

THE OHIO POWER SITING BOARD

**IN THE MATTER OF THE APPLICATION OF
HARDIN WIND ENERGY, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE HARDIN WIND FARM.**

CASE No. 09-479-EL-BGN

**IN THE MATTER OF THE APPLICATION OF
HARDIN WIND ENERGY, LLC FOR AN
AMENDMENT TO ITS CERTIFICATE TO
INSTALL AND OPERATE A WIND-
POWERED ELECTRIC GENERATION
FACILITY IN HARDIN COUNTY, OHIO.**

CASE No. 11-3446-EL-BGA

**IN THE MATTER OF THE APPLICATION OF
HARDIN WIND ENERGY, LLC FOR A
THIRD MODIFICATION TO ITS
CERTIFICATE TO INSTALL AND OPERATE
A WIND-POWERED ELECTRIC
GENERATION FACILITY IN HARDIN
COUNTY, OHIO.**

CASE No. 16-469-EL-BGA

**IN THE MATTER OF THE APPLICATION OF
HARDIN WIND ENERGY, LLC FOR A
MODIFICATION TO ITS CERTIFICATE
ISSUED IN CASE No. 09-479-EL-BGN.**

CASE No. 16-2404-EL-BGA

**IN THE MATTER OF THE APPLICATION OF
HARDIN WIND ENERGY, LLC FOR A
FIFTH MODIFICATION TO ITS
CERTIFICATE IN CASE No. 09-479-EL-
BGN.**

CASE No. 18-677-EL-BGA

ENTRY

Entered into the Journal on November 19, 2020

I. SUMMARY

{¶ 1} The Ohio Power Siting Board grants Hardin Wind Energy, LLC's request to relinquish its certificate to construct a wind-powered electric generation facility in Hardin County, Ohio. This grant of relinquishment does not impact the transfer of the

interconnection substation to AEP Ohio Transmission Company, Inc. pursuant to the September 20, 2018 Board Entry in Case No. 09-479-EL-BGN.

II. PROCEDURAL HISTORY

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

{¶ 3} 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).

{¶ 4} On March 22, 2010, the Board granted the application filed by Hardin Wind for a certificate to construct, operate, and maintain a wind-powered electric generation facility in Hardin County, Ohio. *In re Hardin Wind Energy, LLC*, Case No. 09-479-EL-BGN (*Hardin Wind Certification Case*), Opinion, Order, and Certificate (Mar. 22, 2010) (*Certificate Order*). The Board granted Hardin Wind's application pursuant to a stipulation filed by the Applicant, the Ohio Farm Bureau Federation, the staff of the Ohio Environmental Protection Agency (Ohio EPA), and Board Staff (Staff), subject to 60 conditions set forth in the stipulation. Among the conditions set forth in the stipulation were conditions regarding multiple requirements related to the decommissioning of the facility. *Certificate Order* at 30-34. Hardin Wind was approved to construct a wind-powered electric generation facility with up to 200 wind turbines, with a combined generation capacity of up to 300 megawatts (MW).

{¶ 5} On June 13, 2011, and as amended on June 15, 2011, and supplemented on July 8, 2011, Hardin Wind filed its first application to revise its certificate. Among other changes, the Applicant sought to construct the facility in three phases and use taller turbine models. The Board approved the application in *In re Hardin Wind Energy, LLC*, Case No. 11-3446-EL-BGA, Order on Certificate (Aug. 29, 2011).

{¶ 6} On June 5, 2014, the Applicant filed a second application to modify its

certificate. Upon withdrawing the application, the Board dismissed the case. *In re Hardin Wind Energy, LLC*, Case No. 14-1030-EL-BGA, Entry (Nov. 12, 2015).

{¶ 7} On June 17, 2014, Hardin Wind filed a motion to extend the term of the certificate authorizing the construction, operation, and maintenance of the facility for a period of 36 months beyond the initial certificate term. The Board granted the motion, extending the term of its certificate until March 22, 2018. *Hardin Wind Certification Case*, Entry (Aug. 25, 2014).

{¶ 8} Hardin Wind filed a third application to modify its certificate on March 24, 2016. The Board approved Hardin Wind's application to use a turbine model with higher hub heights. *In re Hardin Wind Energy, LLC*, Case No. 16-469-EL-BGA, Order on Certificate (Feb. 2, 2017).

{¶ 9} For its fourth modification, filed on December 19, 2016, Hardin Wind sought approval to use a 2.5 MW version of a previously approved GE 2.3-116 wind turbine, with a revised hub height of 90-meters. The Board approved the application in *In re Hardin Wind Energy, LLC*, Case No. 16-2404-EL-BGA, Order on Certificate (Mar. 2, 2017).

{¶ 10} For its fifth modification, filed on April 25, 2018, Hardin Wind sought approval to use the GE 2.5-116 turbine model, which increases capacity from 2.5 MW to 2.7 MW, as well as the addition of a separate GE 2.5-127 turbine model. The Board approved the application in *In re Hardin Wind Energy, LLC*, Case No. 18-677-EL-BGA, Order on Certificate (June 21, 2018).

{¶ 11} On August 9, 2018, in accordance with R.C. 4906.04, Hardin Wind and AEP Ohio Transmission Company, Inc. (AEP Ohio Transco) filed a joint application to transfer the interconnection substation authority issued in the *Certificate Order* from Hardin Wind to AEP Ohio Transco, whereby AEP Ohio Transco agreed to abide with all of the terms, conditions, and any modifications contained in the certificate for the interconnection substation granted to Hardin Wind. The Board approved the joint application in *Hardin*

Wind Certification Case, Entry (Sep. 20, 2018). Hardin Wind subsequently filed notice on October 16, 2018, in the *Hardin Wind Certification Case* indicating that the transfer of the interconnection substation was completed on October 11, 2018.

{¶ 12} On June 17, 2019, to comply with Condition 51(b) in the *Certificate Order*, Hardin Wind filed its updated decommissioning plan for the facility.

{¶ 13} On July 17, 2020, Hardin Wind filed notice that it was relinquishing its Certificate of Environmental Compatibility and Public Need issued in the *Hardin Wind Certification Case*, and as amended in Case Nos. 11-3446-EL-BGA, 16-469-EL-BGA, 16-2404-EL-BGA, and 18-677-EL-BGA. Hardin Wind notes that this relinquishment does not include the portion of the certificate pertaining to the interconnection substation that was transferred to AEP Ohio Transco in the *Hardin Wind Certification Case* pursuant to the September 20, 2018 Entry. Hardin Wind also notes that prior to commencing construction of the facility in 2016, it had obtained a performance bond sufficient to cover the total cost of decommissioning for the entire project, as required by the certificate. Hardin Wind states that decommissioning has been completed at the sites where construction took place. Hardin Wind also avers that it coordinated the decommissioning efforts with Staff and complied with all applicable certificate conditions regarding decommissioning, as well as the provisions of the decommissioning plan filed on June 17, 2019, in the *Hardin Wind Certification Case*.

{¶ 14} On October 27, 2020, Staff filed its Decommissioning Staff Report of Investigation (Staff Report).

III. SUMMARY OF THE STAFF REPORT

{¶ 15} In the Staff Report, Staff provides a summary of the construction activities undertaken by Applicant prior to implementing its decommissioning plan. The first phase of construction, which began on November 21, 2016, consisted of excavating nine turbine locations and installing a two-inch mud mat at the bottom of the 10-foot deep excavation

pits. The Applicant then backfilled each excavation site with soil, stabilized the soil cover, and fenced off the perimeter of each site. Staff notes that the Applicant also pursued excavating another turbine site, T18, in November 2016 in a manner similar to that above; however, the Applicant encountered elevated groundwater during excavation, so it ceased excavation and backfilled the soil, stabilized the soil cover, and fenced off the perimeter. During the second phase of construction, the Applicant built the project substation and point of interconnection facilities. Applicant began constructing these facilities on January 29, 2018, and ultimately transferred the interconnection substation facility to AEP Ohio Transco. Staff states that the third phase of construction was intended to consist of building the turbine foundations and access roads, while the fourth phase was intended to erect turbines and associated facilities. Applicant held a preconstruction conference with Staff on July 16, 2019, for the third and fourth phases, and, in August 2019, Applicant improved approximately one mile of County Road 95 with asphalt. According to Staff, Applicant halted all construction activities after this road improvement and began decommissioning activities in April 2020. (Staff Report at 2-3.)

{¶ 16} Staff states that, during its review, it inspected the facility site, coordinated with the Ohio EPA storm water inspectors and geology program staff, contacted an Ohio Department of Agriculture soil scientist, contacted affected parties, and reviewed document submittals to determine whether Applicant decommissioned the facility in compliance with the terms of Condition 51(a)-(i) set forth at pages 30 through 34 in the *Certificate Order* (Condition 51). Staff states that the goal of its review is to ensure the land is restored to a condition similar to that as existed prior to construction activities; therefore, Staff's compliance review particularly focused on Applicant's activities regarding backfill of topsoil, subsoil decompaction, grading, and the effects of disturbance to the underlying geological subsurface conditions of the area. (Staff Report at 2-3.)

A. Condition 51(a) – Ohio EPA Stormwater Permit

{¶ 17} Prior to performing any decommissioning activities involving the disturbance of one or more acres, Condition 51(a) requires the Applicant to obtain and comply with a National Pollutant Discharge Elimination System (NPDES) permit authorizing such activities. On June 17, 2019, Applicant submitted to Staff a copy of an Ohio EPA letter approving Applicant's NPDES Notice of Intent (NOI) for coverage under the Construction Stormwater General Permit covering decommission activities, including disturbance of one or more acres and restoration to agricultural land use. Subsequent to sending the above letter, Applicant submitted photographs and associated paperwork to Staff depicting the completed decommissioning activities for the nine excavated sites. On May 20, 2020, Applicant also filed a notice of termination of its coverage under Ohio EPA-issued NPDES Construction Stormwater General Permit, which, Staff notes, may be terminated by returning the excavated sites to their previous use as agricultural land. Staff and Ohio EPA reviewed the submittals, and Ohio EPA emailed Applicant on July 24, 2020, notifying Applicant of certain deficiencies. Ohio EPA requested that, at specifically identified sites, Applicant remove and properly dispose of remaining construction fencing, provide an explanation for a potential erosion area, and provide additional photographs to demonstrate compliance. Staff states that it performed a site visit on August 5, 2020, and confirmed that the Applicant had rectified the above deficiencies. Staff and Ohio EPA concluded that the site looked acceptable and that the Applicant had returned the land to agricultural land use, allowing the NPDES permit to be terminated. (Staff Report at 3-4.)

{¶ 18} Staff recommends the Board find that the Applicant complied with the requirements of Condition 51(a) (Staff Report at 4).

B. Condition 51(b) – Decommissioning Program

{¶ 19} Condition 51(b) requires Applicant to provide a decommissioning program to Staff and the Hardin County Engineer at least 30 days prior to the preconstruction conference to lend Staff time to review the plan for possible approval. Condition 51(b)(i-v)

detail what the Applicant must include in the decommissioning plan. Applicant filed its updated decommissioning plan on June 16, 2019, and Staff reviewed and accepted the plan at the preconstruction conference held on July 16, 2019. According to Staff, the decommissioning plan identified the turbine excavation sites as prime farmland, if drained. Staff states that, during construction, Applicant preserved this farmland by segregating topsoil and subsoil. According to Staff, Applicant noted in its Response to the Third Data Request from Staff filed on September 28, 2020 (Third Data Request Response), that the excavation sites were backfilled with native soils at a 95 percent standard compaction rate typical for backfill over foundations. As evidenced in photographs filed on August 7, 2020, damaged drain tiles at these sites were repaired and re-routed, and, when Staff inspected each excavation site on August 5, 2020, it observed each site being actively farmed with corn or soybeans. Staff expects agricultural land use to continue into the future. (Staff Report 4-5.)

{¶ 20} Staff confirmed that, by compacting and de-compacting subsoils and restoring and revegetating land to its pre-construction condition, Applicant implemented the engineering techniques described in the decommissioning plan. Also, as indicated earlier, Applicant obtained NPDES permit coverage for the decommissioning activities with an NOI application, and Ohio EPA determined that Applicant performed these activities in line with best management practices and permit requirements. Staff notes that Applicant anticipated a 12-month decommissioning timeframe, though ultimately, the decommissioning activities began in April 2020 and finished in May 2020. (Staff Report at 5.)

{¶ 21} Staff recommends the Board find that the Applicant complied with the requirements of Condition 51(b) (Staff Report at 5).

C. Condition 51(c) – Wind Turbines at the End of the Facility Useful Life

{¶ 22} Condition 51(c) contemplates scenarios regarding the possible refurbishing or decommissioning of constructed wind turbines at the end of the facility's or turbine's useful life. Consequently, Staff advises that this condition is inapplicable since no wind turbines

were constructed by Applicant. If the Board finds that this condition is applicable, Staff recommends that this condition subpart be considered adequately resolved. (Staff Report at 6.)

D. Condition 51(d) – Decommissioning Activities Performed

{¶ 23} For its review, Staff categorized the requirements of Condition 51(d) into the following categories: turbine excavation sites, geological and subsurface conditions, roads and bridges, field tile systems, and inapplicable condition requirements (Staff Report at 6).

{¶ 24} With regard to the nine turbine excavation pits, as indicated earlier, the Applicant repaired and re-routed any damaged drainage tiles, backfilled each excavation site with soil, stabilized the soil cover, disposed of any construction fencing, and returned the site to agricultural use. For seven of these sites, landowners requested that they perform decommissioning activities so that they could prepare for spring planting, and these landowners ultimately indicated to the Applicant that decommissioning had been addressed to their satisfaction. As also described earlier, Applicant pursued excavating another turbine site, T18; however, the Applicant encountered elevated groundwater during excavation, so it ceased excavation, backfilled the soil, and stabilized the soil cover. According to Staff, this site is now actively farmed with corn. With regard to the ground water discovered at site T18, Staff and Ohio EPA investigated and reviewed relevant geotechnical engineering reports and consulted the Applicant's filed geotechnical engineering report, which contained a log of soil boring from adjacent excavation site, T19. *Hardin Wind Certification Case*, Case No. 09-479-EL-BGN, Barr Engineering Company's January 2012 Geotechnical Engineering Report (Oct. 17, 2016) (Barr Report). According to the Barr Report and the Third Data Request Response, the soil boring consisted of saturated fine-coarse grained sand and cobbles, which likely could have transmitted the shallow ground water observed in the T18 excavation pit. Staff and Ohio EPA concur with the Applicant's analysis and conclusion regarding excavation site T18 and subsurface conditions. (Staff Report at 6-7.)

{¶ 25} With regard to geological and subsurface conditions at the sites, Staff states that, in Applicant's Third Data Request Response, Applicant's geotechnical consultant asserted that the concrete pads will not modify the geotechnical or geotechnical subsurface conditions in a way that alters or reduces the land's viability for agricultural use. For the landowners who elected to perform decommissioning on their own property pursuant to an agreement between Applicant and the landowner, Applicant provided Staff with notices signed by the landowners advising that the decommissioning requirements were discharged to each landowner's satisfaction. Staff reached out to Applicant's consultant, Terracon Consultants, Inc. (Terracon), to obtain information regarding subsurface conditions for landowners not party to one of the foregoing agreements. According to Staff, Terracon indicated that soil backfilling will result in similar or better engineering characteristics compared to that of the surrounding native ground. Staff notes that it, as well as the Ohio EPA, do not dispute the conclusions described above and made by Terracon, in the Barr Report, and in Applicant's Third Data Request Response. (Staff Report at 7-8.)

{¶ 26} With regard to roads and bridges, Staff states that Applicant built an access road to the interconnection substation but notes that this substation is now operated and maintained by AEP Ohio Transco. Other than that access road, the Applicant improved only one road, a portion of County Road 95. According to Staff, the Hardin County Engineer's office advised that it is content with leaving the improvement in place and with Applicant's relinquishment request. The Hardin County Commissioners also stated that they have no objection to the relinquishment of the certificate. (Staff Report at 8.)

{¶ 27} With regard to the field tile systems, as already described, Applicant filed photographic evidence of repaired and re-routed drain tiles at two excavation sites. For those landowners who performed their own decommissioning activities, they repaired their drainage tiles and confirmed that the land was returned to preconstruction conditions. (Staff Report at 8.)

{¶ 28} With regard to inapplicable condition requirements, Staff states that it confirmed that no tree clearing occurred for this project, meaning forested nonriparian areas were not affected by construction or decommissioning activities. Staff also notes that, since the Applicant did not construct wind turbines, conditions related to their removal or removal of associated facilities are inapplicable. Since Applicant coordinated its decommissioning efforts with Staff, Staff states that it has no concerns regarding these remaining condition subparts. (Staff Report at 8.)

E. Condition 51(e) – Decommissioning Period

{¶ 29} Staff states that Applicant performed its decommissioning activities within the decommissioning period; therefore, Staff recommends the Board find that the Applicant complied with the requirements of Condition 51(e), and Staff recommends the Board not enact the forfeiture provided within Condition 51(e) (Staff Report at 9).

F. Condition 51(f) – Release of Decommissioning Bond Escrow Fund

{¶ 30} Condition 51(f) states that “[t]he escrow agent shall release the decommissioning funds when the facility owner has demonstrated, and the Board concurs, that decommissioning has been satisfactorily completed; or upon written approval of the Board in order to implement the decommissioning plan.” *Certificate Order* at 32-33. Staff states that the Applicant holds a decommissioning bond in the amount of \$11,027,200, set to expire on November 20, 2020, unless renewed. With regard to the decommissioning activities conducted by landowners pursuant to an agreement between Applicant and specific landowners, as well as the notices provided to Staff indicating these landowners’ satisfaction with the Applicant’s decommissioning activities, Staff notes that Applicant concluded that unforeseen, future issues regarding the foregoing landowner agreements would be subject to review by a court of competent jurisdiction. (Staff Report at 9.)

{¶ 31} Staff recommends the Board find that the Applicant demonstrated that decommissioning has been satisfactorily completed. Staff further recommends the Board allow the decommissioning bond to be released to the Applicant. (Staff Report at 9.)

G. Condition 51(g) – Disposal of Material

{¶ 32} Staff notes that, due to limited construction activities, recyclable and nonrecyclable waste materials consisted primarily of construction fencing. As observed during Staff's site visit on August 5, 2020, and as evidenced in photographs filed by the Applicant on August 7, 2020, Staff reports that Applicant has disposed of the construction fencing material. (Staff Report at 9-10.)

H. Condition 51(h) – Interconnection Substation

{¶ 33} As detailed earlier, Applicant's relinquishment request does not include the portion of the certificate pertaining to the interconnection substation transferred to AEP Ohio Transco in accordance with the September 20, 2018 Board Entry. AEP Ohio Transco owns and operates the interconnection substation and associated tap/tie line. AEP Ohio Transco advised Staff that the substation is in operation and currently back-feeding power to the collector substation used for two solar farms. See *In re Hardin Solar Energy, LLC*, Case No. 17-773-EL-BGN, and *In re Hardin Solar Energy II, LLC*, Case No. 18-1360-EL-BGN. AEP Ohio Transco also advised Staff that the Applicant bore the substation's cost of construction prior to transferring ownership, thereby obviating the need for any construction cost recovery from ratepayers through AEP Ohio Transco's formula rates. (Staff Report at 10.)

{¶ 34} Staff recommends that, in the event Applicant's relinquishment request is granted, the Board or Administrative Law Judge open a new case number for the portion of Case No. 09-479-EL-BGN related to AEP Ohio Transco's interconnection substation so that AEP Ohio Transco may continue to operate and maintain the interconnection substation (Staff Report at 10).

I. Condition 51(i) – Bond Amount

{¶ 35} Condition 51(i) sets forth the manner in which the decommissioning bond amount shall be calculated and the parameters regarding obtaining and maintaining such bond. Staff notes that the Applicant holds a decommissioning bond in the amount of \$11,027,200, which was calculated in accordance with the version of the decommissioning plan filed on January 18, 2018, in this case and that the bond is set to expire on November 20, 2020, unless renewed. (Staff Report at 10-11.)

{¶ 36} In conclusion, Staff recommends the Board find that the Hardin Wind facility has been satisfactorily decommissioned in accordance with Condition 51.

IV. BOARD CONCLUSION

{¶ 37} Upon consideration of the Applicant's notice of relinquishment and withdrawal and the Staff Report, the Board finds that Hardin Wind complied with Condition 51 set forth in the *Certificate Order* and, therefore, grants Hardin Wind's request to relinquish the certificate issued in the *Hardin Wind Certification Case*, as modified in Case Nos. 11-3446-EL-BGA, 16-469-EL-BGA, 16-2404-EL-BGA, and 18-677-EL-BGA, and concurs that the escrow agent release the decommissioning bond to Hardin Wind. This grant of relinquishment does not apply to the portion of the certificate pertaining to the interconnection substation that was transferred to AEP Ohio Transco pursuant to the September 18, 2020 Entry in the *Hardin Wind Certification Case*. As recommended by Staff, we direct the Board's docketing division to open a new case number for the portion of Case No. 09-749-EL-BGN related to AEP Ohio Transco's interconnection substation in order for AEP Ohio Transco to continue to operate and maintain the interconnection substation.

V. ORDER

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That the notice of relinquishment filed by Hardin Wind be

granted in accordance with Paragraph 37. It is, further,

{¶ 40} ORDERED, That the Board's docketing division open a new case number for the portion of Case No. 09-479-EL-BGN related to AEP Ohio Transco's interconnection substation and docket a copy of this Entry in that new case in order for AEP Ohio Transco to continue to operate and maintain the interconnection substation. It is, further,

{¶ 41} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record in each of the above captioned cases.

BOARD MEMBERS:

Approving:

Matt McClellan, Designee for Lydia Mihalik, Director
Ohio Development Services Agency

Mary Mertz, Director
Ohio Department of Natural Resources

W. Gene Phillips, Designee for Stephanie McCloud, Director
Ohio Department of Health

Drew Bergman, Designee for Laurie Stevenson, Director
Ohio Environmental Protection Agency

Sarah Huffman, Designee for Dorothy Pelanda, Director
Ohio Department of Agriculture

Greg Murphy, Public Member

MJS/kck

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Case No(s). 09-0479-EL-BGN, 11-3446-EL-BGA, 16-0469-EL-BGA, 16-2404-EL-BGA, 18-0677-EL-BGA

Summary: Entry granting Hardin Wind Energy, LLC's request to relinquish its certificate to construct a wind-powered electric generation facility in Hardin County, Ohio. electronically filed by Ms. Mary E Fischer on behalf of Ohio Power Siting Board