

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Republic)	
Wind, LLC for a Certificate to Build and)	
Operate an Electric Transmission Line,)	Case No. 19-1066-EL-BTX
Seneca County, Ohio)	

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Applicant Republic Wind, LLC (“Republic Wind” or “Applicant”) and Staff of the Ohio Power Siting Board (“OPSB Staff”) who represent the parties to this proceeding, submit this Joint Stipulation and Recommendation (“Joint Stipulation”) for adoption by the Ohio Power Siting Board (“Board” or “OPSB”). Ohio Administrative Code (“OAC”) 4901-1-30 provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below (“Parties” or in the singular “Party”), and to recommend that the Board approve and adopt this Joint Stipulation as part of its Opinion, Order, and Certificate in this proceeding, resolving all matters raised by the OPSB Staff pertinent to the approval to construct a 7.4-mile 138 kV Transmission Line with a point of interconnection (“POI”) Switchyard, located in rural Pleasant and Adams Townships in Seneca County, Ohio (“Project” or “Facility”).

This Joint Stipulation is supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or

precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process to resolve all of the issues in this proceeding.

The Parties have engaged in settlement discussions related to the topics raised in this proceeding. This Joint Stipulation represents the culmination of these discussions, and the Parties acknowledge that this agreement is amply supported by the record and thus entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Facility.

II. JOINT STIPULATION AND RECOMMENDATION

A. Recommended Conditions

The Project includes the construction of the 138 kV Republic Wind Transmission Line, the Preferred Route of which is an approximately 7.4 mile line to be located in Adams and Pleasant Townships, Seneca County, Ohio. The project will also include a POI substation adjacent to the existing Fremont Center – Tiffin Center 138 kV transmission line. The proposed transmission line will be constructed to connect to the Republic Wind electric generation project to the electric grid.

The Parties recommend that the Board approve Republic Wind's Application subject to the conditions in the Staff Report of Investigation issued on August 13, 2020 as listed below, and with the exception of Condition No.15, which is modified as presented below.

- (1) The certificate authority provided in this case shall not exempt the facility from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
- (2) The facility shall be installed on the Applicant's Preferred Route, utilizing the equipment, construction practices, and mitigation measures as presented in the application and as modified and/or clarified in supplemental filings, replies to data requests, and clarified by recommendations in this *Staff Report of Investigation*.

- (3) Commencement of construction on the transmission line and/or POI substation may only commence after the approval of the Republic Wind Farm application in case number 17-2295-EL-BGN. In addition, Applicant shall file a notice of withdrawal dismissing this case from record or relinquish any certificate authority if the associated generation case, case number 17-2295-EL-BGN, is otherwise disposed of without the issuance of a certificate.
- (4) The Applicant shall docket a detailed project construction schedule within 7 days of the date of journalization of the certificate.
- (5) The Applicant shall comply with the requirements established by the OAC Chapter 4906-3-13 and 4906-3-14.
- (6) At least 30 days prior to the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design and mapping in the form of PDF, which the Applicant shall also file on the docket of this case, and geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings to confirm that the final design is in conformance with the certificate. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically denote any adjustments made from the siting detailed in the application. All final geotechnical study results shall be included in this submission. The detailed engineering drawings of the final project design shall account for karst topography and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio who reviewed and approved the designs.
- (7) At least 30 days prior to the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, mapping in the form of PDF, which the Applicant shall also file on the docket of this case, and geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings to confirm that the final design is in conformance with the certificate. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically denote any adjustments made from the siting detailed in the application. All final geotechnical study results shall be included in this submission.
- (8) At least seven days prior to the start of construction and at least seven days prior to the start of facility operations, the Applicant shall notify via mail affected property owners and tenants including those individuals who were provided notice of the public informational meeting, residences located within one mile of the project area, parties to this case, county commissioners, township trustees, emergency responders, airports, schools, and libraries, as well as anyone who has requested updates regarding the project. These notices will provide information about the project, including contact information and a copy of the complaint resolution plan. The start of construction notice must also contain a timeline for construction and restoration activities, and the start of facility operations must also contain a timeline for the start of operations. The Applicant shall also file a copy of these notices on the public docket.

- (9) The Applicant shall replace agricultural field tiles damaged from this project, and excavated topsoil in agricultural fields will be segregated and restored upon backfilling.
- (10) The Applicant shall provide a copy of any floodplain permit required for construction of this project, or a copy of correspondence with the floodplain administrator showing that no permit is required, to Staff within seven days of issuance or receipt by the Applicant.
- (11) Thirty days prior to the preconstruction conference, the Applicant shall provide Staff with a construction access plan for review. The plan would consider the location of streams, wetlands, wooded areas, and sensitive plant species, as identified by the Ohio Department of Natural Resources (ODNR) and explain how impacts to all sensitive resources would be avoided or minimized during construction.
- (12) The Applicant shall have an environmental specialist on site during construction activities that may affect sensitive areas, as mutually agreed upon between the Applicant and Staff, and as shown on the Applicant's final approved construction plan. Sensitive areas include, but are not limited to, areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction.
- (13) The Applicant shall contact Staff, the ODNR, and the U.S. Fish and Wildlife Service (USFWS) within 24 hours if state or federal listed species are encountered during construction, operation, or monitoring activities. Activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, Staff and the appropriate agencies. If the Applicant encounters any listed plant or animal species prior to construction, the Applicant notify Staff of the location and how impacts would be avoided during construction.
- (14) The Applicant shall adhere to seasonal cutting dates of October 1 through March 31 for removal of any trees greater than or equal to three inches in diameter, unless coordination efforts with the ODNR and the USFWS allows a different course of action.
- (15) If Staff and the ODNR, in consultation with the USFWS, determine the project results in significant adverse impact to wild animals, the ODNR and Staff will notify the Applicant. As soon as possible and no longer than 30 days after receiving notification of the significant adverse impact, Applicant shall implement practices to rectify the significant adverse impact, which will include development and submission of a mitigation plan or adaptive management strategy to Staff and the ODNR for review to confirm compliance with this condition.
- (16) Construction in upland sandpiper preferred nesting habitat types shall be avoided during the species' nesting period of April 15 through July 31, unless coordination with the ODNR allow a different course of action.

- (17) Construction in northern harrier preferred nesting habitat types shall be avoided during the species' nesting period of May 15 through August 1, unless coordination with the ODNR allow a different course of action.
- (18) Construction in loggerhead shrike preferred nesting habitat types shall be avoided during the species' nesting period of April 1 through August 1, unless coordination with the ODNR allow a different course of action.
- (19) Prior to construction, if impacts to wetlands or upland habitats adjacent to wetlands are proposed, the Applicant shall obtain an ODNR-approved herpetologist to conduct Blanding's turtle and spotted turtle habitat suitability surveys to determine if suitable habitat exists within the project area. If suitable habitat is determined to be present, the Applicant shall avoid impacts to this habitat by doing one of the following:
 - (a) Avoid the area determined to be suitable habitat along with an appropriate buffer determined by the ODNR.
 - (b) Obtain an ODNR-approved herpetologist to conduct a presence/absence survey. If either species is determined to be present, the Applicant shall continue to coordinate with the ODNR to assure that impacts are avoided.
 - (c) Obtain an ODNR-approved herpetologist to develop and implement an avoidance/minimization plan.
- (20) Should construction be delayed beyond five years of the date of the certificate, certain wildlife surveys may be required to be updated as determined by Staff and the ODNR.
- (21) The Applicant shall conduct a pre-construction survey of the proposed project site to ensure that the Engleman's spike rush is not impacted. The Applicant shall coordinate survey efforts with the ODNR Division of Natural Areas and Preserves' Chief Botanist.
- (22) For both construction and maintenance, the Applicant shall limit, to the greatest extent possible, the use of herbicides in proximity to surface waters. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides during initial clearing or maintenance should only be used where no other options exist, and with prior approval from the Ohio EPA. Prior to commencement of construction, the Applicant shall submit a plan to Staff for review and confirmation that it complies with this condition, describing the planned herbicide use for all areas in or near any surface waters during initial project construction and/or maintenance.
- (23) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving, hoe ram, and blasting operations, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of OAC 4906-5-08(C)(3) (2014), of upcoming construction activities including potential for nighttime construction activities.

- (24) The Applicant shall remove all construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to preconstruction conditions in compliance with the Ohio Environmental Protection Agency (Ohio EPA) General National Pollutant Discharge Elimination System permit(s) obtained for the project and the approved Stormwater Pollution Prevention Plan created for this project.
- (25) The Applicant shall not dispose of gravel, or any other construction material, during or following construction of the facility by placing such material on agricultural land. All construction debris and all contaminated soil shall promptly be removed and properly disposed of in accordance with Ohio EPA regulations.

B. Exhibits

Subject to the terms and conditions of this Joint Stipulation, the Applicant and OPSB Staff agree, stipulate, and recommend that the following exhibits submitted to this docket be marked and admitted into the record of this proceeding, and that cross-examination is waived thereon:

- 1. Applicant Exhibit 1, the Application, filed on August 27, 2019 as amended on February 25, 2020 (“Amended Application”);
- 2. Applicant Exhibit 2, a copy of the Proof of Service of the Amended Application on local public officials and libraries along with the list of property owners and adjacent property owners, as filed on February 28, 2020;
- 3. Applicant Exhibit 3, Proof of Publication for the Amended Application filed on December 21, 2020 in accordance with Ohio Revised Code Section (“R.C. 4906.06(C) for the publication of the description of the application and the hearing dates, published on November 6, 2020 in *The Adviser Tribute*;
- 4. Applicant Exhibit 4, Proof of Publication for the Amended Application filed January 8, 2020 in accordance with OAC 4906-3-10(A) for the second publication of the description of the application and the hearing dates, published on December 23, 2020 in *The Adviser Tribute*;
- 5. Applicant Exhibit 5, the “Prefiled Testimony of Dalton Carr” filed on December 29, 2020;
- 6. Applicant Exhibit 6, the “Supplemental Testimony of Dalton Carr” filed on January 15, 2021;

7. Joint Exhibit 1, this “Joint Stipulation and Recommendation” signed on behalf of the Applicant and OPSB Staff;
8. OPSB Staff Exhibit 1, “Staff Report of Investigation,” issued on August 13, 2020;
9. OPSB Staff Exhibit 2, the “Prefiled Testimony of Eric Morrison filed on January 15, 2021.

C. Other Terms and Conditions

This Joint Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially modifies all or part of this Joint Stipulation or imposes additional conditions or requirements upon the Parties, each party shall have the right, within thirty (30) days of the Board’s order, to file an application for rehearing with the Board. Upon the Board upholding the material modification of the Joint Stipulation in its entry on rehearing, any Party may terminate or withdraw from the Joint Stipulation by filing a second application for rehearing with the Board within thirty (30) days of the Board’s entry on rehearing. The second application shall be limited in scope to a party giving notice of exercising its right to terminate and withdraw from the Joint Stipulation to the Board, and requesting an evidentiary hearing with all appertaining rights of process, as if the Joint Stipulation had never been executed. Prior to any Party seeking rehearing or terminating and withdrawing from the Joint Stipulation pursuant to this provision, the Parties agree to convene immediately to work in good faith to achieve an outcome that substantially satisfies the intent of the Board or proposes a reasonable equivalent thereto to be submitted to the Board for its consideration. Upon a second application for rehearing being filed giving notice of termination or withdrawal by any Party, pursuant to the above provisions, the Joint Stipulation shall immediately become null and void. In the event the Board accepts this Joint Stipulation without material modification, the Parties waive all rights to appeal or rehearing.

III. FINDINGS

The Parties agree that the record in this case, provided the Board approves the conditions in this Joint Stipulation, contains sufficient probative evidence for the Board to find and determine, as findings of fact and conclusions of law, that:

A. **Findings of Fact**

1. The Facility qualifies as a “major utility facility” defined in R.C. 4906.01(B)(1)(b).
2. On August 27, 2019, the Applicant filed a motion for waiver from the requirement under OAC Rule 4906-3-05, which requires that the alternate route have no more than 20% in common with the preferred route; and a waiver from OAC Rule 4906-5-04(A) which requires submittal of a formal route selection study.
3. Applicant formally submitted its Application for Certificate of Environmental Compatibility and Public Need on August 27, 2019.
4. The Administrative Law Judge, by Entry dated December 17, 2019, granted Applicant’s request for waivers.
5. Applicant formally submitted its Amended Application for Certificate of Environmental Compatibility and Public Need on February 25, 2020.
6. On February 28, 2020, Applicant filed a copy of the Proof of Service of the Amended Application on local public officials and libraries along with the list of property owners and adjacent property owners.
7. On December 21, 2020 and January 8, 2021, Applicant filed a copy of the Proofs of Publication in accordance with OAC 4906-3-09 and 4906-3-10 for the publication of the description of the Amended Application and the hearing dates in *The Adviser Tribute*.
8. The Staff Report was filed on August 13, 2020.
9. The Administrative Law Judge, by Entry dated October 30, 2020, ordered that any stipulation entered into by the parties shall be filed by no later than 12:00 p.m. on January 10, 2021.
10. The requirement for the need for the facility under R.C. 4906.10(A)(1) has been demonstrated.

11. Adequate data on the project has been provided to determine the nature of the probable environmental impact as required by R.C. 4906.10(A)(2).
12. Adequate data on the project has been provided to determine that the Facility described in the Amended Application represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by R.C. 4906.10(A)(3).
13. Adequate data on the project has been provided to determine that the Facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability, as required by R.C. 4906.10(A)(4).
14. Adequate data on the project has been provided to determine that the Facility will either comply with, or is not subject to, the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5).
15. Adequate data on the project has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).
16. Adequate data on the project has been provided to determine what the Facility's impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the R.C. that is located within the site of the proposed Facility, as required by R.C. 4906.10(A)(7).
17. Adequate data on the project has been provided to determine that the facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of the various alternatives, as required by R.C. 4906.10(A)(8).
18. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

B. Conclusions of Law

- (1) Republic Wind, LLC is a "person" under R.C. 4906.01(A).
- (2) The proposed Facility is a major utility facility as defined in R.C. 4906.01(B)(1).
- (3) The Amended Application complies with the requirements of OAC Chapter 4906-5.

- (4) The requirement for the need for the facility under R.C. 4906.10(A)(1) has been demonstrated
- (5) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the Facility under R.C. 4906.10(A)(2).
- (6) The record establishes that the Facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(3).
- (7) The record establishes, as required by R.C. 4906.10(A)(4), that the Facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability.
- (8) The record establishes, as required by R.C. 4906.10(A)(5), that to the extent that any of them are applicable, construction of the proposed Facility will comply with the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all rules and standards adopted under the relevant Chapters of the Ohio Revised Code
- (9) The record establishes that the Facility will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).
- (10) The Facility's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. 4906.10(A)(7).
- (11) The record establishes that the Facility incorporates maximum feasible water conservation practices, as determined by the Board, considering available technology and the nature and economics of the various alternatives consistent with R.C. 4906.10(A)(8).
- (12) Based on the record, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the Facility which includes the conditions in the Staff Report of Investigation, as presented and modified, by the Joint Stipulation and Recommendation.

The undersigned hereby stipulate, agree and represent that they are authorized to enter into this Joint Stipulation and Recommendation.

Respectfully submitted on behalf of,

**THE STAFF OF THE OHIO POWER
SITING BOARD**

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Summary: Text Joint Stipulation and Recommendation electronically filed by Teresa OrahooD
on behalf of Dylan F. Borchers