

BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of)
6011 Greenwich Windpark, LLC for a)
Certificate to Construct a Wind-Powered) Case No. 13-990-EL-BGN
Electric Generation Facility in)
Huron County, Ohio.)

In the Matter of the Application of)
6011 Greenwich Windpark, LLC for an)
Amendment to its Certificate to Install) Case No. 15-1921-EL-BGA
and Operate a Wind-Powered Electric)
Generation Facility in Huron County, Ohio.)

**GREENWICH NEIGHBORS UNITED'S MOTION
FOR ORDER CONFIRMING THAT CERTIFICATE IS INVALID AND
A CANCELLATION OF THE CERTIFICATE**

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AUGUST 26, 2019

ATTORNEY FOR GREENWICH NEIGHBORS UNITED

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Greenwich Neighbors United (“GNU”) moves the Ohio Power Siting Board (“Board”) for an order confirming that the certificate issued to 6011 Greenwich Windpark, LLC (“Windpark”) in Case No. 13-990-EL-BGN (“Certificate Case”), as modified by Case No. 15-1921-EL-BGA (“Amendment Case”), has become invalid pursuant to the Board’s August 25, 2014 Opinion, Order and Certificate issued in the *Certificate Case*. More specifically, Windpark has not (and could not have) begun a continuous course of construction within five (5) years of the issuance of the certificate as required by Certificate Condition 6.

As set forth in more detail in the accompanying memorandum in support, the Board should issue an order confirming that the certificate became invalid on August 26, 2019. Alternatively, the Board should require Windpark to demonstrate that it has met all

prerequisites in the certificate to commence construction and that a continuous course of construction has in fact commenced.

Respectfully submitted,

/s/ Matthew R. Pritchard

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MEMORANDUM IN SUPPORT

On December 23, 2013, Windpark filed an application seeking approval to construct an economically significant wind farm. The application sought a certificate to construct and operate a wind farm in Huron County, Ohio consisting of up to 25 Nordex N117 model wind turbine generators with a combined output capacity of 60 megawatts (“MW”).¹ The application was followed by a Staff Report of Investigation on April 18, 2014 and a Stipulation and Recommendation on May 16, 2014 (“Stipulation”).

The Stipulation recommended approval of the application subject to 53 conditions. On August 25, 2014, the Commission approved the Stipulation without modification, and issued a certificate “subject to the conditions set forth in the Stipulation.”² Condition 6 in the Stipulation provides that the certificate becomes invalid if Windpark has not

¹ Certificate Case, Windpark Exhibit 3 (Proof of Publication) (June 3, 2014).

² Certificate Case, Opinion, Order and Certificate at 45 (Aug. 25, 2014).

commenced a continuous course of construction within five (5) years. Fifteen additional conditions address activity that must occur prior to the commencement of construction.

On November 16, 2015, Windpark filed an application to amend its certificate (“Amendment Application”). In approving the Amendment Application, the Board held that “none of the requirements established in the certificate will be changed” by the Amendment Application.³

On August 22, 2019, Windpark filed a notice of “On-Site Construction commencement.”

The certificate conditions required Windpark to have commenced a continuous course of construction no later than August 25, 2019. Despite the August 22, 2019 notice of construction activity, GNU does not believe that a continuous course of construction has commenced. GNU also does not believe that Windpark has satisfied all of the prerequisites to the commencement of any type of construction. Finally, Windpark has not filed anything in these proceedings that indicates compliance with all prerequisite conditions to construction.

As is Board practice when a condition to commence a continuous course of construction within the specified deadline is not met, the Board affirmatively issues a decision confirming that the certificate is invalid.⁴ The Board should issue such an order confirming that the certificate is now invalid.

³ Amendment Case, Order on Certificate at 9 (May 19, 2016).

⁴ See, e.g., *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Meigs County, Ohio*, Case Nos. 06-30-EL-BGN, et al., Entry at 1-3 (July 30, 2012).

Alternatively, the Board should require Windpark to present affirmative evidence demonstrating that it had commenced a continuous course of construction by August 25, 2019, and that it had met all 15 prerequisite conditions to have lawfully started any construction.

I. **CERTIFICATE CONDITION INVALIDATING CERTIFICATE**

Certificate Condition 6 addresses the requirement that Windpark commence a continuous course of construction by August 25, 2019:

The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate." (emphasis added)

II. **CERTIFICATE CONDITIONS THAT ARE A PREREQUISITE TO ANY CONSTRUCTION**

There are at least 15 certificate conditions that must be satisfied before Windpark could have lawfully commenced any construction activities:

Condition 2. Interconnection Agreement with PJM

That the Applicant shall not commence construction of the Facility until it has a signed Interconnection Service Agreement with PJM, which includes construction, operation, and maintenance of system upgrades necessary to reliably and safely integrate the proposed generating Facility into the regional transmission system. The Applicant shall provide a letter stating that the Agreement has been signed or a copy of the signed Interconnection Service Agreement to the OPSB Staff. (emphasis added).

Condition 3. Preconstruction Conference

The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. (emphasis added).

Condition 9. Final Project Design

At least 30 days before the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of **the final project design**, including the facility, temporary and permanent access roads, any crane routes, construction staging areas, and any other associated facilities and access points, so that Staff can determine that the final project design is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically-referenced electronic data. The final design shall include all conditions of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate. (emphasis added).

Condition 12. Phase I Cultural Resources Survey Program

That prior to commencement of construction, the Applicant shall finalize a Phase I cultural resources survey program for archaeological work at turbine locations, access roads, substations, collection lines and laydown areas acceptable to Staff. If the resulting survey work discloses a find of cultural or archaeological significance, or a site that could be eligible for inclusion on the National Register of Historic Places, then the Applicant shall submit an amendment, modification, or mitigation plan for Staff's acceptance. Any such mitigation effort, if needed, shall be developed in coordination with the Ohio Historic Preservation Office with input from applicable local preservation officials and submitted to Staff for review and acceptance. (emphasis added).

Condition 13. Targeted Architectural Survey

That prior to the commencement of construction, the Applicant shall conduct a targeted architectural survey of the project area. The Applicant shall finalize a work program that outlines areas to be studied in the project area in coordination with OPSB Staff and the Ohio Historic Preservation Office. If the architectural survey discloses a find of cultural or architectural significance, or a structure that could be eligible for inclusion on the National Register of Historic Places, then the Applicant shall submit an amendment, modification, or mitigation plan for Staff's acceptance. Any such mitigation effort, if needed, shall be developed in coordination with the Ohio Historic Preservation Office with input from applicable local preservation officials and submitted to Staff for review and acceptance. (emphasis added).

Condition 19. Construction and Maintenance Access Plan

Applicant shall prepare a construction and maintenance access plan based on final plans for the Facility, access roads, and types of equipment to be used. At least 30 days prior to commencement of construction, Applicant shall submit the plan to OPSB Staff for review and acceptance. The plan shall consider the location of streams, wetlands, wooded areas, and sensitive plant species, as identified by the ODNR DOW, and shall explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance. The plan shall provide specific details on all wetlands, streams, and/or ditches to be crossed by the Facility, including those where construction or maintenance vehicles and/or Facility components such as access roads cannot avoid crossing the waterbody. In such cases, specific discussion of the proposed crossing methodology for each wetland and stream crossing (such as culverts), and post-construction site restoration, will be included. The plan shall include the measures to be used for restoring the areas around all temporary access points, and a description of any long-term stabilization required along permanent access routes. The plan shall include a detailed frac-out contingency plan for stream and wetland crossings that are expected to be completed via horizontal directional drilling (HDD). (emphasis added).

Condition 20. Vegetation Clearing Plan

At least 30 days prior to commencement of construction, the Applicant shall submit this plan to Staff, for review and confirmation that it complies with this condition. The plan shall identify all areas of proposed vegetation clearing for the facility, specify the extent of clearing and describe how clearing will be done (so as to minimize removal of woody vegetation), and describe how trees and shrubs (along access roads at construction staging areas, during maintenance operations, and in proximity to any other facilities) would be protected from damage. (emphasis added).

Condition 33. Emergency and Safety Plan

At least 30 days before the preconstruction conference, the Applicant shall submit to Staff for review and confirmation that it complies with this condition, a proposed emergency and safety plan to be used during construction, to be developed in consultation with the fire department(s) having jurisdiction over the area. (emphasis added).

Condition 41. Microwave Path Study

The Applicant shall monitor the microwave paths to ensure there are no adverse impacts. **At least 30 days prior to the preconstruction conference, the Applicant shall conduct a microwave path study** that identifies all existing microwave paths that intersect the selected route, and a worst-case Fresnel zone analysis for each path. A copy of this study shall be provided to the path licensee(s), for review, and to Staff for review and confirmation that the Applicant is complying with this condition. . . . (emphasis added).

Condition 43. Transportation Permits and Final Traffic Plan

Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, Ohio Department of Transportation, local law enforcement, and health and safety officials. **This coordination shall be detailed as part of a final traffic plan submitted to Staff prior to the preconstruction conference** for review and confirmation that it complies with this condition. (emphasis added).

Condition 44. Final Delivery Route Plan and Traffic Studies

The Applicant shall provide the final delivery route plan and the results of any traffic studies to Staff and the County Engineer(s) 30 days prior to the preconstruction conference. The Applicant shall complete a study on the final equipment delivery route to determine what improvements will be needed in order to transport equipment to the wind turbine construction sites. The Applicant shall make all improvements outlined in the final delivery route plan prior to equipment and wind turbine delivery. The Applicant's delivery route plan and subsequent road modifications shall include, but not be limited to, the following: . . . (emphasis added).

Condition 45. Road Use Agreement

The Applicant shall repair damage to government-maintained (public) roads and bridges caused by construction or maintenance activity. Any damaged public roads and bridges shall be repaired promptly to their previous condition by the Applicant under the guidance of the appropriate regulatory

agency. Any temporary improvements shall be removed unless the County Engineer(s) request that they remain. The Applicant shall provide financial assurance to the counties that it will restore the public roads it uses to their condition prior to construction or maintenance. **The Applicant shall also enter into a Road Use Agreement with the County Engineer(s) prior to construction and subject to Staff review and confirmation that it complies with this condition.** The Road Use Agreement shall contain provisions for the following: . . . (emphasis added).

Condition 46. Road Use Agreement

The facility owner and/or operator shall repair damage to government-maintained (public) roads and bridges caused by decommissioning activity. Any damaged public roads and bridges shall be repaired promptly to their pre-decommissioning state by the facility owner and/or operator under the guidance of the appropriate regulatory agency. The Applicant shall provide financial assurance to the counties that it will restore the public roads and bridges it uses to their pre-decommissioning condition. **These terms shall be defined in a road use agreement between the Applicant and the County Engineer(s) prior to construction.** The road use agreement shall be subject to Staff review and confirmation that it complies with this condition, and shall contain provisions for the following: . . . (emphasis added). (emphasis added).

Condition 47. Final Decommissioning Plan

The Applicant, facility owner, and/or facility operator shall comply with the following conditions regarding decommissioning:

- A. The Applicant , facility owner, and/or facility operator **shall provide the final decommissioning plan to Staff** and the county engineer(s) for review and confirmation of compliance with this condition, **at least 30 days prior to the preconstruction conference.**
...
- H. The Applicant, facility owner and/or facility operator shall post and maintain for decommissioning, at its election, funds, a surety bond, or similar financial assurance in an amount equal to the per-turbine Decommissioning Costs multiplied by the sum of the number of turbines constructed and under construction. . . . **At least 30 days prior to the preconstruction conference, the Applicant, the facility owner, and/or the facility operator shall provide an estimated timeline for the posting of decommissioning**

funds based on the construction schedule for each turbine.

Condition 48. NPDES Permits, SWPPP, SPCC, and Erosion and Sediment Control Plan

At least seven days before the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, a copy of all NPDES permits including its approved SWPPP, approved SPCC procedures, and its erosion and sediment control plan. Any soil issues must be addressed through proper design and adherence to the Ohio EPA BMPs related to erosion and sedimentation control. (emphasis added).

III. ARGUMENT

A. Windpark Has Not Commenced a Continuous Course of Construction and Therefore the Certificate is Invalid

Windpark's certificate required the commencement of construction within five (5) years of the journalization of the certificate. The Opinion, Order and Certificate was journaled on August 25, 2014 in the *Certificate Case*, thus requiring the commencement of a continuous course of construction by August 25, 2019. If such a continuous course of construction were not commenced by August 25, 2019, “[t]he certificate shall become invalid.”⁵ A continuous course of construction did not commence by August 25, 2019.

GNU's members include owners of property adjacent to the wind farm property.⁶ As such, GNU's members work, reside, and travel adjacent to and around the wind farm property on a daily basis. There has not been a continuous course of construction at the proposed wind farm property to date. On August 22, 2019, Windpark filed a notice indicating that on-site construction had commenced on August 22, 2019. However,

⁵ *Certificate Case*, Stipulation at 3 (May 16, 2014).

⁶ GNU's members include Kevin Ledet, identified by Windpark as an Adjacent Property Owner. *Certificate Case*, Windpark Exhibit 2b (Filed in *Certificate Case* on June 3, 2014).

photographs taken on August 22, 2019 and attached to this motion depict the complete absence of construction activity associated with the proposed wind farm.⁷ On August 22, 2019, a tractor trailer delivered some construction equipment to the site, and on August 23, 2019 several vehicles did begin moving around some dirt on the property. This scant activity is far short of the continuous course of construction necessary to have prevented the certificate from becoming invalid on August 26, 2019.

Windpark failed to commence a continuous course of construction by August 25, 2019. By the express terms of the certificate, it is now invalid. In similar circumstances, the Board has taken the affirmative step of issuing an order confirming the cancellation of the invalid certificate.⁸ The Board should follow this practice and issue an order confirming that the certificate became invalid by its own terms and cancel the certificate.

In the alternative, the Board should require Windpark to present affirmative evidence demonstrating the alleged construction activity that has occurred that Windpark believes satisfies Certificate Condition 6's continuous course of construction requirement.

B. Windpark Could Not Have Lawfully Commenced A Continuous Course of Construction within the Requisite Five-Year Period

Not only did Windpark not commence a continuous course of construction by August 25, 2019, but it failed to satisfy the certificate conditions that were a prerequisite to any construction, continuous or otherwise. As a matter of law, the certificate is invalid.

⁷ Attachment A.

⁸ See, e.g., *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Meigs County, Ohio*, Case Nos. 06-30-EL-BGN, et al., Entry at 1-3 (July 30, 2012); see also *In the Matter of the Application of Black Fork Wind Energy, LLC for a Certificate to Site a Wind-Powered Electric Generating Facility in Crawford and Richland Counties*, Case Nos. 10-2865-EL-BGN, et al., Entry at 1 (June 20, 2019) (taking the affirmative step to grant the relinquishment and withdrawal of a certificate).

One of the many prerequisites to any construction activity associated with the proposed wind farm was the requirement to enter into an interconnection agreement with PJM. Certificate Condition 2. The proposed wind farm is identified in PJM's interconnection queue as AC1-051.⁹ As of August 26, 2019, PJM is reporting that project AC1-051 is still in the Facilities Study Report phase, the phase that must be completed before an interconnection agreement could be executed.¹⁰ PJM's queue also identifies that an interconnection agreement for this project has not yet been executed.¹¹ Without a signed interconnection agreement, Windpark is prohibited from commencing any construction activities, let alone the commencement of a continuous course of construction.

Windpark did have an interconnection agreement for project X3-023, but that project was withdrawn.¹² Among other things, project X3-023 required 20% of site work to have been completed by April 30, 2017; major electrical equipment delivered by June 30, 2017; and commercial operation by December 31, 2017. Those requirements were not met, and the prior interconnection agreement, along with the entire X3-023 project, was officially withdrawn on August 23, 2016. Simply put, Windpark does not have an interconnection agreement with PJM that would have lawfully permitted Windpark to have commenced construction on or about August 22, 2019 as alleged by Windpark.

⁹ PJM's new service queue is available at the following link: <https://pjm.com/planning/services-requests/interconnection-queues.aspx>. The Feasibility Study and System Impact Study for the project are available at the following links: https://pjm.com/pub/planning/project-queues/feas_docs/ac1051fea.pdf and https://pjm.com/pub/planning/project-queues/impact_studies/ac1051imp.pdf.

¹⁰ See Attachment B.

¹¹ *Id.*

¹² See Attachment B.

Upon information and belief, GNU also does not believe Windpark has satisfied all of the remaining 14 certificate conditions that must all be satisfied for any construction to have commenced. For example, a preconstruction conference was required to have been completed in advance of any construction activities, and other conditions had to have been satisfied at least 30 days prior to the preconstruction conference, that is, no later than July 26, 2019. Certificate Conditions 9, 19, 33, 41, 44, 47(A) & (H); see also Certificate Condition 20 (also required to have been satisfied at least 30 days prior to construction). Additionally, a road use agreement with the County Engineer is a further prerequisite to construction. Certificate Conditions 45 & 46. It is not clear that all the required road use agreements were executed by August 25, 2019.

Notably, Windpark has not filed any information in either of the above-captioned dockets signaling compliance with the certificate conditions as is common practice (though the certificate conditions themselves do not necessarily specify that the information must be docketed). It does not appear from these dockets that any, let alone all, of these prerequisites to construction have been satisfied.

Based on the foregoing, not only has a continuous course of construction not been commenced, but Windpark did not complete or satisfy all 15 certificate conditions that were a prerequisite to the commencement of any construction activities. Windpark, therefore, could not have lawfully commenced a continuous course of construction by August 25, 2019.

Again, if the Board does not confirm that the certificate is invalid, it should at a minimum require Windpark to present affirmative evidence demonstrating that Windpark

has satisfied all of the certificate conditions that are a prerequisite to the commencement of construction.

IV. CONCLUSION

Windpark was required to have commenced a continuous course of construction of the proposed wind farm no later than August 25, 2019. Windpark did not commence a continuous course of construction by that date and, as a matter of law, was prohibited from commencing any construction because it had not satisfied all of the prerequisite conditions to the start of any construction activities. By the express terms of the certificate, it became invalid on August 26, 2019. The Board should issue an order confirming that the certificate is invalid and should cancel the certificate.

Alternatively, and because Windpark is apparently alleging that it has commenced construction effective August 25, 2019, the Board should require Windpark to present affirmative evidence demonstrating that a continuous course of construction did in fact begin prior to August 25, 2019. Under this alternative approach, the Board should also require that Windpark demonstrate that it had satisfied all certificate conditions that are a prerequisite to the commencement of construction.

Respectfully submitted,

/s/ Matthew R. Pritchard

Matthew R. Pritchard (Reg. No. 0088070)
(Counsel of Record)

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Attachment A

(Pictures taken 8/22/19 demonstrating a lack of a continuous course of construction)





08/22/2019 16:00



08/22/2019 16:01



08/22/2019 16:07



08/22/2019 16:01



08/22/2019 16:00







08/22/2019 15:56



08/22/2019 15:52



08/22/2019 15:29



08/22/2019 15:26



08/22/2019 15:22



Attachment B

(screenshot of website taken 8/22/19, status verified 8/26/19)
("ISA" stands for Interconnection Service Agreement)

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	Description		Transmission Rights			Phases & Agreements			Dates	
Queue/OASIS ID	Name	State	Status	Transmission Owner	Initial	Feasibility	Impact	Facilities	ISA/WMPA	CSA/UCSA
W4-021A	Richland & Crawford	OH	Withdrawn	AEP						
X1-027A_AT12	Davis Besse-Beaver 345kV	OH	Withdrawn	ATSI						
X2-039	Brookside-Cloverdale 138kV	OH	Withdrawn	ATSI						
X2-058	Buckley Road 138kV	OH	Withdrawn	AEP						
X3-023	S. Greenwich-Willard 69kV	OH	Withdrawn	AEP						
X3-030	Shelby-S.W. Lima 345kV	OH	Withdrawn	Dayton						
X3-031	Southwest Lima-West Moulton 138kV	OH	Withdrawn	AEP						
Y1-030	Forest 69kV	OH	Withdrawn	AEP						
Z1-035	Lake Erie Wind 138kV	OH	Active	ATSI						
AA2-075	Southwest Lima 345kV	OH	Withdrawn	AEP						
AB2-016	Maddox Creek 345kV	OH	Withdrawn	AEP						
AC1-051	Willard-S. Greenwich 69kV	OH	Active	AEP						
AC1-173	Logtown 138kV	OH	Active	AEP						
AC1-176	Timber Switch 138kV	OH	Active	AEP						
AC1-195	Dunkirk-Ada 69kV	OH	Withdrawn	AEP						

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state of Ohio)
County of HURON)

After being sworn, Affiant states as follows:

1. My name is Kevin Ledet.
2. I am a member of Greenwich Neighbors United and I own property adjacent to the wind farm property addressed in these proceedings.
3. As an owner of property adjacent to the wind farm property, I have observed the wind farm property on a frequent, and often daily basis.
4. On August 22, 2019, I drove around the wind farm property and took the pictures that are included in Attachment A to this Motion.
5. To the best of my knowledge, no construction activity occurred at the proposed wind farm before August 22, 2019 when a few pieces of construction machinery were delivered. On August 23, 2019, these construction vehicles appear to be pushing around some dirt on the wind farm property, but I do not know the exact purpose of that activity. Based on the

very minor activity that only began in the last couple of days, I would not characterize the activity as a continuous course of construction.

Further Affiant sayeth naught.

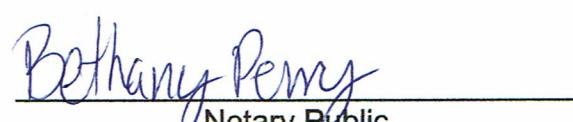


Kevin Ledet

Sworn to in my presence this 23rd of August 2019.



BETHANY
PERRY
NOTARY PUBLIC.
STATE OF OHIO
My Commission
Expires
Oct 28, 2023



Bethany Perry
Notary Public

My Commission Expires 10.28.23

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Greenwich Neighbors United's Motion for Order Confirming That Certificate is Invalid and a Cancellation of the Certificate* has been served *via* electronic mail upon the following parties of record this 26th day of August 2019.

/s/ Matthew R. Pritchard

Matthew R. Pritchard

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ADMINISTRATIVE LAW JUDGES

ATTORNEYS FOR THE OHIO FARM BUREAU FEDERATION

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in

Case No(s). 13-0990-EL-BGN, 15-1921-EL-BGA

Summary: Motion -- Greenwich Neighbors United's Motion for Order Confirming that Certificate is Invalid and a Cancellation of the Certificate electronically filed by Mr. Matthew R. Pritchard on behalf of Greenwich Neighbors United