

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Seneca)
Wind, LLC for a Certificate of Environmental)
Compatibility and Public Need for a Wind-) Case No. 18-488-EL-BGN
Powered Electric Generating Facility in)
Seneca County, Ohio.)

**MOTION TO PARTIALLY MODIFY PROCEDURAL SCHEDULE
PENDING ADDITIONAL STAFF REVIEW OF
AVIATION INFORMATION**

Pursuant to O.A.C. Rule 4906-2-27(A), (C), and (F), Seneca Wind, LLC “Movant” hereby requests that the Ohio Power Siting Board (“OPSB”) partially modify the procedural schedule established by the entry issued Monday, July 8, 2019. OPSB Staff issued its Staff Report of Investigation (“Staff Report”) in this proceeding on Wednesday, July 3, 2019, in which it anticipated conducting additional analysis after receiving expected documentation from the Federal Aviation Administration (“FAA”). Staff Report at 45. The FAA’s final Determination of No Hazard (“DNH”) was issued on July 5, 2019 **only two days (and one business day)** after the Staff Report was filed. Seneca Wind received the DNH on Monday, July 8, 2019, soon after the procedural schedule was issued, and then immediately submitted this information to Staff. Seneca Wind does not seek to delay the filing of testimony or the adjudicatory hearing scheduled in this matter. However, Seneca Wind believes it is reasonable and in the public interest for the Staff to have an opportunity to review and analyze these results in advance of the hearings. Seneca Wind respectfully requests that the public hearing be rescheduled until after Staff completes its review.

A memorandum in support of this motion is attached. Movant contacted counsel for the other parties in this proceeding regarding this motion. Counsel for the Ohio Farm Bureau

Federation, the Seneca East Local School District, and the Black Swamp Bird Observatory indicated that they do not oppose this motion and do not oppose expedited treatment of this motion. Mr. Steve Shuff is opposed to the motion and request for expedited treatment. At the time of the filing of this motion, counsel for Seneca Wind had not heard from the other parties.

Because Seneca Wind must publish notice of the local public hearing by Tuesday, July 16, 2019, Seneca Wind respectfully request that the OPSB grant this motion by **11:00 am, Monday, July 15, 2019**. This would provide Seneca Wind sufficient time to withdraw its scheduled newspaper publication. If, however, this motion is granted after notification is published, Seneca Wind commits to immediately notifying the public that the local public hearing has been canceled.

An expedited ruling that modifies the procedural schedule only by changing the date of the local hearing will not affect a substantial right of any party.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

As required by R.C. 4906.07(C), the Ohio Power Siting Board (“OPSB” or “Board”) Staff is charged with conducting investigations of all certification applications filed with the Board. From its investigation, Staff is to make “recommended findings” regarding whether the application complies with the criteria listed in R.C. 4906.10(A), including impacts to air navigation. R.C. 4906.10(A)(3) and 4906.10(A)(5). Moreover, Staff is to recommend whether the application should be approved with or without proposed conditions. The Staff Report of Investigation (“Staff Report”) automatically becomes a part of the record in the proceeding. Importantly, it is to be completed and made available to the parties—and to the public—at least fifteen (15) days prior to public hearings scheduled in the proceeding. R.C. 4906.07(C).

The reason for this statutory period is readily apparent. It ensures that the public has advance notice of the Staff’s position, and ensures that the public can provide informed comments and testimony at the public hearing. In addition, it permits Staff, as well as the applicant and intervening parties, to answer the public’s inquiries about recommendations and conditions contained in the Staff Report. A staff analysis that considers the most up to date and available information promotes judicial economy and administrative efficiency. As a practical matter, the Staff Report frames issues that will be litigated at the local and adjudicatory hearings. Indeed,

after issuance of the Staff Report, the Board requires the parties to submit a list of issues to be pursued at hearing. See Entry, July 8, 2019, at 4.

As the Board is aware, Seneca Wind, LLC (“Seneca Wind” or “Applicant”) has worked diligently to provide Staff with the information necessary to complete its investigation. Particularly frustrating was the delay in the Federal Aviation Administration’s (“FAA”) issuance of a final Determination of No Hazard (“DNH”). Seneca Wind is anxious for the commercial operation of its proposed facility as soon as possible; but, regrettably sought (and received) postponements of the procedural schedules in this case to await the FAA notices and to facilitate a complete Staff Report. See Entries of February 1, 2019, and April 5, 2019. The April 5, 2019, Entry tolled the date for issuance of the Staff Report to July 3, 2019.

As of Tuesday, July 2, 2019, Seneca Wind was aware that the FAA had completed the DNH circulation process and that its final determination was imminent. However, at that time, Seneca Wind did not yet have a date certain for the issuance of the DNH, and Seneca Wind requested that the procedural schedule again be suspended indefinitely. However, its motion was denied by entry of July 3, 2019, and the Staff Report was issued the same date. The Staff Report recommended that the application be denied because the FAA’s final DNH notice, and a related updated letter from the Ohio Department of Transportation (“ODOT”) Office of Aviation, had not been issued, precluding Staff from finding that the application complied with the aviation components of R.C. 4906.10(A)(3) and (5). As a result, Staff “initially” recommended denial of the facility “[u]ntil the FAA and ODOT Office of Aviation are able to complete their analysis and Staff is subsequently able to analyze the studies’ results.” Staff Report at 44-45.

On July 5, 2019, just **two days** after the Staff Report was issued (and **only one** business day considering the 4th of July holiday), the FAA issued the DNH. On Monday, July 8, 2019, the Administrative Law Judge issued a new procedural schedule that set the local public hearing for

July 23, 2019. Also, in the evening of Monday, July 8, 2019, Seneca Wind was notified that the FAA issued its final DNH notice which Applicant provided to Staff and ODOT on July 9, 2019. Seneca Wind also filed final DNH notice with the Board on July 10, 2019. The FAA concluded that the proposed facility does not create a hazard to navigable airspace, including within the DNH certain attainable conditions.

Seneca Wind is concerned that Staff will not be able to perform an additional review regarding all the relevant aviation information necessary to properly advise the Board potential impacts under provisions R.C. 4906.10(A)(3) and (5) before the July 23, 2019 local hearing, as contemplated by R.C. 4906.07(C). Seneca Wind submitted DNH to Staff and ODOT as soon as it received notice from the FAA. This information was submitted to Staff less than one week after the Staff Report was issued. In fact, the DNH was issued on July 5, 2019, just two days after the Staff Report was filed. Now that this critical piece of information is public record, it is only reasonable and in the public interest for the Staff to have an opportunity to review and analyze these results in advance of the hearings.

Seneca Wind notes that neither the Revised Code nor the Administrative Code requires that the local public hearing be held by a date certain, or that it be held a certain amount of time before the adjudicatory hearing. Considering that Staff may perform additional analysis of information from FAA and ODOT (once ODOT completes its review), Staff Report (See Staff Report at 45), Seneca Wind requests that the date of the local hearing be suspended until Staff has the opportunity to complete its review to ensure the most updated aviation analysis is available for the public in advance of the local public hearing.

In contrast to its most recent motion to suspend the procedural schedule, Seneca Wind now has the FAA's final determination. Rather, Seneca Wind only requests a limited modification of the procedural schedule to allow for the analyses of material information to be available to the

public in advance of the local public hearing. This request prejudices no party and serves the public interest and judicial economy. Further, Movant contacted counsel for the other parties in this proceeding regarding this motion. Counsel for the Ohio Farm Bureau Federation, the Seneca East Local School District, and the Black Swamp Bird Observatory indicated that they do not oppose this motion and do not oppose expedited treatment of this motion. Mr. Steve Shuff is opposed to the motion and request for expedited treatment. At the time of the filing of this motion, counsel for Seneca Wind had not heard from the other parties.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion was served upon the following parties listed below by electronic mail, this 12th day of July 2019.



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Summary: Motion of Seneca Wind, LLC to Partially Modify Procedural Schedule Pending
Additional Staff Review of Aviation Information
electronically filed by Teresa Orahood on behalf of Devin D. Parram