinson live over one mile from any proposed turbine. Jennifer and Doug Myers, Danielle and Chris Zeman, and Jeffrey Hoover live over one-half mile from any proposed turbine location. David Hoover lives almost a half mile from any proposed turbine location. Republic posits that because the identified residents do not live in the project area and do not live near any of the proposed turbine sites, they should not be allowed to intervene to raise theoretical concerns that do not actually impact their interests.

{¶ 17} In the event that these residents living outside the project area have any interests in this proceeding, Republic opines that the concerns can be addressed by other parties in this proceeding or through the Board Staff's investigation.

{¶ 18} To the extent that intervention is granted, Republic opines that the permitted scope should be limited so that arguments regarding alleged increases in the cost of electricity from the operation of the proposed facility are not allowed. In support of its position, Republic points out that the potential cost of electricity is not part of the Board's consideration under R.C. 4906.10, and has no bearing on the potential environmental impacts of the proposed facility.

{¶ 19} In response to Republic's request for limiting the scope of intervention to prevent the introduction of evidence regarding the price of electricity, Seneca County Residents state that the request should be denied inasmuch as it is seeking a premature ruling on the admissibility of evidence before it has been developed and proffered at hearing. Further, Seneca County Residents reference R.C. 4906.10(A)(4) to support its position that one of the factors that the Board must consider is whether the proposed facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability.

{¶ 20} The ALJ notes that the Board has previously found that living in the county of a proposed project is not enough on its own to warrant intervention. *In re South Field Energy LLC*, Case No. 15-1716-EL-BGN, Opinion, Order, and Certificate (Sept. 22, 2016) (where the Board stated that the general concerns as citizens and ratepayers are better represented by the intervening local governments representing their citizens). While the Board's standard is generally construed in favor of intervention, a more defined nexus must be present. *In re Icebreaker Windpower Inc.*, Case No. 16-1871-EL-BGN, Entry (May 23, 2018). The Board has granted petitions to intervene when the petitioner can demonstrate an individual, direct interest is at stake in the outcome of a proceeding. *In re Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010) (where the Board granted intervention to individuals with property that abuts directly with the proposed project site). In this case, this nexus has been established by Duane and Deb Hay, Gary and Dawn Hoepf, Greg and Laura Jess, Mike and Tiffany Kessler, Kevin and Jennifer Oney, and Tom and Lori Scheele, all of whom reside

inside the project area. Additionally, this nexus has been established by David P. Hoover, Jeffrey A. Hoover, Doug and Jennifer Myers, and Chris and Danielle Zeman stemming from the fact that their property abuts the project area, which results in them being directly impacted by the proposed project. Therefore, the motions to intervene shall be granted for these individuals.

{¶ 21} Specific to Carol Burkholder, Rita and Jerry Cantu, Duane Robinson, and John and Lisa Wilson, these individuals reside outside of the project area and do not have property that abuts the project area. Therefore, they have failed to demonstrate a sufficiently direct interest at stake in the outcome of this case and the ALJ finds that their motion to intervene should be denied. The ALJ further notes that the interests of these Seneca County Residents may be raised during the local public hearing, currently scheduled for October 2, 2018, for the Board's consideration.

{¶ 22} As noted above, Republic requests that to the extent that intervention is granted to any of the Seneca County Residents, the scope of the permitted intervention should be limited so that arguments regarding alleged increases in the cost of electricity from the operation of the proposed facility are not permitted. The ALJ finds that the question of admissibility of evidence is premature at this point in the proceeding. Therefore, scope of intervention will not be limited at this time. In reaching this determination, the ALJ is not opining on the ultimate admissibility of any specific information. Further, the ALJ recognizes that the Board's authority is to evaluate a proposed facility's effect on environmental values. Determinations regarding the price a customer must pay for electric service and concerns regarding reliability of service are vested with the Commission. *In re Columbus Southern Power Co. and Ohio Power Co., Case No. 06-309-EL-BTX*, Entry (Nov. 20, 2006).

**2. MOTIONS TO INTERVENE FILED BY THE OHIO FARM BUREAU, AND ADAMS TOWNSHIP, PLEASANT TOWNSHIP, REED TOWNSHIP, SCIPIO TOWNSHIP, AND YORK TOWNSHIP.**

{¶ 23} On June 19, 2018, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene in this proceeding. OFBF states that it has a real and substantial interest in this matter that is not represented by existing parties. Further, OFBF states that its involvement will contribute to a just and expeditious resolution of the issues involved in this proceeding and will not unduly delay the proceedings or unjustly prejudice an existing party.

{¶ 24} In support of its motion, OFBF avers that it is a non-profit organization representing agricultural interests at the state and local levels with member families in every county, including hundreds of families in Seneca and Sandusky counties. OFBF represents that its members support a diversified energy portfolio, including renewable energy sources such as wind energy development. OFBF notes that farmers engaged in wind leasing agreements want to make sure that construction activities on their property adhere to procedures ensuring soil and water conservation and air quality, as well as ensuring appropriate consideration of drainage infrastructure on agricultural land.

{¶ 25} While OFBF is not taking a specific side relative to the proposed project, it wants to ensure that if the project goes forward, landowners and their corresponding land are protected and have appropriate recourse for needed repairs or remediation. It is guided by policy resolutions from the OFBF's 2018 State Policies.

{¶ 26} Additionally, OFBF states that its involvement will contribute to a just and expeditious resolution of the issues involved in the proceeding and will not unduly delay the proceedings or unjustly prejudice an existing party.

{¶ 27} On June 20, 2018, and June 21, 2018, Adams Township, Pleasant Township, Reed Township, and Scipio Township, Seneca County, each filed notices of intervention in this case. Each township represents that the proposed facility will be located, at least in part, in its boundaries.



{¶ 28} On June 28, 2018, as amended on August 14, 2018 and August 17, 2018, York Township, Sandusky County, filed a petition to intervene as a party to this proceeding. The township represents it is part of the area in which the proposed facility will be constructed. Additionally, the township states that it has a real and substantial interest in this matter that is not adequately represented by existing parties. Further, the township represents that its involvement will contribute to a just and expeditious resolution of the issues raised and that its intervention will not unduly delay the proceedings.

{¶ 29} No memoranda contra were filed in response to the intervention motions of the OFBF or the townships.

{¶ 30} The ALJ finds that the unopposed motions to intervene filed by the OFBF and the townships demonstrate good cause for permitting intervention and, therefore, should be granted.

{¶ 31} It is, therefore,

{¶ 32} ORDERED, That the motions for intervention be granted in part and denied in part as set forth in this Entry. It is, further,

{¶ 33} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE OHIO POWER SITING BOARD

/s/ Jay S. Agranoff

By: Jay S. Agranoff  
Administrative Law Judge

JRJ/hac/mef

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

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**Case No(s). 17-2295-EL-BGN**

Summary: Administrative Law Judge Entry granting in part and denying in part the motions for intervention electronically filed by Ms. Mary E Fischer on behalf of Jay S. Agranoff, Administrative Law Judge, Ohio Power Siting Board