

December 28, 2021

Ms. Tanowa Troupe, Secretary
Ohio Power Siting Board
Docketing Division
180 East Broad Street, 11th Floor
Columbus, Ohio 43215-3797

Re: In the Matter of the Application of Firelands Wind, LLC to Amend/Modify its Certificate Issued in Case No. 18-1607-EL-BGN.

Response to First Data Request From Staff of the Ohio Power Siting Board

Dear Ms. Troupe:

Attached please find Firelands Wind, LLC's ("Applicant") Response to the First Data Request from the staff of the Ohio Power Siting Board ("OPSB Staff"). The Applicant provided this response to OPSB Staff on December 24, 2021.

We are available, at your convenience, to answer any questions you may have.

Respectfully submitted,

/s/ Christine M.T. Pirik

Christine M.T. Pirik (0029759)

(Counsel of Record)

Terrence O'Donnell (0074213)

Matthew C. McDonnell (0090164)

Dickinson Wright PLLC

150 East Gay Street, Suite 2400

Columbus, Ohio 43215

Phone: (614) 591-5461

Email: cpirik@dickinsonwright.com

todonnell@dickinsonwright.com

mmcdonnell@dickinsonwright.com

Attorneys for Firelands Wind, LLC

CC: Theresa White
Randall Schumacher
Jonathan Pawley
Jim O'Dell

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 28th day of December, 2021.

/s/ Christine M.T. Pirik

Christine M.T. Pirik (0029759)

Counsel via email:

Werner.Margard@OhioAGO.gov

Administrative Law Judges via email:

Jeffrey.Jones@puco.ohio.gov

Nicholas.Walstra@puco.ohio.gov

4883-4703-9750 v1 [59714-18]

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Firelands Wind,)
LLC to Amend/Modify its Certificate Issued in Case) Case No. 21-1055-EL-BGA
No. 18-1607-EL-BGN.)

**FIRELANDS WIND, LLC 'S
RESPONSE TO THE FIRST DATA REQUEST
FROM THE STAFF OF THE OHIO POWER SITING BOARD**

On October 28, 2021, Firelands Wind, LLC (“Applicant”), an indirectly owned subsidiary of Apex Clean Energy Holdings, LLC (“Apex”), filed an application with the Ohio Power Siting Board (“OPSB”) for an amendment to its Certificate of Environmental Compatibility and Public Need issued in Case No. 18-1607-EL-BGN (“Amendment Application”).

On December 9, 2021, the Staff of the OPSB (“OPSB Staff”) provided the Applicant with OPSB Staff’s First Data Request. Now comes the Applicant providing the following response to the First Data Request from the OPSB Staff.

- 1. On page 43 of the application narrative, it is stated that a historic architectural reconnaissance survey was completed and submitted to OHPO and OHPO concurred with the recommendations. Please submit the survey and OHPO response letter to staff. This is the historic architectural reconnaissance survey for the 18-1607-EL-BGN case, correct?**

Response: Yes. Attached please find Attachment 1, which includes the Historic Resources Survey dated October 2020 conducted by Environmental Design & Research (“EDR”) and the February 4, 2021 concurrence from the State Historic Preservation Office (“SHPO”). The Applicant notes that the report dated October 2020 in Attachment 1 is the version of the report submitted to SHPO on January 5, 2021.

- 2. Also, on page 43 it is stated that an archaeological survey was completed and submitted to OHPO and OHPO concurred with the recommendations. Please submit**

the survey and OHPO response letter to staff. This is the archaeological survey for the 18-1607-EL-BGN case, correct?

Response: Yes. Attached please find Attachment 2, which includes the Phase I Archaeological Survey dated March 2021 conducted by The Mannik & Smith Group (“Mannik”) and the April 8, 2021 concurrence from SHPO.

- 3. Also, on page 43 it is stated that a revised addendum to the report was submitted to OHPO on 9/3/2021 and a concurrence letter was received from OHPO on 9/27/2021. Please submit this addendum and OPHO correspondence to staff. This addendum addresses “some” the changes presented in the amendment. What changes does the addendum address and what changes are not yet addressed?**

Response: Attached please find Attachment 3, which includes the first Addendum Report to the Phase I Archaeological Survey dated August 2021 conducted by Mannik and the September 27, 2021 concurrence from SHPO. Also, attached please find Attachment 4, which includes the Second Addendum to the Phase I Archaeological Survey dated October 2021 conducted by Mannik and the November 19, 2021 concurrence from SHPO.

- 4. The programmatic agreement signed on 2/17/2020 stated the archaeological surveys were expected to be completed by spring 2020 and the report done by June 2020 and that the architectural surveys were expected to be completed and report done by February 2020. Are these surveys completed, reports done and have they been evaluated by OHPO? If so, please submit to staff the reports and OHPO correspondence. If not please explain why they are not completed and when they are expected to be done.**

Response: Yes. All surveys are complete, have been submitted to SHPO, and concurrence letters have been received. All reports and associated SHPO concurrence letters have been provided as attachments to this response.

- 5. Has a memorandum of understanding been developed to mitigate or avoid cultural resources for the 18-1607-EL-BGN case or this amendment case? If so, please send a copy to staff. If not, please estimate when the memorandum of understanding would be completed.**

Response: No, a Memorandum of Understanding (“MOU”) with SHPO has not been developed at this time. We anticipate having this in place by July 2022.

6. **The project area has been changed to include area not previously surveyed such as for two underground collections lines, correct? Has this new area been surveyed for cultural resources? If not when do expect those areas to be surveyed?**

Response: All facility changes included in the Amendment Application have been surveyed for cultural resources. Please see response to Question 3 above.

7. **Please forward to staff any other cultural resource survey reports or OHPO letters that are associated with this case, case no. 18-1607-EL-BGN, and case no. 19-1073-EL-BTX.**

Response: The reports and concurrence letters from SHPO for the archaeological and historic resource surveys related to the transmission line in Case No. 19-1073-EL-BTX are attached to this response as Attachments 5 and 6, respectively. With these attachments all survey reports and concurrence letters have been provided.

8. **In reference to the Application (Exhibit H), when does Firelands Wind, LLC anticipate receiving determination letters from the FAA.**

Response: Determination letters from the Federal Aviation Administration (“FAA”) are anticipated in February or March 2022.

9. **The forms were submitted to the FAA as early as July 2021, please explain and list any concerns that the FAA has indicated to Firelands Wind, LLC about these proposed wind turbine locations.**

Response: These turbine locations received Notice of Preliminary Finding (“NPF”) letters. The concerns listed in the NPF letters were that the structure exceeds obstruction standards and/or would have adverse effects on airspace. These are the standard concerns listed for any structure over 499 feet. No other concerns have been brought to the Applicant’s attention. Due to the location of these turbines in relation to turbine locations at the same tip height that the FAA had issued Determinations of No Hazard (“DNH”) for, additional concerns are not anticipated.

10. **Please provide any aviation studies for the Emerson Creek Wind Farm that analyzed these new seven wind turbine locations.**

Response: No new aviation studies were conducted for these turbine locations specifically as these locations are central to the previously studied locations and received DNH for turbine locations at the original locations which are within a minor distance from these seven locations.

11. **Department of Defense had previously indicated to OPSB that all wind turbines in this project area use NVG (night vision goggle) compatible lighting. Please confirm that the lighting system Firelands Wind, LLC intends to install at these seven wind turbine locations is NVG compatible.**

Response: Night Vision Goggle (“NVG”) compatible lighting will be used at all turbine locations.

12. **Staff has attached a Google Earth map created from data provided by the Department of Defense (<https://www.acq.osd.mil/dodsc/>). This map has overlays of the military aviation training routes (identified as SR 708 and SR 715) and the proposed amended layout of the Emerson Creek Wind farm. SR 708 and SR 715 are slow speed low altitude routes where flight operations are conducted below 1500 feet at speeds of 250 knots or less. This map seems to indicate that Turbine 64a (e.g., crane, rotor swept area) will have an impact on this military aviation training route. Please explain including any steps Firelands Wind, LLC will take to mitigate and minimize the duration of crane use in that route or notify users of that route during crane operations.**

Response: All turbine locations filed with the FAA require a review by the Department of Defense (“DOD”) Siting Clearinghouse in order to receive a DNH. The FAA review process has proceeded past the DOD Siting Clearinghouse review process with no new concerns raised by the DOD Siting Clearinghouse. Turbine 64a has been shifted a minimal distance from the original Turbine 64 location which was also reviewed by the FAA and DOD Siting Clearinghouse. The FAA determined at the original Turbine 64 location that “All structures associated with the project are located in an area where affordable and feasible actions can be taken by the Air Force to mitigate the project’s impacts to the Air Force Mission.” Notice of turbine erection will be filed with the FAA at which time the DOD is also notified within 5 days of the turbine reaching its greatest height.

13. **Staff recalls that T40 and T76 were removed from the Emerson Creek Wind Farm project to accommodate a different request from the Department of Defense – other**

than interference with SR 708 and SR 715. Do these seven wind turbine locations conflict with that Department of Defense request/guidance?

Response: No, T40 and T76 were removed due to a route that runs east-west in the area between T39 and T41. No turbine shifts associated with the Amendment Application conflict with the DOD guidance that was received.

14. Please describe your efforts to address any aviation issues from the Department of Defense Aviation from these new seven locations.

Response: The DOD has had an opportunity to review the seven new turbine locations through the FAA review process. The DOD Siting Clearinghouse raised no concerns with the FAA. These locations will be governed by the same agreement reached for the project originally.

15. Please describe your efforts to address any aviation issues from the ODOT Office of Aviation from these new seven wind turbine locations.

Response: While the Applicant will continue to coordinate with the Ohio Department of Transportation (“ODOT”) Office of Aviation as appropriate, the Applicant notes that, in Case No. 18-1607-EL-BGN, the concern from the ODOT Office of Aviation stemmed in part from concerns from the Willard City Airport. The concerns of the Willard City Airport were resolved in the Case No. 18-1607-EL-BGN, and no turbine shifts in the Amendment Application impact the area preserved for the Willard City Airport. Further, the Applicant notes that this Amendment Application does not propose an increase in hub height of the turbines; therefore, any concerns ODOT Office of Aviation may assert have been thoroughly addressed and resolved and in Case No. 18-1607-EL-BGN.

The ODOT Office of Aviation also commented on the standard concerns listed in the NPF by the FAA. The FAA will review the wind turbines under those standards and issue a determination. In addition, the Applicant notes that under Ohio Revised Code (“R.C.”) 4561.341, ODOT is to use the rules adopted under R.C. 4561.32 in making its determination. Simply stated, the R.C. does not authorize ODOT to regulate structures located outside of the lateral boundaries defined in the civil imaginary surfaces and specifically listed in R.C. 4561.32. It is clear that none of the proposed turbines are located

within the boundaries of the clear zone surface, horizontal surface, conical surface, primary surface, approach surface, or transitional surface, which are the only surfaces ODOT has the statutory authority to regulate. As such, ODOT should have concluded that the proposed turbines would not be obstructions as specified in R.C. 4561.32. The minor movement of the seven turbine locations in this Amendment Application has no effect on the determination made by the OPSB in Case No. 18-1607-EL-BGN that the proposed structures adhere to FAA and ODOT codes, thereby ensuring these seven turbines are designed to preserve the continued safe and efficient use of airspace.

Respectfully submitted,

/s/ Christine M.T. Pirik
Christine M.T. Pirik (0029759)
(Counsel of Record)
Matthew C. McDonnell (0090164)
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, Ohio 43215
(614) 591-5461
cpirik@dickinsonwright.com
mmcdonnell@dickinsonwright.com

Attorneys for Firelands Wind, LLC

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/28/2021 11:21:37 AM

in

Case No(s). 21-1055-EL-BGA

Summary: Response - Response to First Data Request (Part 1 of 7 - Cover Letter and DR Response) electronically filed by Christine M.T. Pirik on behalf of Firelands Wind, LLC