

**BEFORE  
THE OHIO POWER SITING BOARD**

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In the Matter of the Application of )  
**HEARTLAND WIND, LLC** for a Certificate to )  
Site a Wind-Powered Electric Generation Facility ) Case No. 09-1066-EL-BGN  
in Van Wert County, Ohio and Paulding County, )  
Ohio )

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**MOTION FOR WAIVERS**

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Applicant, Heartland Wind, LLC., pursuant to Ohio Administrative Code (“OAC”) Rule 4906-01-03 and Rule 4906-7-12(C), respectfully moves the Ohio Power Siting Board (“Board”) to grant the following waivers on an expedited basis:

- (1) From the one-year notice period as set forth in Ohio Revised Code Section (“R.C.”) 4906.06(A)(6);
- (2) From providing an extensive site selection study to the extent that Applicant is not able to describe all the specific information listed in the site selection criteria as set forth in OAC Rule 4906-17-04(A);
- (3) From providing map of vegetative cover as set forth OAC 4906-17-05(A)(3)(g), and instead allow the Applicant to provide a general narrative description of the vegetative cover that may be disturbed during construction; and
- (4) From certain requirements relating to cross-sectional views and test borings set forth in OAC 4906-17-05(A)(4), and instead allow the Applicant to submit this information once it determines the final location of turbines and other structures.

Further support for these waiver requests is set forth in the Memorandum in Support below.

**MEMORANDUM IN SUPPORT**

**I. BACKGROUND**

Heartland Wind, LLC, (“Applicant” or “Heartland Wind”) whose sole member and manager is Iberdrola Renewables, Inc., who in turn is a subsidiary of Iberdrola, S.A., the leading energy group in Spain and the fourth largest utility company in the world. With nearly 10,000 MW of renewable energy in operation globally, and more than 3,000 MW of that consisting of

wind power in the United States, Iberdrola, S.A. currently is one of the world's leading providers of wind power. The Applicant's parent company is in the process of expanding its portfolio of clean and renewable energy projects in 23 countries (including the United States) by, among other measures, developing wind energy projects. In 2008 alone, the Applicant's parent company invested \$2.2 billion in wind energy projects in the United States. Currently, Iberdrola Renewables, Inc. or its wholly owned companies, have successfully completed wind power projects in 13 states.

Expanding the Iberdrola Renewables, Inc. wind operations into Ohio, Heartland Wind, plans to submit an application to the Ohio Power Siting Board ("Board") in the near future for a Certificate to construct and operate a 350 megawatt wind generation facility to be located in portions of Van Wert County and Paulding County (known as the "Blue Creek Wind Farm"). The proposed Blue Creek Wind Farm will consist of 175, G87 turbines with a name-plate capacity of 2.0 MW manufactured by Gamesa, or other similar wind turbine models, and associated infrastructure (i.e. access roads, electrical collection system, construction staging area, operations and maintenance facilities and substations). The wind turbine array will be spread across 15,000 acres of leased land, located in portions of three (3) primarily agricultural townships in Van Wert County (Tully, Union and Hoaglin), and two (2) primarily agricultural townships in Paulding County (Blue Creek and Latty).

Based upon the unique nature of wind generation facilities, Heartland Wind. is seeking waivers from certain requirements of R.C. 4906.06 and the new OAC Chapter 4906-17 governing wind applications.

## **II. EXPEDITED RULING – OAC Rule 4906-7-12(C)**

A ruling on this Motion is required in order for Applicant to complete an application in conformance with the applicable requirements in OAC Chapter 4906-17. Applicant plans to file its application approximately late December 2009. Meeting this filing date is necessary to allow

Applicant to begin construction by September 2010 so that the project can commence commercial operation of the first phase by no later than the end of 2011 and the second phase by no later than 2012.

As set forth in this waiver request, and as will be evident in the application itself, Applicant has conducted the requisite analyses and studies, and obtained the necessary site commitments, so that Applicant can meet its ambitious schedule. For these reasons, Applicant asks that the review of its waiver requests be undertaken on an expedited basis and urges the Board or Administrative Law Judge to decide this Motion on that basis.

### **III. WAIVER REQUESTS**

#### **A. RC 4906.06(A)(6): Waiver of the One Year Notice Period**

Pursuant to RC 4906.06, an application for the siting of a wind generation facility must be filed “not less than one year nor more than five years prior to the planned date of commencement of construction.” The statute also allows the Board to waive these time limits for “good cause” shown. Applicant requests the Board to waive the one-year requirement between the dates an application is filed and construction is commenced.

Applicant plans to submit an application for this project in mid to late December 2009. Through this waiver request, Applicant seeks the flexibility to begin construction-related activities prior to the commencement of the one-year milestone date contemplated by the statute. Applicant’s desire to take full advantage of the longest period possible of construction weather, and shorten the construction period as much as possible so as not to inconvenience affected property owners for more than one construction season, appears to satisfy the good cause required by the statute.

Furthermore, a waiver from the one year period is authorized by statute and the Board has routinely granted the waiver for at least the last decade, including in a number of recent wind cases. See *In the Matter of Hardin Wind Energy LLC for a Certificate to Site a Wind-Powered*

*Electric Generation Facility in Hardin County, Ohio*, Case No. 09-479-EL-BGN, Entry (July 17, 2009). See also *In the Matter of the Application of Black Fork Wind LLC for a Certificate of Environmental Compatibility and Public Need for the Siting of a Wind Powered Electric Generating Facility in Richland and Crawford Counties*, Case No. 09-546-EL-BGN, Entry (October 1, 2009).

**B. OAC Rule 4906-17-04(A): Waiver of an Extensive Site Selection Study**

As part of Applicant's application, it will be providing a significant amount of information regarding the company's selection of its site in both Van Wert County, Ohio and Paulding County, Ohio. Wind resource is extremely limited in Ohio; there are only a handful of project sites with the wind resource necessary to support a utility scale project. The convergence of sufficient wind resources, sufficient transmission capacity and interested landowners willing to lease their land – all are needed for a viable wind energy project. In order for Ohio utilities to meet the requirements for renewable energy mandated by the Ohio legislature, all viable Ohio wind sites must be considered as potential wind energy project sites. Each specific criterion set forth in OAC Rule 4906-17-04 may not apply even though the site is an appropriate one for a wind energy project. OAC Rule 4906-17-04 contemplates extensive detail in a site selection study. Applicant will be providing a description of the project boundary; the rationale for selecting the site; a map of the general project area; a list and description of qualitative siting criteria (i.e. constraints such as setbacks, noise, etc.); and a constraint map. Applicant is aware that there is no approved form for a site selection study used in Chapter 17 of the Board's rules. Moreover, as the Board recognized in promulgating the wind application rules, where an applicant limited its study to locations where there are potentially viable wind resources, it would be appropriate for the Board to grant a waiver from filing an extensive site selection study<sup>1</sup>.

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<sup>1</sup> Opinion and Order in Case No. 08-1024-EL-ORD issued October 28, 2008 at paragraph 56.

Assuming that Heartland Wind files the site selection information indicated above, Applicant requests a waiver to the extent that each specific factor in OAC Rule 4906-17-04 (A) is not met.<sup>2</sup>

This waiver request is not novel: waivers from this subsection have been granted in a number of recent wind cases. *See In the Matter of Hardin Wind Energy LLC for a Certificate to Site a Wind-Powered Electric Generation Facility in Hardin County, Ohio*, Case No. 09-479-EL-BGN, Entry (July 17, 2009); *In the Matter of the Application of Buckeye Wind LLC for a Certificate to Construct Wind Powered Electric Generating Facilities in Champaign County, Ohio*, Case No. 08-666-EL-BGN, Entry (July 31, 2009); and *In the Matter of the Application of Black Fork Wind LLC for a Certificate of Environmental Compatibility and Public Need for the Siting of a Wind Powered Electric Generating Facility in Richland and Crawford Counties*, Case No. 09-546-EL-BGN, Entry (October 1, 2009).

**C. OAC 4906-17-05(A)(3)(g): Waiver to Allow Applicant to Provide a General Narrative Description of the Vegetative Cover that May be Disturbed During Construction, Rather than the Required Map.**

OAC 4906-13-04(A)(3) requires Heartland Wind to submit a map showing, among other things, the vegetative cover that may be removed during construction. Given the large footprint of the project area, the Applicant's map does not portray the vegetative cover to be removed. Heartland Wind, however, will provide in its application a general narrative description of the vegetative cover that may be removed during construction, and will quantify the vegetation that may be disturbed during construction.

A similar waiver from this subsection was granted in a recent wind case, *In the Matter of the Application of Buckeye Wind LLC for a Certificate to Construct Wind Powered Electric Generating Facilities in Champaign County, Ohio*, Case No. 08-666-EL-BGN, Entry (July 31, 2009).

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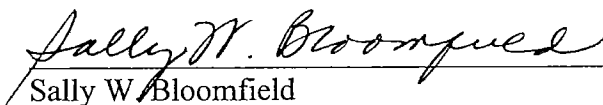
<sup>2</sup> Applicant is unsure of the quantitative factors referenced in paragraph (A) (1) (c) that requires a "comprehensive list and description of all. . . quantitative siting criteria."

**D. OAC 4906-17-05(A)(4): Waiver to Allow Applicant to Submit Information Relating to Cross-Sectional Views and Test Borings Once it Determines the Final Location of Turbines and Other Structures.**

Heartland Wind requests a waiver from the requirement that it provide a map and a corresponding cross-sectional view showing the location of test borings pursuant to Rule 4906-17-05(A)(4). As part of its application, Heartland Wind will provide a geological desktop study aid and a generalized cross-sectional view based on available information. Applicant proposes to merely defer this requirement but later to supplement its filing by providing a cross-sectional view and the location of test borings once the final turbine sites are determined. This type of waiver with the proposed deferral was granted in *In the Matter of the Application of JW Great Lakes, LLC, for a Certificate to Construct a Wind Powered Electric Generating Facility in Hardin County, Ohio*, Case No. 08-666-EL-BGN, Entry (September 18, 2009).

WHEREFORE, Applicant respectfully requests that the Board waive the requirements set forth above and grant such other and further relief to which it may be entitled.

Respectfully submitted on behalf of  
HEARTLAND WIND, LLC



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