

**BEFORE  
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 ) Case No. 18-1607-EL-BGN  
Wind-Powered Electric Generation Facility in )  
Huron and Erie Counties, Ohio. )

**FIRELANDS WIND, LLC’S MOTION TO DISMISS  
NON-PARTICIPATING INTERVENORS FROM THE CASE AND  
REQUEST FOR EXPEDITED RULING**

Pursuant to Ohio Administrative Code (“O.A.C.”) Rule 4906-2-27, Firelands Wind, LLC (“Firelands” or “Applicant”) hereby respectfully requests that the Ohio Power Siting Board (“Board”) dismiss the remaining pro se intervenors – 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 – from this case if they do not indicate their intent to participate in writing in this docket by June 19, 2020. This requested remedy is consistent with the Entry of June 1, 2020, as well as the Board’s procedural requirements for intervention and discovery under O.A.C Rules 4906-2-12 and 4906-2-17. For these reasons and as explained further in the accompanying Memorandum in Support, the Board should no longer allow the Unrepresented Residents to participate as parties in this case if they do not comply with the applicable requirements for participation.

Firelands also requests an expedited ruling on this Motion since it is a straightforward

issue capable of swift resolution, and that resolution will allow all remaining parties to focus on the core issues in this proceeding going forward.<sup>1</sup>

Respectfully submitted,

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*(Counsel is willing to accept service via email.)*

***Attorneys for Firelands Wind, LLC***

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<sup>1</sup> Firelands is not able to represent that no party objects to the issuance of an expedited ruling.

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**MEMORANDUM IN SUPPORT OF FIRELANDS WIND LLC’S MOTION TO DISMISS  
NON-PARTICIPATING INTERVENORS FROM THE CASE AND REQUEST FOR  
EXPEDITED RULING**

**I. INTRODUCTION**

Firelands filed its Application in this case on January 31, 2019. On May 17, 2019, a group of Erie, Huron, and Seneca County residents filed a Motion to Intervene, represented by the law firm of Benesch, Friedlander, Coplan & Aronoff LLP (“Benesch”). On June 25, 2019, the administrative law judge (“ALJ”) granted the motion to intervene with respect to most of those residents (“Local Resident Intervenors”). On February 21, 2020, Benesch filed a Notice of Withdrawal as counsel, explaining that attorney Jack A. Van Kley would substitute as counsel for some of the Local Resident Intervenors. This notice indicated that Mr. Van Kley would not be representing Local Resident Intervenors Rosemary Clifford, Lori Collins, Thomas Collins, John Eberle, Missy Eberly, Jeff Geary, Jenny Geary, Joseph Jenkins, Pam Jenkins, Della Ladd, Randall Ladd, Catherine Limbird, Jim Limbird, Daniel Riedy, Cindy Riley, Julie Ruffing, Patrick Ruffing, Matthew Sostakowski, John Wagner, and Mark Weber (collectively, “Unrepresented Residents”).

Firelands now respectfully moves, pursuant to O.A.C. Rule 4906-2-27, that the Board dismiss any remaining Unrepresented Residents from the case if they do not indicate their intent to participate in writing in this docket by June 19, 2020, as previously directed by the ALJ.

Firelands also requests an expedited ruling on its motion to allow for efficient resolution of this proceeding moving forward.

## **II. BACKGROUND**

Since Benesch's withdrawal as counsel for the Local Resident Intervenors, no legal counsel has stepped in to represent Rosemary Clifford, Lori Collins, Thomas Collins, John Eberle, Missy Eberly, Jeff Geary, Jenny Geary, Joseph Jenkins, Pam Jenkins, Della Ladd, Randall Ladd, Catherine Limbird, Jim Limbird, Daniel Riedy, Cindy Riley, Julie Ruffing, Patrick Ruffing, Matthew Sostakowski, John Wagner, and Mark Weber. As recognized in the ALJ's June 1, 2020 Entry, several of those parties have voluntarily withdrawn, leaving 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 as pro se intervenors in the case.

Firelands has twice sent letters to these Unrepresented Residents – along with interrogatories pursuant to O.A.C. Rule 4906-2-17 – by federal express on February 26, 2020 and May 13, 2020, requesting responses by March 17, 2020, and June 4, 2020, respectively. The letters accompanying these discovery requests provided the contact information for Firelands' counsel, as well as for counsel representing the Board's staff from the Ohio Attorney General's office, and asked that the Unrepresented Residents indicate whether they are represented by counsel or if they no longer plan to participate as a party in the case. With the exception of Jeff and Jenny Geary, the Unrepresented Residents have not responded to those letters or interrogatories, and have not formally withdrawn from this proceeding.<sup>2</sup>

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<sup>2</sup> On May 29, 2020, Firelands docketed an email communication received from Jeff and Jenny Geary on May 27 indicating that they "are not being represented by anyone for the Emerson Wind Project, and we are not representing ourselves."

The ALJ's June 1, 2020 Entry, recognizing the pro se status of these intervenors, provided clear and explicit instructions for them "to participate in the prehearing conference" scheduled for June 16, 2020 "if it is their intention to continue participation in this case" or "[i]n the alternative, if these individuals no longer intend to participate in the case . . . [to] indicate those intentions in writing in this docket." None of the Unrepresented Residents participated in the prehearing conference held on June 16, 2020.

### **III. DISCUSSION**

In order to intervene in a Board proceeding, a party must address, among other things, whether it will "contribut[e] to a just and expeditious resolution of the issues involved in the proceeding" and whether the requested intervention would "unduly delay the proceeding or unjustly prejudice an existing party."<sup>3</sup> Additionally, once a party has intervened it must respond to discovery within the time periods prescribed under the Board's rules.<sup>4</sup> Given that the remaining Unrepresented Residents have not timely answered Firelands' discovery requests, participated in the June 16, 2020 prehearing conference, or otherwise responded to inquiries regarding their intent to continue participating in this proceeding, it appears unlikely that they will in fact be able to contribute to the resolution of the issues in the case without delaying or prejudicing Firelands' own ability to ensure a robust and complete evidentiary record.

Accordingly, if the Unrepresented Residents also do not comply with the directive in the ALJ's June 1, 2020 Entry to participate and submit a written filing regarding their future participation by June 19, 2020, then they should no longer be able to continue as intervening parties.

Although as pro se litigants the Unrepresented Residents may certainly deserve some leeway in complying with technical aspects of the Board's rules, that leeway can only go so far before it undermines the ability of the Board and other parties to ensure Firelands' Application is

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<sup>3</sup> O.A.C Rule 4906-2-12(B)(1)(c) and (d).

<sup>4</sup> O.A.C. Rule 4906-2-17(A).

considered in a fair and timely manner. The Board may take its cues on this issue from the Public Utilities Commission of Ohio, which oversees similar administrative hearing processes and has long recognized that, while it may “grant a certain amount of latitude toward pro se litigants,”<sup>5</sup> it “cannot simply disregard [applicable rules] in order to accommodate a party who fails to obtain counsel,” at the risk of prejudicing other parties.<sup>6</sup> That risk will certainly be present here if Firelands must proceed without the ability to obtain evidence from a number of parties through discovery in a timely fashion or to even to understand their positions regarding the questions at issue.

Notably, although dismissing the Unrepresented Residents as parties from this case will allow it to proceed without unnecessary delay or prejudice to the Applicant, it will not deprive the Board of input from local residents. The Board has, to date, been implementing a robust public participation process that allows any person to submit written comments and will include a public hearing consistent with health and safety requirements during the COVID-19 pandemic. Furthermore, a separate group of local residents continue to be engaged as formal parties represented by legal counsel. These ongoing avenues for local input will enable the Board to reach a decision in this proceeding having heard from a wide range of interested stakeholders, with a record sufficient to address the adequacy of Firelands’ Application under Ohio Revised Code Section 4906.10.

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<sup>5</sup> *In the Matter of Michael Barker, dba Comex Transport, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 16-2186-TR-CVF, Opinion and Order (July 12, 2017 at ¶ 10 (citing *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352,2003-Ohio-6448,800 N.E.2d 25).

<sup>6</sup> *Id.*

#### IV. CONCLUSION

For the reasons outlined above, Firelands respectfully requests that the Board dismiss the Unrepresented Intervenor from the case if they do not indicate their intent to participate in writing in this docket by June 19, 2020. Firelands also requests an expedited ruling on this motion in order to provide certainty on this issue, which all parties and the Board itself have been diligently trying to address since February 2020, without further delay.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 19th day of June, 2020.

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Summary: Motion to Dismiss Non-Participating Intervenors from the Case and Request for Expedited Ruling electronically filed by Christine M.T. Pirik on behalf of Firelands Wind, LLC