

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 September 12, 2019

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

{¶ 2} 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).

{¶ 3} 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.

{¶ 4} On February 2, 2018, as amended on March 27, 2018, December 26, 2018, and June 28, 2019, Republic filed an application with the Board for a certificate of environmental compatibility and public need to construct between 44 and 47 wind turbine generators, each with a nameplate capacity rating of 4.2 MW to 4.5 MW, depending on the final turbine model selected. The total generating capacity of the facility will not exceed 200 MW.

{¶ 5} 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.

{¶ 6} R.C. 4906.07(A) provides that, upon receipt of an application complying with R.C. 4906.06, the Board must promptly fix a date for a public hearing not less than 60 nor

more than 90 days after such receipt and shall conclude the proceeding as expeditiously as practicable.

{¶ 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. Subsequently, the procedural schedule in this matter was amended several times.

{¶ 8} On January 25, 2019, Pleasant Township filed a notice indicating that it was withdrawing its notice of intervention due to the fact that, as a result of Republic's amended application, the Applicant was no longer seeking to site turbine locations in Pleasant Township.

{¶ 9} On April 26, 2019, the administrative law judge (ALJ), pursuant to Ohio Adm.Code 4906-2-27, suspended the procedural schedule and stayed discovery. Specifically, the ALJ tolled the filing of the Staff Report until July 25, 2019. The ALJ also ordered Republic to publish notice of cancellation of the previously scheduled May 14, 2019 public hearing and the June 3, 2019 adjudicatory hearing.

{¶ 10} On June 7, 2019, Republic filed proof of publication of the cancellation notices for the public and adjudicatory hearings.

{¶ 11} On June 28, 2019, Republic filed a notice of project modifications and project information update, noting turbine model modifications to the facility. In the filing, Republic states that pursuant to Ohio Adm.Code 4906-3-11(A)(6), the modifications to the turbines do not create further impacts for property owners within the planned site, and in some cases, result in a reduction of impacts to property owners.

{¶ 12} On July 25, 2019, Staff filed its report of investigation pursuant to R.C. 4906.07(C).

{¶ 13} Pursuant to the Entry of August 19, 2019, the ALJ established a new procedural schedule in this matter. Specifically, the local public hearing was scheduled for

Thursday, September 12, 2019, at 3:00 p.m., at Tiffin University, Marion Center, 235 Miami Street, Tiffin, Ohio 44883. The adjudicatory hearing was scheduled to commence on Wednesday, October 2, 2019, at 10:00 a.m., 11th floor, Hearing Room 11-D, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

{¶ 14} Additionally, the ALJ directed that the following procedural schedule and process should be implemented:

- (a) On or before September 5, 2019, each party shall file a list of issue(s) citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the adjudicatory hearing.
- (b) All expert and factual testimony to be offered by Republic shall be filed by September 20, 2019.
- (c) All expert and factual testimony to be offered by intervenors and Staff shall be filed by September 27, 2019.
- (d) A telephonic prehearing conference be scheduled for September 16, 2019, at 10:00 a.m. Counsel for the parties will be provided the conference line information at a later date.
- (e) Any stipulation entered into by the parties shall be filed by September 27, 2019.

{¶ 15} On September 4, 2019, Seneca County Commissioners, Adams Township, Reed Township, Scipio Township, and Seneca County Park District (collectively, Movants) jointly filed a motion to continue the adjudicatory hearing scheduled for October 2, 2019, and the previously established deadlines for the submission of testimony for a minimum of sixty days. Movants are all represented by the office of the Seneca County Prosecuting Attorney.

{¶ 16} In support of their motion, Movants represent that the office of the Seneca County Prosecuting Attorney (Seneca County Prosecuting Attorney) just recently became

substantively involved in this proceeding and, therefore, requires additional time to prepare for the adjudicatory hearing. Movants explain that this late change in counsel was due to the change in membership of the Seneca County Commissioners, which resulted in a change in Seneca County's official position relating to the application in this proceeding. Movants state that the Seneca County Prosecuting Attorney has no experience before the Board and needs sufficient time to adequately prepare his clients' case. Movants also contend that the Seneca County Prosecuting Attorney is involved in other scheduled matters, including a felony trial. Finally, Movants aver that the office of the Seneca County Prosecuting Attorney is currently dealing with staffing issues that will prevent him from focusing on this proceeding based on the current procedural schedule.

{¶ 17} On September 5, 2019, Republic filed its memorandum contra Movants' motion for continuance of the adjudicatory hearing. In support of its opposition to the requested continuance, Republic submits that the fact that an intervenor changes its position during a case does not entitle that party to delay the evidentiary hearing. Republic notes that the office of the Seneca County Prosecuting Attorney has been representing various parties in this proceeding over the past 14 months. As a result, Republic avers that Movants have had a substantial amount of time to conduct discovery and prepare for hearing, but chose not to do so. Additionally, Republic notes that Movants have failed to provide any explanation regarding why Adams, Reed, and Scipio townships need the requested continuance. Republic also argues that the Seneca County Commissioners had notice of the potential change in position prior to the August 19, 2019 Entry establishing the procedural schedule, but failed to contact the parties. Therefore, Republic asserts that Movants have failed to establish good cause in support of their motion.

{¶ 18} Additionally, Republic submits that the requested continuance would be prejudicial and unfair to the Applicant inasmuch as it will have a negative impact on the viability of the project. Republic also notes that the project has already experienced significant time constraints due to unexpected delays in the Federal Aviation Administration's issuance of determinations of no hazard. Republic contends that it has

already relied upon the procedural schedule established in the August 19, 2019 Entry, and has begun to prepare for the hearing and has published notification of the hearing dates.

{¶ 19} On September 10, 2019, Movants filed a reply to the memorandum contra. They explain that, although the Seneca County Prosecuting Attorney has been counsel of record for some of the parties for an extended period of time, he had not been actively involved because of a conflict of interest between statutory clients. Movants represent that this conflict has now been resolved as a result of the change of position by the Seneca County Commissioners.

{¶ 20} Upon a review of the arguments set forth relative to the motion for a continuance, the ALJ finds that, although Movants have established reasonable grounds for the granting of a continuance, the extension of time should not be for the entire requested sixty days. Rather, the adjudicatory hearing shall be continued and will commence on Monday, November 4, 2019, at 10:00 a.m. at the office of the Public Utilities Commission, Hearing Room 11-D, 180 East Broad Street, Columbus, Ohio 43215-3793. In order to avoid the need for additional publication of the new adjudicatory hearing, a call and continue will take place, at the time and place of the originally scheduled hearing, on October 2, 2019, at 10:00 a.m., in Hearing Room 11-D.

{¶ 21} Consistent with the granted continuance, the following procedural schedule and process should be implemented:

- (f) All expert and factual testimony to be offered by Republic shall be filed by October 21, 2019.
- (g) All expert and factual testimony to be offered by intervenors and Staff shall be filed by October 28, 2019.
- (h) A telephonic prehearing conference be scheduled for October 23, 2019, at 10:00 a.m. Counsel for the parties will be provided the conference telephone number information at a later date.

- (i) Any stipulation entered into by the parties shall be filed by October 28, 2019.
- (j) The parties are strongly encouraged to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJ assigned to this case.

{¶ 22} Due to the granted continuance, the telephonic conference call, previously scheduled for September 16, 2019, is cancelled.

{¶ 23} It is, therefore,

{¶ 24} ORDERED, That the motion for a continuance is granted, in part, in accordance with Paragraph 20. It is, further,

{¶ 25} ORDERED, That the adjudicatory hearing in this matter be continued in accordance with Paragraph 20. It is, further,

{¶ 26} ORDERED, That the procedural schedule be modified in accordance with Paragraph 21. It is, further,

{¶ 27} ORDERED, That the telephonic conference call, previously schedule for September 16, 2019, is cancelled. It is, further,

{¶ 28} 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/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 the motion for continuance, in part, by continuing the adjudicatory hearing to 11/4/19; modifying the procedural schedule in accordance with paragraph 21; and cancelling the 9/16/19 teleconference. electronically filed by Ms. Mary E Fischer on behalf of Jay S. Agranoff, Administrative Law Judge, Ohio Power Siting Board