

THE OHIO POWER SITING BOARD

**IN THE MATTER OF THE APPLICATION OF
PAULDING WIND FARM IV LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A TRANSMISSION LINE IN
PAULDING COUNTY, OHIO.**

CASE No. 18-1293-EL-BTX

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on April 4, 2019

I. SUMMARY

{¶ 1} The Ohio Power Siting Board approves and adopts the stipulation and recommendation between Paulding Wind Farm IV LLC, the Ohio Farm Bureau Federation, and the Ohio Power Siting Board Staff and directs that a certificate be issued to Paulding Wind Farm IV LLC for construction of a 138-kilovolt transmission line project.

II. PROCEDURAL BACKGROUND

{¶ 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 4906-1, et seq.

{¶ 3} Paulding Wind Farm IV LLC (Paulding or Applicant) is a person as defined in R.C. 4906.01.

{¶ 4} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. In seeking a certificate, applicants must comply with the filing requirements outlined in R.C. 4906.06, as well as Ohio Adm.Code Chapters 4906-5 and 4906-2.

{¶ 5} On August 20, 2018, Paulding filed a pre-application notification letter with the Board regarding its proposed 138-kilovolt (kV) transmission line to be located in Benton Township, Paulding County, Ohio (hereafter, the Project). The purpose of the transmission

line is to support the Timber Road IV Wind Farm, which was certified by the Board on February 21, 2019, in Case No. 18-91-EL-BGN. The proposed transmission line will run from the Timber Road IV Wind Farm substation to the existing Timber Road III generation lead line. The transmission line will be approximately 2.89 miles long.

{¶ 6} Thereafter, on October 17, 2018, and supplemented on February 1, 2019, and February 5, 2019, Paulding filed an application (Application) with the Board for a Certificate of Environmental Compatibility and Public Need to construct the Project.

{¶ 7} Also on October 17, 2018, Paulding filed motions for waivers from the requirements set forth in Ohio Adm.Code 4906-3-05 and a motion for protective order to keep certain information within its application confidential and not part of the record. Subsequently, by Entry issued December 5, 2018, the administrative law judge (ALJ) granted Paulding's motions for waivers and motion for protective order.

{¶ 8} By letter dated December 17, 2018, the Board notified Paulding that its application was compliant and provided sufficient information to permit the Staff of the Board (Staff) to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's December 17, 2018 letter directed Paulding to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Paulding to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 9} On December 17, 2018, Paulding filed a certificate of service of its accepted and complete application as required by Ohio Adm.Code 4906-3-07. And, in compliance with Ohio Adm.Code 4906-3-07(C), on December 17, 2018, Paulding filed proof that it submitted its application fee to the Treasurer of the State of Ohio.

{¶ 10} By Entry issued January 7, 2019, the ALJ established the effective date of the filing of the Application as December 17, 2018, and the ALJ established a procedural schedule under which a local public hearing would be conducted on March 5, 2019, and an

evidentiary hearing would be held on March 19, 2019. The ALJ also directed Paulding to issue public notices of the application and hearings pursuant to Ohio Adm.Code 4906-3-9 and indicate that petitions to intervene would be accepted by the Board up to 30 days following service of the notice, or by January 31, 2019, whichever date is later.

{¶ 11} On January 15, 2019, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene in this proceeding. By Entry issued on March 5, 2019, the ALJ granted the OFBF's motion to intervene for good cause.

{¶ 12} On February 15, 2019, Staff filed its report of investigation (Staff Report) pursuant to R.C. 4906.07(C).

{¶ 13} The local public hearing was conducted as scheduled on March 5, 2019. No public witness testified at the local public hearing.

{¶ 14} On March 8, 2019, Paulding, the OFBF, and Staff filed a joint stipulation and recommendation (Stipulation).

{¶ 15} On March 19, 2019, the ALJ conducted the evidentiary hearing where the Stipulation was presented for the Board's consideration. Paulding presented the testimony of Erin Bowser in support of the Stipulation. Staff presented the testimony of Grant Zeto in support of the Staff Report.

III. PROJECT DESCRIPTION

{¶ 16} Paulding seeks certification to construct a new 138-kV transmission line to run from the Timber Road IV Wind Farm substation to the existing Timber Road III generation lead line. The transmission line will be approximately 2.89 miles long, and Paulding proposes to begin construction following the issuance of the Certificate and suggests the Project will be completed within approximately six months, around October 2019.

IV. CERTIFICATION CRITERIA

{¶ 17} Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or a gas or natural gas transmission line;
- (2) The nature of the probable environmental impact;
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 1501.33, 1501.34, and 4561.32;
- (6) The facility will serve the public interest, convenience, and necessity;
- (7) The impact of the facility on the viability as agricultural land or any land in an existing agricultural district established under

R.C. Chapter 929 that is located within the site and alternate site of any proposed major facility; and

- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

V. SUMMARY OF EVIDENCE

{¶ 18} The Board will review the evidence presented with regard to each of the eight criteria by which we are required to evaluate these applications. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

A. *Local Public Hearing*

{¶ 19} On March 5, 2019, the local public hearing was conducted. No witnesses testified about the Project.

B. *Staff Report*

{¶ 20} Pursuant to R.C. 4906.07(C), Staff completed an investigation into the application, which included recommended findings regarding R.C. 4906.10(A). The following is a summary of Staff's findings.

1. BASIS OF NEED

{¶ 21} R.C. 4906.10(A)(1) requires an applicant for an electric transmission line or gas pipeline to demonstrate the basis of the need for such a facility.

{¶ 22} Staff concluded that the Applicant demonstrated the basis of need due because the Project is an integral part of the Timber Road IV Wind Farm and is necessary to transport energy from the wind farm to the electric power grid. Staff evaluated this grid

interconnection in the staff report of investigation issued in Case Number 18-91-El-BGN, which was subsequently certificated on February 21, 2019. Staff recommends that the Board find that basis of need for the Project has been demonstrated and, therefore, complies with the requirements in R.C. 4906.10(A)(1). (Staff Ex. 1 at 17.)

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 23} R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed facility. As a part of its investigation, Staff reviewed the nature of the probable impact of the Project; the following is a summary of Staff's findings.

a. Socioeconomic Impacts

{¶ 24} Paulding seeks to construct the Project entirely within Paulding County. Land use in proximity to the proposed facility is predominately agricultural. Temporary disturbances to agricultural land uses would amount to approximately 18 acres for the Preferred Route and 40 acres for the Alternate Route. Further, less than a tenth of an acre of agricultural land is expected to be permanently converted to transmission line use. There are no structures that are expected to be removed or relocated for the Project's construction or operation. Additionally, significant impacts to commercial, industrial, recreational, and institutional land uses are not anticipated as these land uses are not present in the project area. (Staff Ex. 1 at 18.)

{¶ 25} Paulding conducted a Phase I cultural resource survey to ascertain potential impacts to historic properties and archaeological sites within the Project. The Applicant's survey focused on a 10-mile radius of the Project area and included archaeological resources and known sites, landmarks, historical structures, bridges, cemeteries, and historic districts. The survey included an analysis of the National Register of Historic Places (NRHP) and sites that may be eligible for the NHRP. Paulding consulted with the State Historic Preservation Office (SHPO), and the SHPO approved the Applicant's design for ongoing archaeological

and architectural fieldwork. An evaluation of the Applicant's study results will be coordinated with the SHPO to determine specific measures to appropriately avoid or minimize any potentially adverse impacts to cultural resources. If potentially adverse impacts to cultural resources cannot be avoided or minimized, then the Applicant has committed to achieving a memorandum of understanding with the SHPO to address and mitigate those impacts. (Staff Ex. 1 at 18.)

{¶ 26} As to aesthetics, Staff reports that the Project features and location of the transmission line among existing agricultural fields and adjacent to farm features provides mitigation of potential viewshed impacts. Further, Staff states that the Applicant has selected a single monopole design for a simpler appearance and the presence of existing woodlots are able to offer an additional natural screening of portions of the facility. Lastly, the rural nature of the project vicinity limits and diminishes the potential number of viewers and transportation corridors typically are smaller and much more lightly traveled, which also reduces viewing impacts. (Staff Ex. 1 at 19.)

{¶ 27} In regards to economics, Staff reports that the Applicant submitted all estimated capital and intangible costs under seal. Staff states it has reviewed all costs and equipment for the proposed routes. Based on the assumption that the Project would qualify as a component of the Paulding Wind Farm IV electric generation facility, there would be no incremental tax revenue associated with the Project. The Applicant estimates that it would make a payment in lieu of taxes (PILOT) on the overall wind farm property at a rate of \$6,000 to \$9,000 per MW of nameplate capacity per year during the life of the wind farm. Based on the 75.9 MW capacity of the Project, payments would range between \$455,400 and \$683,100 annually for the life of the wind farm. The proposed facility would have an overall positive impact on commercial and industrial development in Paulding County and northwest Ohio, given the increase to wages, purchase of goods and services, construction spending, and local tax revenue. (Staff Ex. 1 at 19.)

b. Ecological Impacts

{¶ 28} The Project site consists of glacial till ranging from 27 to 40 feet thick and consists of a heterogeneous mixture of all sizes of soil comprised of clay, silt, sand, and gravel. The bedrock is the Salina Group, the Detroit River Group, the Middle Devonian Dundee Limestone, and the Ten Mile Creek Dolomite and Silica Formation, and consists of brown limestone and dolomite, and is variable in character. There has not been any seismic activity near the project area. The closest known structural feature is the Fort Wayne Rift, located 20 miles west southwest of the project area. The construction of the transmission line should not be restricted or limited due to the geology in the area. (Staff Ex. 1 at 19-20.)

{¶ 29} The soils in the project area consists of silty clay and silty clay loams. The dominant soils series are Hoytville and Nappanee that formed in till, are very deep, nearly level, and somewhat poorly drained to very poorly drained. The Applicant notes that it would perform additionally subsurface drilling and soil testing in the Project area at representative sites along the preferred utility corridor. A geotechnical representative will provide Paulding and Staff a final report prior to construction that documents the findings of the geotechnical investigation and laboratory testing, along with recommendations on construction methods and foundation designs. Pending the final report, the soils appear to be suitable for the design and construction of the Project. (Staff Ex. 1 at 20.)

{¶ 30} Staff notes that the Preferred Route would cross seven streams and the Alternative Route would cross ten streams, all of which are manmade ditches. Staff states that facility construction and operation activities would not require the crossing of streams by equipment, nor require any in-water work. No wetlands, lakes, reservoirs, ponds, or floodplains were identified within the construction corridor of the routes. Lastly, Paulding states that it would obtain coverage under the Ohio EPA General Natural Pollutant Discharge Elimination System Permit and that the possible sedimentation that may occur as a result of construction activities would be minimized through best management practices (BMPs). (Staff Ex. 1 at 20.)

{¶ 31} The Project area is within range of the bald eagle, a federally protected endangered species, the Indiana bat, a state and federal endangered species, and the northern long-eared bat, which is listed as a federally threatened species. In the unexpected event that the Applicant encounters a listed plant or animal species during construction, Staff recommends that the Applicant contact Staff, the Ohio Department of Natural Resources (ODNR), and the United States Fish and Wildlife Service (USFWS), as applicable. Further, Staff recommends that the Applicant provide a final access plan to Staff prior to construction to assure construction would avoid impacts to listed species as presented in the application. Lastly, Staff recommends that if the Applicant encounters any listed plant or animal species prior to construction, the Applicant include the location and how impacts would be avoided in a final access plan. (Staff Ex.1 at 21-22.)

{¶ 32} The Preferred and Alternate routes cross through two major vegetative communities. According to the Staff Report, the Preferred Route will impact approximately 34.3 acres of agricultural and 1.5 acres of maintained lawn. The Alternate Route is projected to impact approximately 63.2 acres of agricultural and 1.1 acres of maintained lawn. The Applicant proposes to clear 35 feet on either side of the transmission line. During operation, the right-of-way would be returned to agricultural land use. Staff reports that temporary disturbance to the right-of-way includes vegetative clearing and the installation of poles and stringing locations. The Applicant has stated that it does not plan to clear any trees for the construction of the Project and does not anticipate the use of herbicides during construction or operation. (Staff Ex. 1 at 22.)

c. Public Services, Facilities, and Safety

{¶ 33} The principal impact on public services is minimal. Access to construction areas would be through existing farm roads and public roads; however, some widening and additional stabilization of these existing roads may be required. The Applicant has indicated that, beyond construction equipment access and delivery of construction supplies, it does not anticipate any additional truck traffic. (Staff Ex. 1 at 22-23.)

{¶ 34} Minimum adverse noise impacts are expected. Most noise impacts associated with construction activities would occur during the proposed construction period. Moreover, the Applicant would mitigate noise impacts by using standard construction techniques and limit construction activities to daylight hours. (Staff Ex. 1 at 23.)

{¶ 35} The Applicant stated that it would comply with all applicable safety standards set by the Occupational Safety and Health Administration, safety standards of the Public Utilities Commission of Ohio, and the North American Electric Reliability Corporation Reliability Standards. Additionally, the Applicant will design the facility to meet the requirements of the National Electric Safety Code. (Staff Ex. 1 at 23.)

{¶ 36} The Applicant does not expect AM or FM radio or microwave path interference to occur from the operation of the Project along either the Preferred or Alternate routes. Further, the Applicant states that any likely source of television interference would be a localized effect primarily from defective hardware that could be easily detected and replaced. Moreover, television interference would be resolved through the complaint resolution process.

{¶ 37} In sum, Staff recommends that the Board find that Paulding has determined the nature of the probable environmental impact for the proposed facility, and, therefore, complies with the requirements specified in R.C. 4906.10(A)(2), provided that any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 23).

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 38} Pursuant to R.C. 4906.10(A)(3), the proposed facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, along with other pertinent considerations.

{¶ 39} In assessing whether the facility represents the minimum adverse environmental impact, Staff notes Paulding studied various routing locations. Staff explains

that Paulding's study focused on the area between the Timber Road IV Wind Farm collection substation and the interconnection to the existing Timber Road III 138-kV transmission line. Within the defined study area, the Applicant sought the most direct routes within land already under lease for the wind farm that would avoid or minimize socioeconomic and ecological impacts when possible. The Applicant also relied on public involvement to determine the routes. The Applicant solicited landowners' feedback regarding the routes and then took this feedback to local officials, who were supportive of the Preferred Route so long as it would comply with the 25-foot public road setback. (Staff Ex. 1 at 24.)

{¶ 40} While both the Preferred and Alternate routes are viable, Staff concludes that, when compared to the Preferred Route, potential impacts are greater along the Alternate Route. Specifically, the Alternate Route would require 28.4 more acres of right-of-way and an additional 0.9 miles of transmission line infrastructure compared to the Preferred Route. Furthermore, the Preferred Route would cost less to build because it is a more direct route from the collection substation to the point of intersection and includes fewer structures. (Staff Ex. 1 at 24.)

{¶ 41} Accordingly, Staff finds that the Preferred Route represents the minimum adverse environmental impact and, therefore, complies with R.C. 4906.10(A)(3), provided that any certificate issued by the Board for the Project include the conditions specified in Staff Report (Staff Ex. 1 at 24).

4. ELECTRIC POWER GRID

{¶ 42} Pursuant to R.C. 4906.10(A)(4), the Board must determine that the proposed facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems. Under the same authority, the Board must also determine that the proposed facility will serve the interest of the electric system economy and reliability.

{¶ 43} The Staff Report states that the Applicant, as an owner, operator, and/or user of the bulk power system (BPS), is subject to compliance with various North American Electric Reliability (NERC) Standards, including but not limited to those relating to transmission planning for contingency events. Staff further states that interconnection of the Paulding Wind Farm IV to the electric transmission grid was previously reviewed by Staff and certified by the Board on February 21, 2019, in Case No. 18-91-EL-BGN. In proposing interconnection with the transmission grid, the Applicant utilized generation interconnection queue positions AC1-173 and T-131. Queue position AC1-173 was submitted to PJM Interconnection, LLC (PJM) on October 31, 2016, for 75.9 MW.¹ The System Impact Study (SIS) was released in May 2017. Queue position T131 was submitted to PJM on January 9, 2008, for 150 MW, of which only 49.2 would be used for the Timber Road IV Wind Farm. An Interconnection Service Agreement for T-131 was executed on February 18, 2016. Construction of the facility shall not commence until the Interconnection Service Agreement (ISA) is executed for queue position AC1-173. Staff avers that PJM analyzed the BPS for compliance with NERC reliability standards and PJM reliability criteria. The PJM system studies indicated that no reliability violations were modeled to occur during single and multiple contingencies. Staff states that the proposed transmission line would not be constructed to relieve congestion or improve the electric grid, rather, the proposed Project is an integral part of the Timber Road IV Wind Farm and is necessary to transport energy to the BPS. (Staff Ex. 1 at 25-26.)

{¶ 44} Accordingly, Staff recommends the Board find that the proposed facility is consistent with the regional plans for expansion of the electric power grid of electric systems serving the state and interconnected utility systems and that the facility would serve the interests of electric system economy and reliability. Further, Staff believes the facility

¹ PJM is the regional transmission organization charged with planning for upgrades to the regional transmission system in Ohio.

complies with the requirements specified in R.C. 4906.10(A)(4), provided that any certificate issued by the Board includes the conditions specified in the Staff Report. (Staff Ex. 1 at 26.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 45} Pursuant to R.C. 4906.10(A)(5), the facility must comply with Ohio law regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation.

{¶ 46} For this Project, Staff states no air quality permits are required, although fugitive dust suppression techniques may be necessary. The Applicant would control fugitive dust through dust suppression techniques such as application of water or calcium chloride (a dust suppressant). Staff also asserts the facility will not require the use of significant amounts of water for construction or operation. For streams and wetlands, the Applicant's field delineation identified no wetlands within 100 feet of the Preferred or Alternate Route and laydown yard. The Applicant would minimize waterbody impacts by placing poles in uplands. Therefore, the Applicant does not anticipate the need for wetland permits and/or authorizations. (Staff Ex. 1 at 27.)

{¶ 47} The Applicant has further stated that it would submit a Notice of Intent for coverage under the Ohio EPA's NPDES general permit for stormwater discharges associated with construction activities. The Applicant has committed to identifying surface water resources and other environmentally sensitive areas before the commencement of clearing or construction. Lastly, the Applicant has also stated that no construction or access would be permitted in these areas unless clearly specified in the construction plans and specifications, thus, minimizing any clearing-related disturbance to surface water bodies. (Staff Ex. 1 at 27.)

{¶ 48} Staff states the Applicant will properly dispose of, in accordance with state and federal requirements, all solid wastes. Further, any contaminated soils discovered or generated during construction would be handled in accordance with applicable regulations.

Additionally, the Applicant would have a Spill Prevention Plan in place and would follow said plan for any spill cleanup. (Staff Ex. 1 at 27.)

{¶ 49} The tallest anticipated above-ground structure of the transmission line and construction equipment would be approximately 130 feet; the Applicant does not anticipate the need for a Federal Aviation Administration (FAA) permit because the height is below the FAA threshold. Staff avers that it contacted the Ohio Department of Transportation Office of Aviation in order to coordinate review of potential impacts of the Project on local airports. As of the date of Staff's Report of Investigation, no such concerns have been identified. (Staff's Ex. 1 at 28.)

{¶ 50} Staff, therefore, concludes that the facility will comply with the requirements contained in R.C. 4906.10(A)(5), provided the proposed facility includes the conditions provided in the Staff Report (Staff Ex. 1 at 28).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 51} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity.

{¶ 52} Staff avers that Paulding has worked with the community in developing the Project, having held informational meetings and meetings with local public officials and landowners. According to Staff, the Applicant plans on continuing to provide community members, elected officials, and the local media with information about the Project. (Staff Ex. 1 at 29.)

{¶ 53} In regards to electromagnetic fields (EMF), Staff explains that laboratory studies have failed to establish a strong correlation between exposure to EMFs and effects on human health. Notwithstanding this fact, due to the concerns regarding the potential impacts that EMFs may have on human health, Staff states Paulding computed the electric fields associated with the new circuits to be 0.3 kV/meter or less as well as the magnetic field output which was less than 41.18 milligauss at the edge of the right-of-way. Further,

Staff highlights that electric fields are easily shielded by physical structures such as the walls of a house or foliage. The Applicant states that the transmission facilities will be designed according to the requirements of the National Electric Safety Code. (Staff Ex. 1 at 29-30.)

{¶ 54} Therefore, Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and complies with the requirements set forth in R.C. 4906.10(A)(6), provided the proposed facility includes the conditions set forth in the Staff Report (Staff Ex. 1 at 30).

7. AGRICULTURAL DISTRICTS

{¶ 55} Pursuant to R.C. 4906.10(A)(7), the Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project area of the proposed utility facility.

{¶ 56} Staff states the Preferred and Alternate Routes would include approximately 18 and 40 acres, respectively, of agricultural land. The majority of agricultural land to be impacted is primarily used for the production of soybeans, corn, and wheat. Temporary agricultural impacts associated with construction of the Project would total 13.4 acres along the Preferred Route and 13.5 acres along the Alternate Route. The permanent loss of agricultural land would total 0.02 acres along the Preferred Route and 0.03 acres along the Alternate Route. Additionally, Paulding indicated that it would take measures to minimize impacts to field operations, irrigation, agricultural, and field drainage systems that would occur as a result of construction, operation, and maintenance of the Project. Further, the Applicant will repair field drainage systems damaged by construction activities. Lastly, the Applicant stated that property owners would be compensated for crop damages resulting from the Applicant's construction activities. (Staff Ex. 1 at 31.)

{¶ 57} Staff recommends that the Board find that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined,

and the requirements of R.C. 4906.10(A)(7) are satisfied so long as any certificate issued by the Board include the conditions specified in the Staff Report (Staff Ex. 1 at 31).

8. WATER CONSERVATION PRACTICE

{¶ 58} Pursuant to R.C. 4906.10(A)(8), the proposed facility must incorporate maximum feasible water conservation practices considering the available technology and the nature and economics of the various alternatives.

{¶ 59} Although the facility may require some water use during construction for dust reduction purposes and for concrete foundations, the transmission line would not require the use of any water during operation (Staff Ex. 1 at 32).

{¶ 60} Staff recommends that the Board find that the facility would incorporate maximum feasible water conservation practices as specified in R.C. 4906.10(A)(8) (Staff Ex. 1 at 32).

9. RECOMMENDATIONS

{¶ 61} In addition to making various findings throughout its report, Staff recommended that 14 conditions be made part of any certificate issued by the Board for the proposed facility (Staff Ex. 1 at 33-35). With some slight differences, the recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' March 8, 2019 Stipulation (Jt. Ex. 1). The conditions are discussed below.

VI. STIPULATION AND CONDITIONS

{¶ 62} At the March 19, 2019, adjudicatory hearing, counsel for the Applicant presented the Stipulation entered into by Paulding, the OFBF, and Staff and filed to the record on March 8, 2019 (Jt. Ex. 1; Tr. at 9). Paulding witness Erin Bowser offered testimony in support of the Stipulation (Applicant Ex. 7). Pursuant to the Stipulation, the parties recommend that the Board issue the certificate requested by Paulding, subject to 14 listed

conditions. The following is a summary of the conditions agreed to by the parties and is not intended to replace or supersede the actual Stipulation. The parties stipulate that:

- (1) The facility shall be installed on the Preferred Route, utilizing the equipment, construction practices, and mitigation measures as presented in the Application filed on October 17, 2018, and supplemented on February 1, 2019, and February 5, 2019, and further clarified by recommendations in the Staff Report.
- (2) Prior to the start of any construction activities, Paulding shall conduct a preconstruction conference, which shall be attended by Staff, the Applicant, and representatives of the prime contractor and all subcontractors for the Project. The Applicant shall provide a proposed conference agenda for Staff review prior to the conference. The Applicant may conduct separate preconstruction meetings for each stage of construction.
- (3) Paulding shall submit one set of detailed engineering drawings of the final project design to Staff at least 30 days before the preconstruction conference. This 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. The final project layout shall be provided in hard copy and as geographically-referenced electronic data.
- (4) Within 60 days after the commencement of commercial operation, Paulding shall submit to Staff a copy of the as-built specifications for the entire facility. The Applicant shall provide

as-built drawings in both hard copy and as geographically-referenced electronic data.

- (5) If Paulding has not commenced a continuous course of construction for the proposed facility within five years of the date of the certificate's journalization, the certificate shall become invalid.
- (6) As information becomes known, Paulding shall docket in the case record the date on which construction will begin, on which construction was completed, and on which the facility begins commercial operation.
- (7) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, Paulding shall obtain and comply with such permits or authorizations, including any permits necessary for aviation clearance. Paulding shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. Paulding shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (8) At least seven days prior to construction, Paulding shall provide Staff, affected property owners and tenants, Paulding County officials, municipal and township officials, emergency responders, surrounding airports, and libraries with written notice regarding the start of construction and the complaint resolution process outlined in Exhibit B of the application. The

notice shall include a description of the nature of the project, contact information for the project, and the proposed timeframe for project construction and restoration activities. A copy of the notice shall be filed on the docket in this case.

- (9) Paulding shall contact Staff, the ODNR, and the USFWS within 24 hours if state or federally listed species are encountered during construction activities, and construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by Paulding, Staff, and the appropriate agencies.
- (10) Prior to the preconstruction conference, Paulding shall provide a construction access plan for review. The plan shall consider the location of streams, wetlands, wooded areas, and sensitive plant species and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan would also include the measures to be used for restoring the area around all temporary access points and a description of any long-term stabilization required along permanent access routes.
- (11) Paulding shall obtain transportation permits prior to the commencement of construction activities that require them. Paulding 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.

- (12) 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 pile driving, hoe ram operations, 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 at sensitive receptors are permitted outside of daylight hours when necessary. Paulding shall notify property owners or affected tenants of upcoming construction activities including the potential for nighttime construction.
- (13) Paulding shall remove all construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to pre-construction conditions in compliance with the Ohio EPA General National Pollutant Discharge Elimination System permit(s) obtained for the project and the approved Stormwater Pollution Prevention Plan created for this project.
- (14) Paulding shall not dispose of gravel, or any other construction material, during or following construction of the facility by placing such material on agricultural land. All construction debris and all contaminated soil shall promptly be removed and properly disposed of in accordance with Ohio EPA regulations.

VII. CONCLUSION

{¶ 63} Pursuant to Ohio Adm.Code 4906-2-24, parties before the Board are permitted to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Under Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board affords the terms of such an agreement substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of Board proceedings. *See, e.g., In re Hardin Wind, LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principal or practice?

{¶ 64} In the Stipulation, Paulding, the OFBF, and Staff agree that the Stipulation results from lengthy, serious bargaining among knowledgeable and capable parties (Joint Ex. 1 at 2). Paulding witness Erin Bowser further contends that the Stipulation is a reasonable, good faith settlement that resulted from thoughtful negotiations among capable,

knowledgeable parties to the case. Ms. Bowser explains that the Stipulation addresses all questions that have been expressed by the parties. (Applicant Ex. 7 at 4.)

{¶ 65} The Board finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The Board notes that all the parties to the proceeding are signatories of the Stipulation. We further recognize that the counsel for each of the parties have participated in several other Board proceedings and is, therefore, familiar with Board proceedings and certificate requirements. Consequently, the Board finds that, based upon the record, the first prong is satisfied.

{¶ 66} The parties further claim that the Stipulation, as a package, benefits the public interest, and Ms. Bowser testified that the stipulated conditions ensure that the Project will serve the public interest. Specifically, Ms. Bowser states that Paulding estimates that construction and operation of the Project, as well as the Timber Road IV Wind Farm, will increase employment in the area. She further predicts that the Project will have a significant positive impact on the local tax base – assuming an estimated nameplate capacity of 75.9 MWs, the increase in local tax revenues could be as much as \$683,100 annually for the facility. (Applicant Ex. 7 at 4-5.)

{¶ 67} Upon review, the Board finds that, as a package, the Stipulation benefits the public interest by resolving the issues raised in this matter without resulting in litigation. The Stipulation reflects consideration of Staff's recommendations and conditions. We find that, based on the evidence of record, the proposed project is necessary to transport energy from the wind farm to the electric power grid and will increase tax revenue for the local community.

{¶ 68} The parties and Ms. Bowser state that the Stipulation does not violate any important regulatory principle or practice. The Board agrees and finds that the Stipulation does not violate any important regulatory principle or practice. Moreover, the conditions

contained within the Stipulation adequately address all statutory requirements for such projects. (Joint Ex. 1 at 2; Applicant Exhibit 7 at 5.)

{¶ 69} Based on the record in this proceeding, the Board concludes that all of the elements established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the 138-kV transmission line described in Paulding's application, subject to the conditions set forth in the Stipulation and this Order. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to Paulding in accordance with R.C. Chapter 4906.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 70} Paulding is a person under R.C. 4906.01(A) and is licensed to do business in the State of Ohio.

{¶ 71} The proposed electric transmission line is a major utility facility as that term is defined in R.C. 4906.01(B).

{¶ 72} On August 20, 2018, Paulding filed a pre-application notification letter informing the Board of a public informational meeting for its proposed facility and its proof of notification to property owners and affected tenants of the date of the public informational meeting, respectively.

{¶ 73} On August 30, 2018, Paulding filed proof of its publication of the notice regarding the public informational meeting in accordance with Ohio Adm.Code 4906-3-03.

{¶ 74} On September 12, 2018, Paulding held the public informational meeting for its proposed transmission line project.

{¶ 75} On October 17, 2018, and supplemented on February 1, 2019, and February 5, 2019, Paulding filed its application for a Certificate of Environmental Compatibility and Public Need.

{¶ 76} Also on October 17, 2018, Paulding filed motions for waivers from the requirements set forth in Ohio Adm.Code 4906-3-05 and motion for protective order.

{¶ 77} By letter dated December 17, 2018, the Board notified Paulding that its application had been found to be sufficiently complete pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 78} Also on December 17, 2018, the Applicant filed a Certificate of Service indicating that copies of the application had been served upon local public officials and filed proof that it had paid its application fee.

{¶ 79} On January 7, 2019, the ALJ issued a procedural Entry establishing the effective date of the application as December 17, 2018; scheduling a local public hearing for March 5, 2019, and an adjudicatory hearing for March 19, 2019; directing Staff to file a report; and setting a deadline for intervention.

{¶ 80} On January 28, 2019, the Applicant filed Proof of Service and Initial Publication regarding the date, time, and location of the public hearing and adjudicatory hearing, including proof of notice of the public hearing and adjudicatory hearing to affected property owners and elected officials, in substantial compliance with Ohio Adm.Code 4906-3-09(A).

{¶ 81} The Staff Report of Investigation was filed on February 15, 2019.

{¶ 82} On February 27, 2019, Paulding filed a Proof of Service and Second Notice stating that a copy of the second "Notice of Public Information Meeting for Proposed Utility Facility" was published in the *West Bend News* and *The Paulding Progress* on February 19, 2019, and February 20, 2019, respectively.

{¶ 83} A local public hearing was held on March 5, 2019. No public witness testified at the local public hearing.

{¶ 84} On March 8, 2019, Paulding, the OFBF, and Staff filed a Stipulation resolving all issues in this proceeding.

{¶ 85} On March 19, 2019, the ALJ conducted the evidentiary hearing where the Stipulation was presented for the Board's consideration. Paulding presented the testimony of Erin Bowser in support of the Stipulation. Staff presented the testimony of Grant Zeto in support of the Staff Report.

{¶ 86} Adequate data on the proposed transmission line has been provided to make the applicable determinations required by R.C. 4906.10(A). The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

{¶ 87} The Stipulation satisfies the criteria established by the Board for review and consideration of such agreements.

{¶ 88} Based on the record, the Board finds that Paulding's application should be approved and, pursuant to R.C. Chapter 4906, a certificate should be issued for the construction, operation, and maintenance of the electric transmission line project subject to the conditions set forth in the Stipulation and this Order.

IX. ORDER

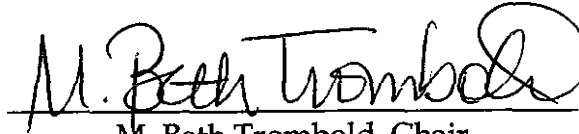
{¶ 89} It is, therefore,

{¶ 90} ORDERED, That the Stipulation be approved and adopted. It is, further,

{¶ 91} ORDERED, That a certificate be issued to Paulding for the construction, operation, and maintenance of the electric transmission line, subject to the conditions set forth in the Stipulation and this Order. It is, further,

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

THE OHIO POWER SITING BOARD



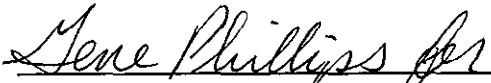
M. Beth Trombold, Chair
Public Utilities Commission of Ohio



Lydia Mihalik, Board Member
and Director of the Ohio
Development Services Agency



Mary Mertz, Board Member
and Director of the Ohio
Department of Natural Resources



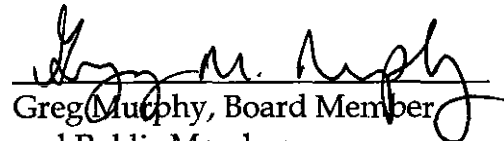
Amy Acton, M.D., MPH, Board Member
and Director of the Ohio
Department of Health



Laurie Stevenson, Board Member
and Director of the Ohio
Environmental Protection Agency



Dorothy Pelanda, Board Member
and Director of the Ohio
Department of Agriculture



Greg Murphy, Board Member
and Public Member

LLA/hac

Entered in the Journal

APR 04 2019



Tanowa Troupe
Secretary