

**BEFORE
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 Wind-)	Case No: 18-91-EL-BGN
Powered Electric Generation Facility in Paulding)	
County, Ohio.)	

**MOTION FOR PROTECTIVE ORDER
AND MEMORANDUM IN SUPPORT**

Pursuant to Ohio Administrative Code (“O.A.C.”) Rule 4906-2-21(D), Paulding Wind Farm IV LLC (“Company”) respectfully moves the Ohio Power Siting Board (“Board”) for a protective order to keep confidential portions of a document in the Board’s possession, which document is subject to a request made pursuant to the Ohio Public Records Act, R.C. § 149.43 *et seq.* Specifically, the Board has identified as responsive to the public-records request the “Timber Road IV – Wind Turbine Incident Report,” dated September 3, 2020 (“Incident Report”), which contains confidential information and trade secrets exempt from disclosure under Ohio law.

The Company requests that portions of pages 2, 5, 6, 8, and 9 of the Incident Report—which consist of the identity of a landowner residing in the project area, sensitive trade secret information regarding the wind turbine manufacturer’s internal response process and data collection strategy with respect to turbine failure scenarios, and other closely-held information—be kept confidential. The Company believes that public disclosure of the sensitive information (which the manufacturer provided on a confidential basis) will have a harmful effect on its ability to compete in the marketplace and negotiate contracts now and in the future with potential vendors for this Project (and others). Similarly, public disclosure will give the manufacturer’s competitors an undue advantage.

An explanation of the reasons supporting this motion is detailed in the attached Memorandum in Support. Consistent with the practice of the Board, a redacted version of the Incident Report is attached hereto and an unredacted copy of the confidential portions of the Incident Report have been submitted to the Docketing Division under seal.

Accordingly, the Company respectfully moves for a protective order to keep the confidential information contained in the Incident Report under seal and not part of the public record.

Respectfully submitted,

/s/ Christine M.T. Pirik

Christine M.T. Pirik

(Counsel of Record)

Terrence O'Donnell

William V. Vorys

Dickinson Wright PLLC

150 East Gay Street, Suite 2400

Columbus, Ohio 43215

Phone: (614) 591-5461

Email: cpirik@dickinsonwright.com

todonnell@dickinsonwright.com

wvorys@dickinsonwright.com

Attorneys for Paulding Wind Farm IV LLC

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

I. INTRODUCTION

On February 21, 2019, the Board issued a Certificate of Environmental Compatibility and Public Need (“Certificate”) to the Company authorizing the construction of a wind-powered electric generation facility in Paulding County, Ohio (“Project”). On September 4, 2020, in compliance with condition 21 of the Certificate, the Company notified the Board via telephone and email that one of the Project’s wind turbines had experienced an incident resulting in damage to that wind turbine’s blade. The notice confirmed there were no injuries nor any other property damage associated with the incident.

On October 2, 2020, also in compliance with Certificate condition 21, the Company provided to Board’s Staff the applicable Wind Turbine Incident Report, which contained additional information regarding the event as well as some context surrounding the Company’s (and manufacturer’s) response. On October 14, 2020, Board staff notified the Company via email that it had received a public records request for the Incident Report. Given the Company’s prior identification of the document as “confidential and trade-secret,” the Board allowed the Company to file a Motion for Protective Order to keep portions of the Incident Report out of the public record.

Accordingly, the Company requests that portions of the above-referenced pages of the Incident Report remain confidential in light of their sensitive nature, as described below. Attached hereto is the redacted version of the Incident Report and the Applicant has submitted the unredacted pages of the Incident Report under seal in order to maintain their confidentiality.

II. LEGAL AUTHORITY

As a threshold matter, under the Ohio Public Records Act, the term “public records” excludes information which may not be released under state or federal law. R.C. § 149.43(A)(1)(v). The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Bresser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

Similarly, the O.A.C. expressly permits the Board or the administrative law judge (“ALJ”) assigned to the case to protect the confidentiality of certain information filed with the Board’s Docketing Division. See O.A.C. Rule 4906-2-21. In particular, O.A.C. Rule 4906-2-21(D) provides that:

“[u]pon motion of any party or person filing a document with the board’s docketing division relative to a case before the board, the board or the [ALJ] assigned to the case may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where it is determined that both of the following criteria are met: The information is deemed by the board or [ALJ] assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code.”

Here, nondisclosure of the information requested to be kept confidential will in no way impair the purposes of R.C. Title 49. The Board and its Staff already have full access to the information in order to fulfill the Board’s statutory obligations. The question becomes whether the confidential information may be considered a “trade secret” under Ohio law.

The definition of a “trade secret” is set forth in Ohio’s Uniform Trade Secrets Act, which states:

“Trade secret” means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information or listing of names, addresses, or telephone numbers, that satisfies both of the following:

(1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. Section 1333.61(D).

Courts of other jurisdictions have held that a public utilities commission has the authority to protect trade secrets of companies subject to its jurisdiction. *New York Tel. Co. v. Pub. Serv. Comm.*, 56 N.Y. 2d 213 (1982). In fact, the existence of a state trade secret statute creates a duty of the public utilities commission to protect them. *Id.* Recognizing this duty, the Board has issued orders protecting trade secrets in numerous proceedings. See, e.g., *Carroll Co. Energy, LLC*, Case No. 13-1752-EL-BGN, Entry (Jan. 6, 2014); *North Coast Gas Transmission, LLC*, Case No. 14-1754-GA-BLN, Entry (Dec. 30, 2014); *Hardin Solar Energy, LLC*, Case No. 17-773-EL-BGN, Entry (Feb. 20, 2018); *Vinton Solar Energy, LLC*, Case No. 17-774-EL-BGN, Opinion and Order (Sept. 20, 2018); *Paulding Wind Farm IV LLC*, Case No. 18-91-EL-BGN, Opinion and Order (Feb. 21, 2019).

In *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 687 N.E.2d 661 (1997), the Ohio Supreme Court adopted the six factor test set forth in *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134-135, 454 N.E.2d. 588, 592 (1983), which served to further define “trade secrets” under Ohio law. The six factors to be considered in recognizing a trade secret are:

(1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, i.e., by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and

(6) the amount of time and expense it would take for others to acquire and duplicate the information.

Note that the Board is not necessarily limited to protecting information meeting the precise definition of “trade secret.” The Board may issue a protective order providing that a “trade secret *or other confidential research, development, commercial, or other information* not be disclosed or be disclosed only in a designated way.” O.A.C. Rule 4906-2-21(A)(7) (*emphasis added*).

As will be discussed in the next section, the information the Company seeks to protect should be considered trade secrets. In addition, much of the confidential and sensitive information contained in the Incident Report and described in this motion and memorandum in support would also be considered “confidential research, development, commercial, or other” information warranting protection from the public record, pursuant to the O.A.C.

III. ANALYSIS

A. Identity of Landowner (Incident Report, Page 2)

The Company seeks to keep confidential the identity of the landowner whose property is located closest to the impacted wind turbine, and whose name appears in the text under the photograph on page 2 of the Incident Report. Although not likely a “trade secret,” the information is confidential and not publicly available. Moreover, the Company is bound by the terms in its agreement with this landowner, which require confidentiality.

B. Manufacturers’ Systems / Processes (Incident Report, Pages 5 and 6)

Page 5 of the Incident Report, titled “Weather Conditions and Turbine Operation,” contains information regarding the wind turbine manufacturer’s confidential data collection systems and manufacturing processes—including its internal procedure(s) to address wind turbine failure—which the Board should classify as “trade secrets.” The first paragraph details the manufacturer’s internal strategy in determining the impact of weather on turbine failure. The second paragraph describes its data collection strategy in determining other potential contributors to the failure. The

third paragraph outlines methods of inspecting other manufacturing records, complete with references to its manufacturing processes.

The wind turbine manufacturer's internal incident response processes are not publicly available and are closely held. The manufacturer provided this information to the Company on a confidential basis, which the Company agreed to protect from public disclosure. The manufacturer devoted great time and expense to develop these incident response protocols; public disclosure would give their competitors a "road map" of these procedures and therefore an undue competitive advantage. For example, disclosure would allow competitors to calculate the cost associated with the manufacturer's incident response process—which they could then leverage to their advantage. In sum, competitors would be able to gain the benefit of the methodologies employed by the manufacturer (and developer) without having to undertake the effort and expense incurred to produce, compile, and organize the information and associated strategy. Likewise, given these confidentiality issues, the final sentence in the fourth full paragraph on page 6 of the Incident Report should be redacted.

Disclosure of this information would not assist the Board in carrying out its duties as Board staff can view unredacted versions of the Incident Report that have been submitted under seal. Disclosure would similarly not serve any other public policy.

C. Photographs of Damaged Wind Turbine (Pages 8 and 9)

The Incident Report contains numerous photos (5) of the damaged wind turbine. The Company seeks to maintain as confidential two of the five images, both of which were taken at close proximity to the wind turbine and have the capacity to reveal confidential trade secret information regarding its structure and design. The two "close-up" images would give the manufacturer's competitors an undue advantage because they contain details highlighting the manufacturing process (and parts) utilized to build the wind turbines. Public disclosure of these

images—which reveal specifications for turbine components—will also allow competitors to derive an approximation of the manufacturer’s costs to build the wind turbines.

The manufacturer provided the images to the Company on a confidential basis and has not authorized the release of the redacted photos. The Company submits that disclosure would not serve any other public policy and is unnecessary, considering the other three photos that fully and accurately capture the nature of the incident. Similarly, the two redacted images would not assist the Board in carrying out its duties.

IV. CONCLUSION

For the foregoing reasons, the Company requests that the Board or the ALJ grant its motion for a protective order to maintain the information described above as confidential and not subject to public disclosure.

/s/ Christine M.T. Pirik
Christine M.T. Pirik
(Counsel of Record)
Terrence O’Donnell
William V. Vorys
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, Ohio 43215
Phone: (614) 591-5461
Email: cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
wvorys@dickinsonwright.com

Attorneys for Paulding Wind Farm IV LLC

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 21st day of October, 2020.

/s/ Christine M.T. Pirik

Christine M.T. Pirik (0029759)

Counsel:

thomas.lindgren@ohioattorneygeneral.gov

cendsley@ofbf.org

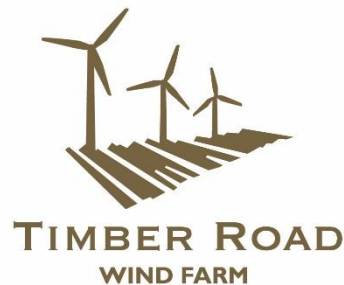
lcurtis@ofbf.org

amilam@ofbf.org

Administrative Law Judge:

jay.agranoff@puco.ohio.gov

4812-5936-5583 v2 [56242-8]



Timber Road IV - Wind Turbine Incident Report

Event Date – September 3, 2020

EDPR Case Reference – 18-0091-EL-BGN

**<< CONFIDENTIAL – CONTAINS PROPRIETARY
AND/OR TRADE SECRET INFORMATION >>**

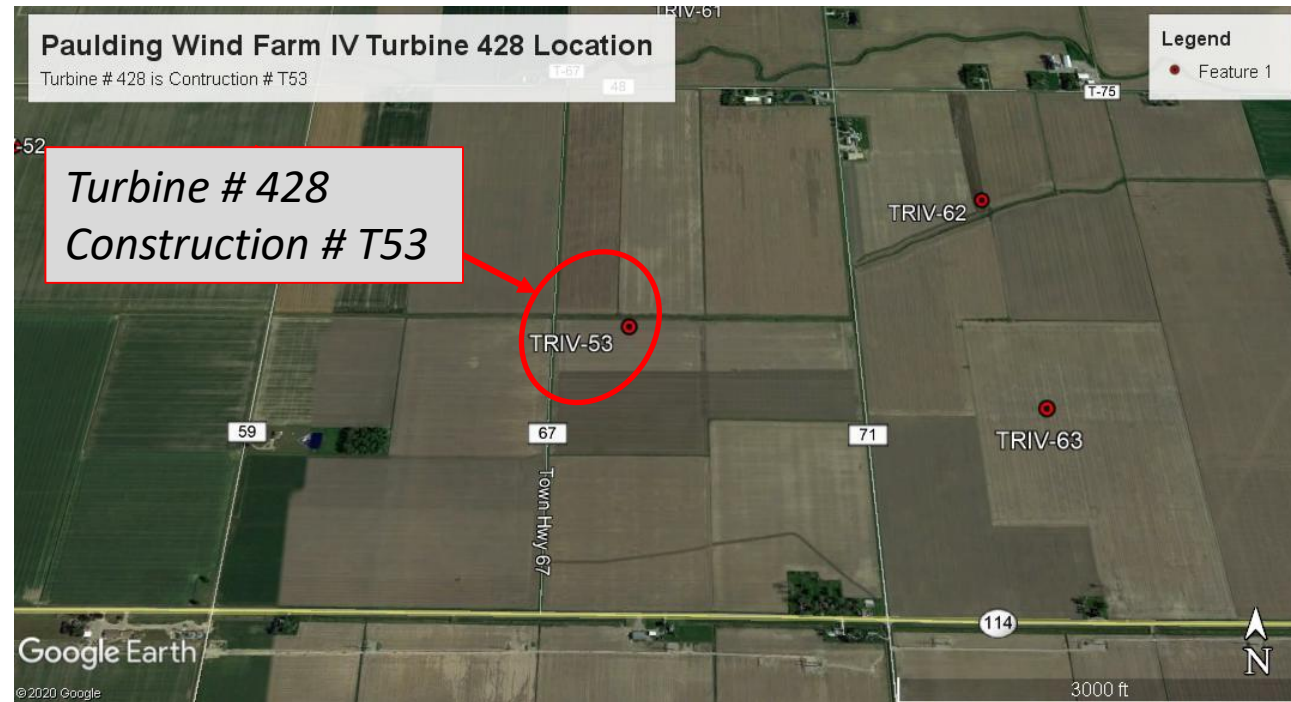
Public and Site Personnel Safety Precautions

On September 3, 2020 at approximately 22:36 hours local time, a Vestas V150 4.2MW wind turbine at Paulding Wind Farm IV (“Timber Road IV”) in Paulding County experienced a blade failure. Damaged blade debris has fallen to the crane pad and within an approximate 90-meter radius around the turbine.

Timber Road IV is a 126MW generating facility that consists of 24 Vestas V150 4.2MW and 7 Vestas V136 3.6MW turbines.

The Timber Road IV operations team mobilized to the turbine at 06:45 to ensure no additional hazards were present. After initial visual inspection of the turbine and surroundings, the operations team implemented actions to secure the area around the turbine. Those actions included notifying landowners and closing access roads leading to the affected turbine 428.

No injuries to personnel or the public occurred. No property damage was sustained beyond the turbine equipment.



Turbine 428 is accessed from Town Hwy 67 via 2700 ft. project access road on the property of [REDACTED]

Public and Site Personnel Safety Precautions

Timber Road IV site operations and Vestas, the turbine manufacturer, promptly implemented safety procedures including: Emergency Action Plan, site wide safety stand down, job safety analysis planning, and Safe Approach protocols.

That same morning of September 4, Timber Road IV site management notified the Paulding County Sheriff's office and county officials of the blade failure and the safety measures under way. OPSB Inspector (Mr. Mark Belamy) was on site for initial inspection, mid-day on September 4.

Site-wide external inspections of 90 turbine blades on the remaining 30 turbines were completed by September 6. No damages were found, and all 30 inspected turbines were cleared to operate by Vestas and Timber Road IV.

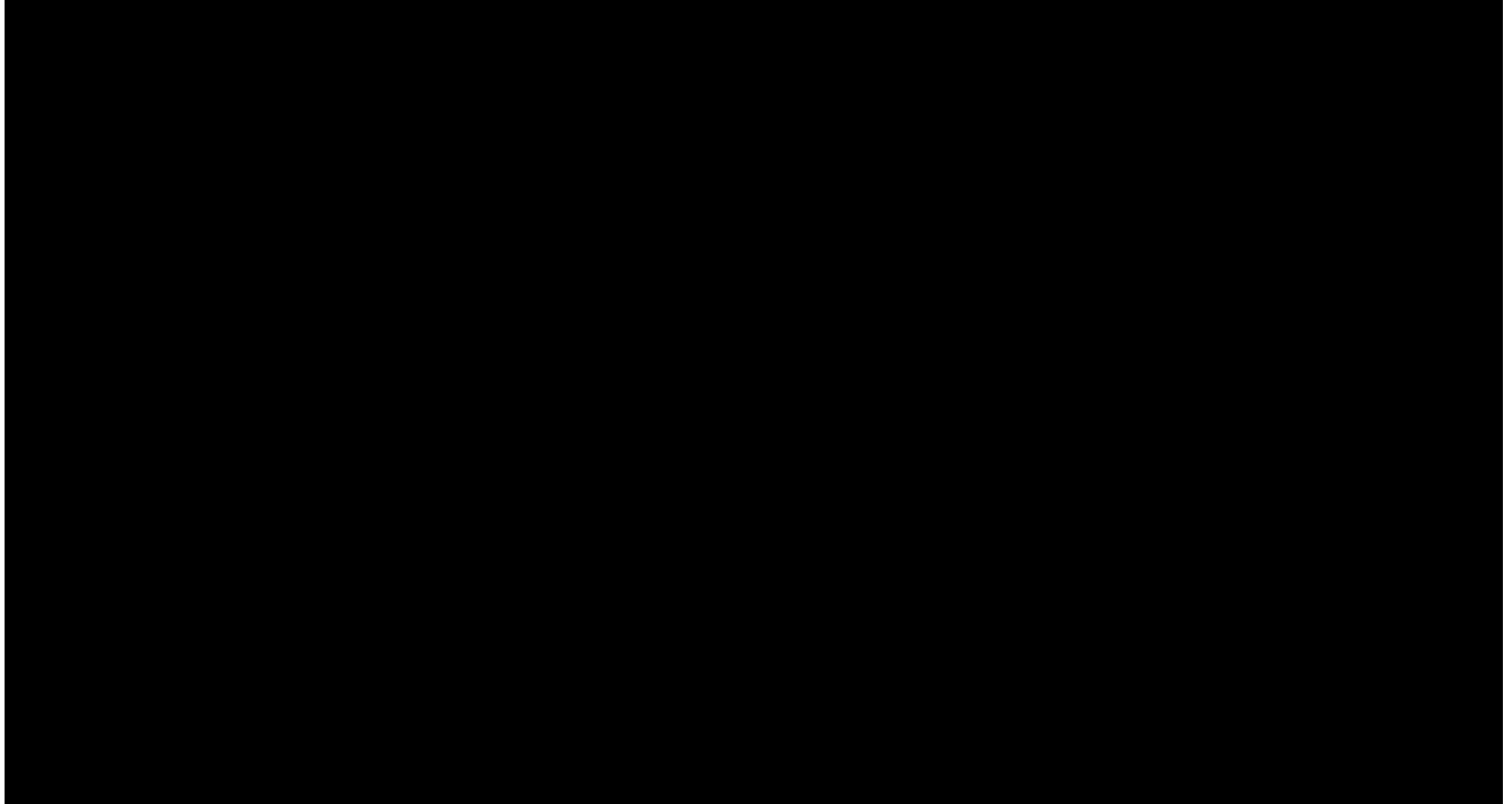
To ensure security around the turbine, off-duty Paulding County Sheriff's department officers have been contracted to monitor the site during nighttime hours between 1900 and 0700 each night.



Incident Description – Log of Events

Date : Time (local EDT)	Event
September 3 rd 2236 hours	Tower shock sensor triggered alarm and turbine stopped, Blade failure occurred.
September 4 th 0645 hours	Timber Road IV and Vestas site teams traveled to the turbine; damage was observed.
September 4 th 0800 hours	Site wide ‘safety stand down’ meeting took place, Vestas and Timber Road IV management briefing.
September 4 th Morning hours	Timber Road IV site manager notified Paulding County sheriff and county officials. Affected landowners were notified.
September 4 th Mid-day hours	OPSB Inspector visited the site, performed inspection with Vestas and Timber Road IV team support.
September 4 th 1400 hours	Written notice sent to OPSB by EDPR’s Director of Proj. Management (Erin Bowser).
September 4 th 1600 hours	Vestas and Timber Road IV Engineering and Management teams held a joint incident meeting.
September 5 th and September 6 th	External inspections of all turbine blades on site performed and complete.

Weather Conditions & Turbine Operation



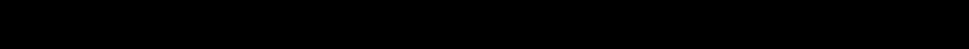

Activities and Next Step

Timber Road IV will continue to monitor and control the area around turbine 428.

A thorough inspection of turbine 428 was completed during the first climb on September 22. Multiple drone flights were completed prior to the first climb to ensure safety and develop a plan for Safe Approach.

All blades have gone through external inspections on September 5-6. As an additional step to ensure safe operation, Vestas and Timber Road IV executed internal blade inspections on all V150 blades between September 17 and September 29. Vestas Engineering has reviewed the inspection material and all blades have been cleared for continued operation. Two blades have been noted for a follow-up inspection to collect additional measurements, but there are no meaningful nor immediate concerns related to the blade integrity and operability.

Preparations are underway to ready a crane and necessary equipment to remove the damaged root section of the failed blade. This work is currently scheduled during the week of October 5. Once the remaining blade section is safely removed, Vestas and Timber Road IV Engineering will be on site to perform the field investigation. This material will be incorporated into Vestas' root cause analysis. This root cause analysis and final incident report is expected to take several weeks after the field investigation.

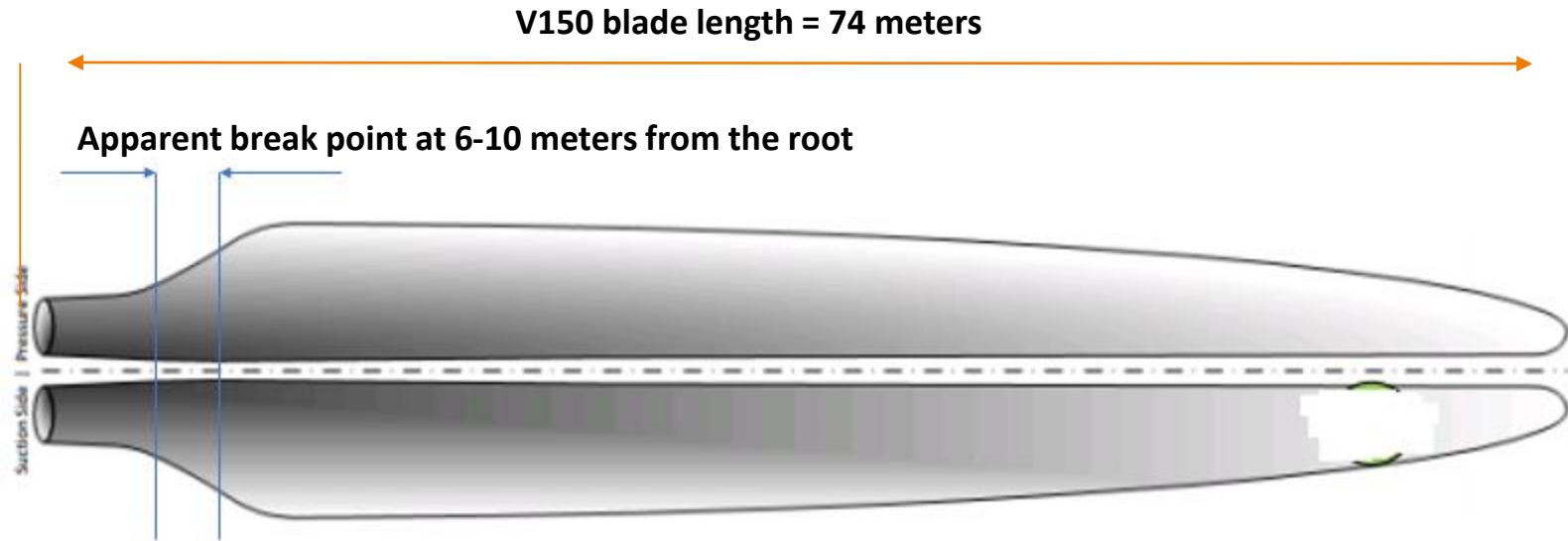


Return to service activity summary:

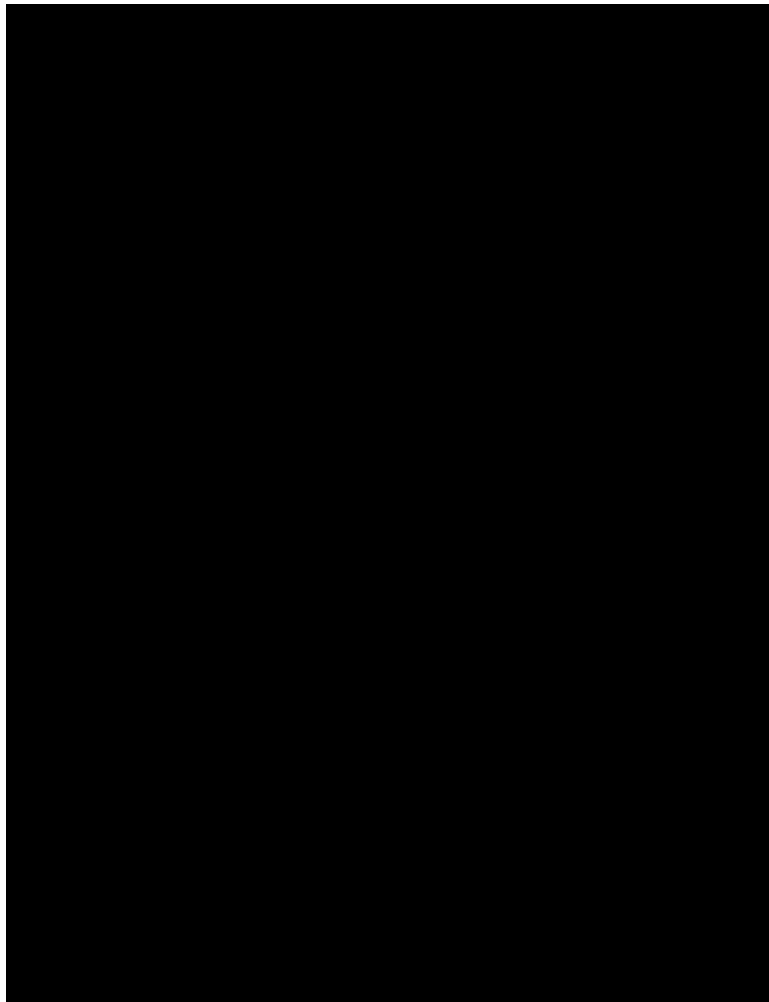
- Deliver replacement blade to site (currently scheduled for December)
- Deliver all other parts, tooling and equipment to site
- Re-install new blade



Blade Damage Overview



Incident Description – Photos



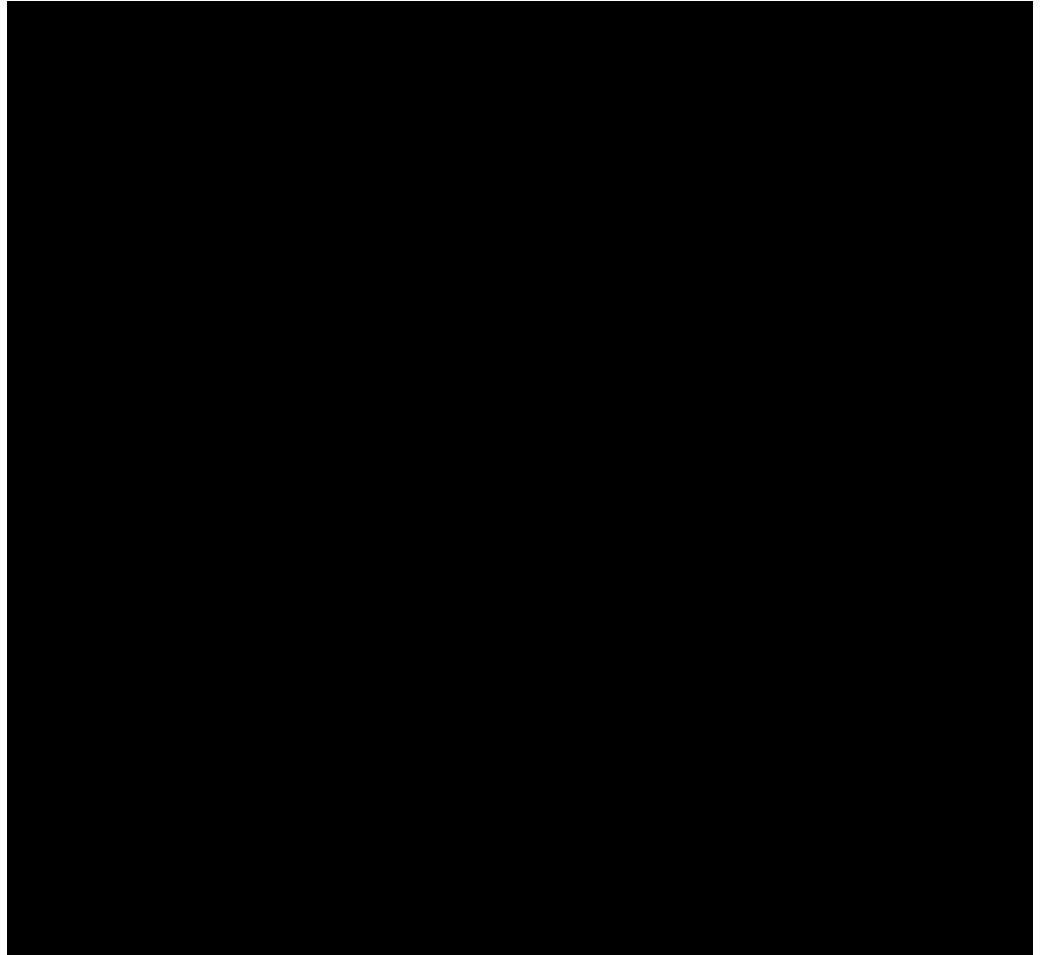
Blade broke at the root



Blade debris fell directly beneath turbine



Incident Description – Initial Photos



This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/21/2020 4:43:13 PM

in

Case No(s). 18-0091-EL-BGN

Summary: Motion for Protective Order and Memorandum in Support electronically filed by Christine M.T. Pirik on behalf of Paulding Wind Farm IV LLC