

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
FIRELANDS WIND, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A WIND-POWERED
ELECTRIC GENERATION FACILITY IN
HURON AND ERIE COUNTIES, OHIO.

CASE NO. 18-1607-EL-BGN

ENTRY

Entered in the Journal on June 1, 2020

{¶ 1} Firelands Wind, LLC (Firelands 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 October 26, 2018, Firelands, a wholly-owned subsidiary of Apex Clean Energy Holdings, Inc., filed a pre-application notification letter with the Board regarding its proposed 298.2 megawatt (MW) wind-powered electric generating facility in Huron, Erie, and Seneca counties, Ohio.

{¶ 4} On January 31, 2019, Firelands filed its application with the Board for a certificate of environmental compatibility and public need to construct and operate a wind-powered electric generation facility (Project) in Huron and Erie counties, Ohio. Applicant explained that the information presented in the pre-application notification letter was revised to reflect that the Project will be located in Huron and Erie counties only and that no facilities are now proposed for Seneca County. Specifically, Firelands states that the Project will be located within approximately 32,000 acres of leased land in Groton and Oxford townships in Erie County, and Lyme, Norwich, Richmond, Ridgefield, and Sherman townships in Huron County. The Project consists of up to 87 turbine generators, each with

a nameplate capacity rating of 4.2 to 4.5 MW which results in the Project generating up to 297.66 MW, rather than the 298.2 MW listed in the pre-application notification letter.

{¶ 5} Applicant filed supplements to its application on March 18, 2019, July 10, 2019, September 12, 2019, and October 4, 2019.

{¶ 6} By Entries dated December 23, 2019, and December 24, 2019, the administrative law judge (ALJ) found that the application, as supplemented, was complete as provided for in R.C. 4906.06. Further, the ALJ established a procedural schedule in this matter, including a local public hearing to be held on March 18, 2020, and an adjudicatory hearing to commence on April 14, 2020.

{¶ 7} On March 5, 2020, the ALJ issued an Entry that granted intervenor status, granted permission to appear pro hac vice, and granted the withdrawal of parties as intervenors in the case. The Entry further scheduled the case for a prehearing conference on March 31, 2020.

{¶ 8} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 9} On March 11, 2020, the ALJ issued an Entry suspending the procedural schedule in this matter in light of the guidance issued by the Executive Order and the

Department of Health. Among other things, the ALJ postponed the local public and adjudicatory hearings and directed that notice of the postponement be issued by Applicant.

{¶ 10} On March 11, 2020, and March 23, 2020, notices were filed on behalf of intervenors Rosemary Clifford, Cindy Riley, Mark Weber, Sally Norman, Keith Fox, Daniel Riedy, and John Wagner to withdraw from this case.

{¶ 11} On March 27, 2020, a motion for permission for Hillary Aidun to appear pro hac vice was filed by Philip Leppla, Esq., counsel for intervenors Yingling and Erf. No memoranda contra were filed in response to the motion for permission to appear pro hac vice.

{¶ 12} At this time, the ALJ finds, pursuant to Ohio Adm.Code 4906-2-25, that a prehearing conference should be scheduled for June 16, 2020, at 2:00 p.m. EST. Prior to the prehearing conference, the parties are directed to participate in a technology test session on June 15, 2020, at 2:00 p.m. EST. Due to the declared state of emergency, the prehearing conference will occur via a Webex conference. The Board will email instructions to the parties for participation in the technology test session and the prehearing telephone conference prior to June 12, 2020. For those parties that are unrepresented who have not provided email addresses to the Board, the Board will mail correspondence to them describing the process for participation in both the technology test session and the prehearing conference. Further, anyone interested in attending the prehearing conference as a non-party can access the conference through either <https://bit.ly/18-1607-PHC>, or calling 1-408-418-9388, and entering code 129 625 3667. Although non-parties will be able to access the prehearing conference, they will not be able to actively participate. During the prehearing conference, the parties should be prepared to discuss a new procedural schedule for this matter, including potential dates for the local public and adjudicatory hearings, and options for proceeding with the hearings through video conferencing or other means.

{¶ 13} The ALJ further finds that the unopposed motion on behalf of out-of-state attorney Aidun to appear pro hac vice is granted. Pursuant to Ohio Adm.Code 4906-2-26,

the Board may grant an out-of-state attorney permission to appear before it pro hac vice, subject to compliance with the requirements in paragraph (A)(6) of section 2 of rule XII of the Rules of Government of the Bar of Ohio. The ALJ finds that attorney Aidun satisfies the criteria to appear pro hac vice in matters before the Board. The ALJ notes that intervenors Yingling and Erf are represented by multiple attorneys in this matter, and orders that one of the attorneys be designated “counsel of record” in accordance with Ohio Adm.Code 4906-2-26(D).

{¶ 14} The ALJ further finds that the requests of intervenors Rosemary Clifford, Cindy Riley, Mark Weber, Sally Norman, Keith Fox, Daniel Riedy, and John Wagner to withdraw from this case are approved, and these persons are no longer intervenors in this proceeding.

{¶ 15} The ALJ further finds that the remaining pro se intervenors in this case are as follows: Lori Collins; Thomas Collins; John Eberle; Missy Eberle; Jeff Geary; Jenny Geary; Joseph Jenkins; Pam Jenkins; Della Ladd; Randall Ladd; Julie Ruffing; Patrick Ruffing; and, Matthew Sostakowski. These parties are instructed to participate in the prehearing conference as described in Paragraph 12 if it is their intention to continue participation in this case. In the alternative, if these individuals no longer intend to participate in the case, the ALJ requests that they indicate those intentions in writing in this docket.

{¶ 16} As a final matter, the ALJ notes that the Board’s Entry of June 25, 2019, incorrectly identified Kevin Rospert as an intervenor in this case. The record is clarified to reflect that the correct name of the intervenor is Kenneth Rospert.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That a prehearing conference be scheduled for June 16, 2020, in accordance with Paragraphs 12 and 15. It is, further,

{¶ 19} ORDERED, That permission to appear pro hac vice is granted in accordance with Paragraph 13. It is, further,

{¶ 20} ORDERED, That Rosemary Clifford, Cindy Riley, Mark Weber, Sally Norman, Keith Fox, Daniel Riedy, and John Wagner are no longer participating intervenors in accordance with Paragraph 14. It is, further,

{¶ 21} ORDERED, That Kenneth Rospert be identified as the correct intervenor in accordance with Paragraph 16. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Michael L. Williams

By: Michael L. Williams
Administrative Law Judge

MJA/hac

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in

Case No(s). 18-1607-EL-BGN

Summary: Administrative Law Judge Entry scheduling prehearing conference; granting motion to appear pro hac vice; ordering Rosemary Clifford, Cindy Riley, Mark Weber, Sally Norman, Keith Fox, Daniel Riedy, and John Wagner are no longer participating intervenors; and, ordering that Kenneth Rospert be identified as the correct intervenor electronically filed by Heather A Chilcote on behalf of Michael L. Williams, Administrative Law Judge, Ohio Power Siting Board