

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF
FIRELANDS WIND, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED TO
CONSTRUCT A WIND-POWERED
ELECTRIC GENERATION FACILITY IN
HURON AND ERIE COUNTIES, OHIO.

CASE NO. 18-1607-EL-BGN

ENTRY

Entered in the Journal on December 23, 2019

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

{¶ 2} 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).

{¶ 3} On October 26, 2018, Firelands, a wholly-owned subsidiary of Apex Clean Energy Holdings, Inc., filed a pre-application notification letter with the Board regarding its proposed 298.2 megawatt (MW) wind-powered electric generating facility in Huron, Erie, and Seneca counties, Ohio.

{¶ 4} On January 31, 2019, Firelands filed its application with the Board for a certificate of environmental compatibility and public need to construct and operate a wind-powered electric generation facility (“Project” or “Emerson Creek Project”) in Huron and Erie counties, Ohio. Applicant explained that the information presented in the pre-application notification letter was revised to reflect that the Project will be located in Huron and Erie counties only and that no facilities are now proposed for Seneca County. Specifically, Firelands states that the Project will be located within approximately 32,000 acres of leased land in Groton and Oxford townships in Erie County, and Lyme, Norwich, Richmond, Ridgefield, and Sherman townships in Huron County. The Project consists of up to 87 turbine generators, each with a nameplate capacity rating of 4.2 to 4.5 MW which

results in the Project generating up to 297.66 MW, rather than the 298.2 MW listed in the pre-application notification letter.

{¶ 5} On March 7, 2019, the Board ordered Applicant to hold a second public information meeting in accordance with Ohio Adm.Code 4906-3-03(B) based on “substantial changes” that were made to the application after the informational meeting on November 15, 2018. The noted changes included: (1) the elimination of turbines in Seneca County; (2) the alteration of associated facilities so as to maintain a nearly equivalent generating capacity; and, (3) the greater detail regarding the number of acres under lease and the specific townships affected.

{¶ 6} On March 13, 2019, Applicant scheduled the Board-ordered second public information meeting for April 3, 2019.

{¶ 7} On March 18, 2019, Applicant filed a “Supplement to Application – Visual Impact Assessment” (VIA). The filing was described as being in accordance with the original Application narrative, wherein Applicant stated that the VIA would be filed as a supplement to the Application. The supplemental filing consisted of 242 pages.

{¶ 8} On March 29, 2019, Applicant and the Board’s Executive Director (Staff) filed separate pleadings wherein they each requested an extension of the Application completeness deadline set forth in Ohio Adm.Code 4906-3-06(A), due to the timing of the scheduled second public information meeting. By Entry of March 29, 2019, the Board granted the extension of the completeness deadline, setting the new deadline as April 17, 2019.

{¶ 9} On April 17, 2019, Staff issued correspondence confirming that the Application was complete in compliance with Ohio Adm.Code Chapters 4906-01, et seq.

{¶ 10} On July 10, 2019, Applicant filed a “Third Supplement to Application – Updated Wind Turbine Models and Map.” The purpose of this 199-page filing was purportedly threefold: (1) to update the list of turbine models that may be used for this

Project to include the latest updated versions of the Nordex and Vestas turbine models, which were included in the Application; (2) to provide an updated map that reflects a small portion of the Project boundary that was inadvertently excluded from the maps included in the Application; and, (3) to provide updated maps reflecting the locations for several associated collection lines and private access roads.

{¶ 11} On September 12, 2019, Applicant filed a “Fourth Supplement to Application – Updated Wind Turbine Models and Maps (Fourth Supplement).” Applicant stated that the purpose of this 871-page filing is to update the list of turbine models that may be used for this Project and to include an additional hub height for the proposed Vestas turbine model.

{¶ 12} On September 12, 2019, Applicant also filed its certificate of service of its accepted and complete application, in accordance with the requirements of Ohio Adm.Code 4906-3-07. Applicant also submitted the application fee to the Board, pursuant to Ohio Adm.Code 4906-3-12.

{¶ 13} On September 27, 2019, Staff filed a motion to modify the completeness determination that was originally issued on April 17, 2019. Staff requested that Applicant’s Fourth Supplement filed on September 12, 2019, be deemed as an amendment to a pending accepted, complete application pursuant to Ohio Admin. Code 4906-3-11(A). Accordingly, Staff requested that the Board find that Applicant must comply with Ohio Adm.Code 4906-3-06 for the filing of an amendment, and that a further Staff determination of completeness should be extended for 60 days from the filing of the fourth supplement.

{¶ 14} On September 27, 2019, Applicant filed to withdraw its Fourth Supplement that was filed on September 12, 2019.

{¶ 15} On October 4, 2019, Applicant filed a “Revised Fourth Supplement to Application – Updated Wind Turbine Models and Map” (Revised Fourth Supplement). Applicant indicated that this 212-page filing was to replace the withdrawn filing from

September 12, 2019. The filing: updated changes to the proposed turbine models; and, provided comparison information regarding turbine model specifications, sound analysis, shadow flicker analysis, and setback analysis.

{¶ 16} On October 11, 2019, Staff filed an amended motion to modify the determination of completeness. The filing updated Staff's motion from September 27, 2019, in response to Applicant's filings of September 27, 2019, and October 4, 2019. Staff requested that Applicant's latest filing be treated as an application amendment, and that Staff's completeness review deadline be extended until December 3, 2019.

{¶ 17} On October 15, 2019, Applicant filed a "Second Certificate of Service of Accepted, Complete Application of Local Public Officials and Libraries" (Second Certificate). This filing described the service of the application of January 31, 2019, as supplemented on March 18, 2019, April 11, 2019, July 10, 2019, and October 4, 2019.

{¶ 18} On October 24, 2019, the Administrative Law Judge (ALJ) granted Staff's motion of October 11, 2019, and extended Staff's time for further determination of completeness until December 3, 2019.

{¶ 19} On December 3, 2019, Staff issued correspondence to Applicant advising that Applicant's supplemental filings were sufficient such that Staff can begin its review of the application as supplemented. Staff identified additional information that must be provided to enable Staff's continuing review of the Project, including: copies of all applicable licenses, permits, and authorizations needed to construct and operate the wind farm; final designs and detailed construction drawings of the facility; detailed description of potential damage to drainage systems and the location of subsurface drainage tiles; and, final concurrence from OHPO for archaeology and architecture impacts and any resulting mitigation.

{¶ 20} On December 10, 2019, Applicant filed a "Third Certificate of Service of Accepted, Complete Application on Local Public Officials and Libraries" (Third Certificate).

On December 11, 2019, Applicant filed a Supplement to Third Certificate of Service of Accepted, Complete Application on Local Public Officials and Libraries.

{¶ 21} Subject to Applicant's continuing obligation to comply with Staff requests for supplemental information, the ALJ now finds that the Application is complete as provided for in R.C. 4906.06. The new effective date of the filing of the application shall be December 23, 2019.

{¶ 22} R.C. 4906.07(A) provides that, upon receipt of an application complying with R.C. 4906.06, the Board must promptly fix a date for a public hearing not less than 60 nor more than 90 days after such receipt, and shall conclude the proceeding as expeditiously as practicable.

{¶ 23} Accordingly, the local public hearing in this case will be held on Tuesday, March 17, 2020, at 3:00 p.m., at the Bellevue Veterans of Foreign Wars, 6104 US-20, Bellevue, Ohio 44811. The adjudicatory hearing will commence on Tuesday, April 14, 2020, at 10:00 a.m., 11th floor, Hearing Room 11-A, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

{¶ 24} Additionally, the ALJ finds that petitions to intervene in this proceeding will be accepted by the Board up to 30 days following publication of the notice required by Ohio Adm.Code 4906-3-09, or by February 6, 2020, whichever is later.

{¶ 25} Firelands should issue public notices of the application and hearings in accordance with Ohio Adm.Code 4906-3-09. As part of the information to be included in the notices, as required by Ohio Adm.Code 4906-3-09, Firelands shall include a statement that the public hearing in this case shall consist of two parts:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person, commencing on Tuesday, March 17, 2020, at 3:00

p.m., at the Bellevue Veterans of Foreign Wars, 6104 US-20, Bellevue, Ohio 44811.

- (b) An adjudicatory hearing to commence on Tuesday, April 14, 2020, at 10:00 a.m., 11th floor, Hearing Room 11-A, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

{¶ 26} Further, regarding the initial public notice required under Ohio Adm.Code 4906-3-09, Firelands shall include the following statement as a part of the public notice:

Petitions to intervene in the adjudicatory hearing will be accepted by the Board up to 30 days following publication of the notice required by Ohio Adm.Code 4906-3-09, or by February 6, 2020, whichever is later. However, the Board strongly encourages interested persons who wish to intervene in the adjudicatory hearing to file their petitions as soon as possible. Petitions should be addressed to Docketing Division, Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215-3793 and cite the above-listed case number.

{¶ 27} Ohio Adm.Code 4906-2-09 provides that the ALJ shall regulate the course of the hearing including requiring that expert or factual testimony to be offered in the Board proceedings be reduced to writing and filed with the Board, according to a schedule established by the ALJ. Accordingly, the ALJ finds that the following procedural schedule and process should be implemented:

- (a) Pursuant to Ohio Adm.Code 4906-3-06, Staff shall file its report of investigation (Staff Report) on or before March 2, 2020.

- (b) On or before March 23, 2020, each party shall file a list of issue(s) citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing.
- (c) All expert and factual testimony to be offered by Firelands shall be filed by March 27, 2020.
- (d) All expert and factual testimony to be offered by intervenors and Staff shall be filed by April 6, 2020.
- (e) Any stipulation entered into by the parties shall be filed by April 10, 2019.
- (f) The parties are strongly encouraged to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJ assigned to this case.

{¶ 28} Since the ALJ's entries that determined intervenor status on June 25, 2019, June 26, 2019, and October 24, 2019, an additional notice of intervention was filed by the City of Willard on November 1, 2019. In accordance with Ohio Adm.Code 4906-2-12(A)(1), the City of Willard will be considered an intervenor in this matter.

{¶ 29} It is, therefore,

{¶ 30} ORDERED, That intervenor status be granted in accordance with Paragraph 28. It is, further,

{¶ 31} ORDERED, That hearings in this matter be scheduled at the times and places designated in Paragraph 23. It is, further,

{¶ 32} ORDERED, That the application and hearings be noticed by Firelands in accordance with Paragraphs 25 and 26. It is, further,

{¶ 33} ORDERED, That Staff file its Staff Report pursuant to Paragraph 27. It is, further,

{¶ 34} ORDERED, That the parties file their issue lists and testimony in accordance with Paragraph 27. It is, further,

{¶ 35} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE OHIO POWER SITING BOARD

/s/Michael L. Williams

By: Michael L. Williams
Administrative Law Judge

JRJ/hac

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 18-1607-EL-BGN

Summary: Administrative Law Judge Entry granting intervenor status, scheduling hearings, ordering the application and hearings be noticed by Firelands, setting deadline for Staff to file report and setting deadlines for filing of issue lists and testimony electronically filed by Heather A Chilcote on behalf of Michael L. Williams, Administrative Law Judge, Ohio Power Siting Board