

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Grover Hill Wind,	)	
LLC for a Certificate of Environmental	)	
Compatibility and Public Need to Construct a Wind-	)	Case No: 20-417-EL-BGN
Powered Electric Generation Facility in Paulding	)	
County, Ohio.	)	

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**MOTION FOR WAIVER AND REQUEST FOR APPROVAL OF AN  
ALTERNATIVE METHOD FOR AN ADDITIONAL  
PUBLIC INFORMATION MEETING  
REQUEST FOR EXPEDITED RULING  
AND MEMORANDUM IN SUPPORT**

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Pursuant to Ohio Administrative Code (“O.A.C.”) Rule 4906-3-01(B), Grover Hill Wind, LLC (“Applicant” or “Grover Hill”) files this motion requesting that the Ohio Power Siting Board (“Board”) grant, on an expedited basis, a waiver of O.A.C. Rule 4906-3-03(B), insofar as it requires that the Applicant’s public informational meeting (“PIM”) “be held in the area in which the project is located.” Through this motion, the Applicant is requesting that it be permitted to use an alternative method for complying with the PIM requirement under the rule.

The Applicant’s PIM was initially scheduled for March 19, 2020, and was to be held in the project area. However, the Applicant postponed the March 19, 2020 PIM, due to the declared a state of emergency resulting from the COVID-19 pandemic and the stay-home order issued for the state of Ohio. Subsequently, in accordance with the Board’s June 24, 2020 entry, the Applicant held its first set of virtual PIMs on August 11 and 12, 2020. At this time, the Applicant is planning to hold an additional virtual PIM.

State policy continues to restrict the types of gatherings typically held, which includes such meetings as the PIM required under O.A.C. Rule 4906-3-03(B). Further, while the stay-home order and other restrictions have been reduced, the public has been strongly advised to maintain social distancing and avoid public gatherings. In addition, it is anticipated that for some time in

the future there will be individuals that are apprehensive about attending public meetings and individuals that have high-risk conditions or other reasons that make it not possible for them to attend a public gathering.

Since the COVID-19 pandemic is very much a concern for all Ohioans, the Applicant requests a limited waiver and proposes an alternative method for holding the PIM. As described in further detail in the memorandum in support, the alternative method will provide the maximum information about the project to the public and will enhance the PIM notice requirements set forth in the O.A.C. to ensure that the public is aware of the alternative PIM and that the public will be able to fully participate.

Finally, the Applicant asserts that, for the reasons more fully set forth in the following memorandum in support, good cause exists to grant this motion on an expedited basis, in accordance with O.A.C. Rule 4906-2-27(C). The Applicant's proposed public information program envisions a live web-based/teleconference question and answer ("Q&A") PIM, which is tentatively planned for December 3, 2020. Therefore, the Applicant requests that the Board rule on this motion by November 10, 2020, to enable the Applicant to issue the required notices prior to the PIM.

Accordingly, the Applicant respectfully moves that the Board grant this motion for waiver on an expedited basis.

Respectfully submitted,

/s/ Christine M.T. Pirik

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR WAIVER AND  
REQUEST FOR APPROVAL OF AN  
ALTERNATIVE METHOD FOR THE  
ADDITIONAL PUBLIC INFORMATION MEETING AND  
REQUEST FOR EXPEDITED RULING**

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**I. Background**

The Applicant is preparing to file an application with the Board for a certificate of public convenience and necessity to construct the Grover Hill Wind Project, an up to 150 megawatt (“MW”), wind-powered electric generation facility in Paulding County, Ohio. On February 24, 2020, the Applicant filed its preapplication notification letter with the Board noticing that it would be holding the PIM required pursuant to O.A.C. Rule 4906-3-03 on March 19, 2020, in Haviland, Ohio, which is located near the project area. The Applicant filed notice of compliance with the service requirement for the PIM and proof of publication of the PIM on February 24, 2020, and March 13, 2020, respectively.

On March 9, 2020, the governor issued Executive Order 2020-01D declaring a state of emergency in Ohio to protect the well-being of Ohioans for the dangerous effects of COVID-19. In response, to protect the public, the Applicant decided to postpone the PIM scheduled for March 19, 2020. Proof of service and publication of the PIM postponement was filed on April 9, 2020.

Subsequently, on August 11, and 12, 2020, in accordance with the Board’s entry issued June 24, 2020, the Applicant held virtual PIMs. The Applicant filed notice of compliance with the service requirement for the PIMs and proof of publication of the PIMs on July 20, 2020, and August 10, 2020, respectively. In light of the fact that the Applicant is still in the process of finalizing its application and will not be ready to file the application within the 90-day time frame required by O.A.C. Rule 4906-3-03(B), the Applicant is proposing to hold an additional virtual PIM.

As the Board is aware, the Applicant successfully developed and constructed a 100 MW wind energy project just to the west of the project area now under consideration.<sup>1</sup> During that initial project development, the Applicant developed very good relationships with county and township officials, the county engineer, emergency services, landowners, and other stakeholders. The team leading the development of Grove Hill is virtually identical to the initial project including our local Operations Manager and Land Leasing Agent. Grover Hill has been active in the community for five years now, with some of the other members of the project team, such as the Project Lead and other consultants, going on nine years.

The Applicant was approached by local officials and landowners after completing the initial 100 MW project with the request to develop an additional project in the area so that more parties could benefit from the income stream that it would provide. During the initial evaluation and site control efforts, Grover Hill has been largely working with the same group of stakeholders as with the initial project – many landowners in the initial project also own land in the Grover Hill project. This strong local support has been a great benefit and the Applicant wants to ensure every affected stakeholder has an opportunity to ask questions, comment, and receive more information about the project currently under development.

## **II. Public Information Meeting Requirements in O.A.C.**

While there is no statutory requirement that a PIM be held, the Board has established rules requiring that, prior to filing a standard certificate application, the applicant must hold at least one PIM. Specifically, O.A.C. Rule 4906-3-03(B) provides that:

1. No more than 90 days prior to submitting its application, the applicant hold an informational meeting open to the public “in the area in which the project is located.”
2. Not more than 21 days or fewer than 7 days prior to the PIM, the applicant publish notice of the PIM in newspapers of general circulation in the project area.

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<sup>1</sup> *In re Application of Northwest Ohio Wind, LLC*, Case No. 13-197-EL-BGN (“initial project”).

3. At least 21 days before the PIM, the applicant send a letter to each property owner and affected tenant.
4. At the PIM, the applicant present maps showing the proposed facility.
5. At the PIM, the applicant solicit written comments from the attendees and summarize those comments in its application.

In accordance with the rule, PIMs are typically held on a weekday, for a two-hour period, at a venue located in the project area that can accommodate large groups of individuals.<sup>2</sup> At the PIM, the applicant usually provides hard copy materials explaining the project. In addition, there are stations staffed by subjected matter experts placed around the venue where the public can ask questions and obtain answers to questions they may have about different aspects of the project, including ecological, sociological, and engineering etc. Large maps showing the proposed facility at a scale that allows an affected property owner to identify the location of their property to the facility are also provided in accordance with the rules.

### **III. Current State of Emergency in Ohio**

As previously noted by the Board, on March 9, 2020, the governor signed Executive Order 2020-01D, declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19.<sup>3</sup> Pursuant to Ohio Revised Code (“R.C.”) 3701.13, on March 12, 2020, the Director of the Ohio Department of Health (“ODH”) issued an order to prevent the spread of COVID-19 in the state of Ohio, urging all persons to maintain social distancing of approximately 6 feet from other people. Subsequently, on March 22, 2020, as amended on April 2, 2020, the Director of the ODH issued a stay home order directing that, from March 23, 2020, until May 1,

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<sup>2</sup> See e.g., *In re Application of The Ohio State University*, Case No. 19-1641-EL-BGN, Preapplication Letter (Sept. 11, 2019); *In re Application of Big Plain Solar, LLC*, Case No. 19-1823-EL-BGN, Preapplication Letter (Oct. 4, 2019); and *In re Application of Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN, Preapplication Letter (Oct. 18, 2020).

<sup>3</sup> *In re Proper Procedures and Process for the Board’s Operations and Proceedings During the Declared State of Emergency*, Case No. 20-601-GE-UNC, et al. (“*Declared State of Emergency*”), Entry (Mar. 17, 2020).

2020, “all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence” (“Stay Home Order”).<sup>4</sup> Subsequently, the Stay Home Order was extended to May 29, 2020. As of the filing of this motion, the Stay Home Order is gradually being lifted and the governor has implemented Responsible Restart Ohio protocols (“Protocols”) aimed at responsibly restarting Ohio’s economy during the ongoing COVID-19 pandemic. These Protocols include wearing facemasks and limiting the capacity of gatherings to meet social distancing guidelines of 6 feet, with special care given to protect individuals with high-risk conditions. It is anticipated that, while there will be a gradual return back to normal practices, the necessity for social distancing and the caution against holding large public gatherings will continue for the foreseeable future.

#### **IV. Proposed Alternative Public Information Program**

O.A.C. Rule 4906-3-01(B) provides that the Board may grant a waiver of any requirement in that chapter, other than a requirement mandated by statute. Therefore, in recognition of the ongoing COVID-19 pandemic and the continued state of emergency in Ohio, the Applicant requests that the Board grant this waiver and, in lieu of an in-person PIM in the project area set forth in O.A.C. Rule 4906-3-03(B), the Board authorize the Applicant to implement an alternative public information program, which includes the additional virtual PIM as outline below.

The proposed alternative public information program will include the following primary elements:

1. A presentation document that will be available on the Applicant’s website and in hard copy upon request.
2. A live web/teleconference question and answer (“Q&A”) PIM that can be accessed via a link on the Applicant’s website or by telephone.
3. The project’s website will provide information regarding the project and the PIM.

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<sup>4</sup> *Declared State of Emergency*, Entry (Apr. 16, 2020) at ¶6.

Interested persons will be able to provide comments to the Applicant and/or ask questions of the Applicant regarding the project prior to the PIM via the Applicant's website, and in writing via email or mail. Written comments submitted prior to the PIM will be summarized and submitted to the Board with the application in this case.

**A. Presentation Document**

Two weeks prior to the live web/teleconference Q&A PIM, the Applicant will prepare and make available a presentation document that will include the following information about the proposed project:

1. The Applicant's organizational structure and history.
2. The Applicant's background and history in the Paulding County community.
3. A description of the need for the project.
4. A description of the project including the location, size, and nameplate capacity.
5. The project schedule.
6. The project preliminary design, engineering, facilities, and other pertinent data.
7. Information about the studies required for the project relating to, but not limited to, ecological, socioeconomic, environmental, cultural, transportation and road use, sound, shadow flicker, blade shear, ice throw, setbacks, and geotechnical.
8. Maps showing the proposed facility at a scale that allows affected property owners to identify the location of their property in relation to the facility.
9. Contact information for the Applicant (i.e., website, mailing and email addresses, contact telephone number for the various fields of development expertise).
10. The Board's review and certification process.
11. Contact information for the Board (i.e., website, mailing and email addresses, contact telephone number).
12. The dates and time of the live web/teleconference Q&A PIM.

13. How to access and participate in the live web/teleconference Q&A PIM, including instructions for web and phone participants.

In addition to the slides contributed by the Applicant's subject matter experts for the presentation document, the Board's Staff will be invited to provide slides for the presentation document that explain the Board's process and how to contact the Board. The presentation document will be available on the Applicant's website and hard copies will be provided upon request.

#### **B. Live Web/Teleconference Q&A PIM**

The live web/teleconference Q&A PIM is tentatively scheduled for December 3, 2020, beginning at 6:00 p.m. Access to the PIM will be available through a link and telephone number provided on the Applicant's website. Participants joining the live web/teleconference Q&A PIM via the website will have access to the presentation document described above, as well as maps of the project. This PIM will begin with an introduction of the Applicant's subject matter experts and a brief description of the project as detailed in the presentation document. In addition, the Board and its Staff will be invited to participate in the live web/teleconference Q&A PIM.

The live web/teleconference Q&A PIM will be held through a platform capable of hosting hundreds of participants. The platform will allow participants to connect both by telephone and a link on the Applicant's website. The platform will function across desktop, browser, and mobile devices. For the live web/teleconference Q&A PIM:

1. Participants will be able to interact with the subject matter experts and the Board's Staff using a Q&A process that will be moderated.
2. Participants will be able to virtually "raise their hand" in order to ask questions. Until it is his/her turn to speak, the participant's line will be muted.
3. Questions will be addressed on a first-come, first-serve basis.
4. Any questions that the Applicant is not able to address during the live web/teleconference Q&A PIM will be answered after the PIM via telephone, email, mail, and updates to the Applicant's website.

Information on how to access and participate in the live web/teleconference PIM will be provided in the enhanced notices described below that will be sent out in accordance with the requirements for PIMs set forth in O.A.C. Rule 4906-3-03(B). In accordance with O.A.C. Rule 4906-3-04(B)(4), questions and comments provided during this PIM will be summarized and filed with the Board as part of the application in this case.

### **C. Project Website**

The Applicant's website will be one location where interested individuals will be able to obtain key information regarding the project, including:

1. The presentation document and all of the information described above that will be included in that document.
2. The dates and times of the web/teleconference Q&A PIM, as well as information on how to access and participate in the PIM.
3. A downloadable PDF map of the project, showing the geographic data at no greater than 1:12,000 scale.
4. Forms for submitting comments and questions to the Applicant regarding the project.
5. Frequently-asked-questions with responses from the subject matter experts.
6. The website, mailing and email addresses, and telephone number to contact the Board.
7. Instructions on how to request more information, including paper copies of the presentation document.
8. Information on how to submit comments to the Board, how to participate in the proceeding before the Board, and how to request notification of the public hearing.
9. Contact information for the Applicant including the mailing and email addresses, and telephone for the various fields of development expertise.
10. Information on how an interested person can request a call from a project representative.

## **V. Notices for the Proposed Alternative Public Information Program**

### **A. Method of Notification**

O.A.C. Rule 4906-3-03(B)(1) and (2) requires the Applicant to: provide one public notice of the PIM in newspapers of general circulation in the project area not more than 21 days or less than 7 days prior to the PIM; and at least 21 days before the PIM, send a letter to each property owner and affected tenant that is within the project area or contiguous to the project area.

In addition to the written and newspaper notice required under the rules, the Applicant will also be providing notice in other venues.

### **B. Who will be Served Written Notice**

O.A.C. Rule 4906-3-03(B)(2)(a) through (d) requires that a letter for a generation facility be sent by first class mail to each property owner and affected tenant:

1. Within the planned site for the proposed facility.
2. Contiguous to the planned site of the proposed facility.
3. Who may be approached by the applicant for any additional easement necessary for the construction, operation, or maintenance of the facility.
4. If the property owner's address is not the same as the address affected by the proposed facility, then the applicant shall also send a letter to the affected property.

In addition to the individuals that the Applicant is required to serve under the rules, the Applicant will be enhancing notification of the PIM by sending written notice to the following:

1. County commissioners.
2. Township Trustees for the project area.
3. The head of each public agency charged with the duty of protecting the environment or planning land use in the project area.
4. The county engineer.
5. The superintendent of the school district for the project area.
6. The main public library in the project area.

### **C. Content of Notification**

The Applicant proposes to comply with the notice requirements set forth in O.A.C. Rule 4906-3-03 in full by including the following information in the both the published and written notices:

1. A brief description of the project.
2. A description of the need for the project.
3. The project schedule.
4. The design of the facility.
5. The Applicant's website.
6. The Board's website, mailing and email addresses, and telephone number.

In addition to the above-noted information that is required under the rules to be included in the notices, the Applicant will enhance the notices and include the following information:

1. A description of the certification process.
2. How to participate in the proceeding.
3. How to request notification of the public hearing.
4. A map of the project area.
5. Instructions on how to view or obtain a copy of the presentation document described above.
6. Instructions on how to access the live web/teleconference Q&A PIM.
7. Instructions on how to submit questions prior to the PIM.
8. The Applicant's Facebook page, mailing and email addresses, and contact telephone number.

### **VI. Good Cause Exists to Grant the Motion for Waiver**

The purpose of a PIM, which is held prior to the Applicant filing its application with the Board, is to inform the community about the Applicant's intent to file an application. In addition,

the PIM provides an opportunity for the Applicant to answer questions from interested persons and gather information regarding any concerns the community might have so that the Applicant can consider the questions and concerns in its application. The public information program proposed by the Applicant accomplishes these goals.

This motion for waiver is limited to a request to not hold the PIM physically in the project area. Understanding the purpose of the PIM and the need to provide the community with information on the project and receive constructive feedback on the Applicant's plans for the project, the program proposed by the Applicant, including the live web-based and teleconference PIMs, satisfy the intent of the requirements in O.A.C. Rule 490-6-3-03 public information program. In fact, the proposed program goes beyond the requirements in the Board's rules and ensures that a larger spectrum of individuals will not only receive notice of the project and the PIMs, but will be given an opportunity to have their questions answered in an effective and timely manner.

If the Board does not granted this limited waiver of the requirement for the PIM to be held in-person in the project area, it is not known when the PIM will be able to be held given the necessity for social distancing to protect the public. Such a delay will harm not only the Applicant, but the community where the project will be located. Any unwarranted delay will not only cause financial harm to the Applicant, but stall the payments in lieu of tax ("PILOT") benefits the community would receive from operation of the facility pursuant to R.C. 5727.75. The Applicant's PILOT payments will bring millions of dollars to the local community, with a large percentage of that revenue benefiting the schools. Given the current state of the economy resulting from the COVID-19 pandemic, it is essential that the public information program move forward as expeditiously as possible, so that the Applicant is in a position to file its Application in the near future and the community can begin reaping the benefits from operation of the facility.

Granting this motion for waiver will not diminish any interested stakeholder's rights to participate in or provide comments on the Applicant's project. Rather, the public information

program is just an initial step toward providing an avenue for outreach and input in the process. Individuals may file comments in the above-captioned proceeding at any time. In addition, later in the process, once the Applicant files the application, the Board will provide stakeholders an opportunity to intervene in the proceeding and become involved in the evidentiary hearing, or to testify at a public hearing.

Finally, the Applicant notes that this motion for waiver is consistent with the General Assembly's legislation enabling public bodies to convene virtual public meetings and hearings.<sup>5</sup> In addition, the Supreme Court of Ohio is currently holding oral arguments remotely.<sup>6</sup> In fact, the Board itself has found that motions for waiver allowing virtual PIMs similar to the program proposed by the Applicant herein should be granted.<sup>7</sup> Moreover, citing Am. Sub. H.B. 197, the Board has scheduled the local public and the adjudicatory hearing in a case before the Board; both of which will be held using remote access technology that facilitates participation by telephone and/or live video on the internet.<sup>8</sup>

## **VII. Conclusion**

Therefore, the Applicant requests the Board authorize the Applicant to implement the proposed alternative public information program, which includes a detailed presentation document on the project and process, a presentation from the subject matter experts, a live web/teleconference Q&A PIM, and access to the Applicant's website that contains information on the project. This program substantially complies with and enhances the public information program required by O.A.C. Rule 4906-3-03. In addition, the notification efforts the Applicant proposes to employ comply with and enhance the notice provisions required under the rules for PIMs. Therefore, in light

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<sup>5</sup> Am. Sub. H.B. 197.

<sup>6</sup> See e.g., *In re Complaint of Direct Energy Business, L.C.C. v. Duke Energy Ohio, Inc.*, Case No. 2019-1058, Oral Argument (June 2, 2020) found at <https://ohiochannel.org/video/supreme-court-of-ohio-case-no-2019-1058-in-re-complaint-of-direct-energy-business-llc-v-duke-energy-ohio-inc>

<sup>7</sup> See e.g., *In re Application of Yellowbud Solar, LLC*, Case No. 20-972-EL-BGN, Entry (May 26, 2020); *In re Application of Arche Energy Project, LLC*, Case No. 20-979-EL-BGN, Entry (May 26, 2020).

<sup>8</sup> *In re Application of The Ohio State University*, Case No. 19-1641-EL-BGN, Entry (May 22, 2020).

of the continued state of emergency in Ohio and the need for social distancing to protect the public, the Applicant respectfully requests that the Board grant this motion waiver, insofar as O.A.C. Rule 4906-3-03(B) requires that the Applicant's informational meeting "be held in the area in which the project is located."

The Applicant has tentatively scheduled the additional live web/teleconference PIM for December 3, 2020. The Applicant submits that good cause exists to grant this motion on an expedited basis, in accordance with O.A.C. Rule 4906-2-27(C), and requests that the Board consider this motion as expeditiously as possible to enable the Applicant to begin issuing notices of the Presentation and virtual PIM by November 11, 2020.

Respectfully submitted,

/s/ Christine M.T. Pirik

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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 2<sup>nd</sup> day of November, 2020.

/s/ Christine M.T. Pirik

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Summary: Motion for Waiver and Request for an Approval of an Alternative Method for an Additional Public Information Meeting Request for Expedited Ruling and Memorandum in Support electronically filed by Christine M.T. Pirik on behalf of Grover Hill Wind, LLC