



June 18, 2020

Mr. Chair and Members of the Ohio Power Siting Board,

Thank you for this opportunity to provide comments in response to the Ohio Power Siting Board's ("OPSB" or "Board") five-year rule review process. EDP Renewables North America LLC ("EDPR") is a member of the American Wind Energy Association and supports its comments previously provided to the Board on this topic. As the largest owner and operator of wind farms in the Ohio, EDPR appreciates the chance to offer additional input with respect to the Board's question on certificate monitoring and enforcement.

EDPR is the fourth largest developer, owner, and operator of wind farms in the United States, and is the industry leader in the State of Ohio with over 390 MW of operating projects located in Paulding and Hardin counties. To date, EDPR has invested more than \$700 million in four wind farms in Ohio, which have contributed more than \$8 million directly to local governments, schools, and other critical public services. Over the life of the wind farms, this will increase to more than \$100 million to support the communities hosting our projects.

EDPR takes seriously the obligation to safely operate its wind farms and comply with all relevant laws. EDPR has been operating projects in Ohio since 2011 and has extensive experience in certificate compliance and monitoring with the Ohio Power Siting Board. The Board's current practices for monitoring and enforcement of certificate conditions are sufficient and the Board has the appropriate authority to enforce certificate conditions. As such, EDPR would like to offer these responses to the Board's third question: "How should the Board monitor and enforce the terms of its certificate?" Each of the Board's specific questions is discussed below.

### **3. How should the Board monitor and enforce the terms of its certificates?**

While the Board's current practices are sufficient, the Board could consider requiring applicants to file compliance documents with respect to Certificate conditions to show that these requirements have been met. For example, EDPR has filed approximately 20 documents related to Notices of Compliance on Certificate Conditions with the Board on its Paulding Wind Farm IV, case record 18-91-EL-BGN. By filing these compliance documents in the case docket, the Board will receive the appropriate information from applicants to be assured that Conditions have been met or that steps are being taken to meet these Conditions.

For enforcement, the OPSB jurisdiction is set forth in RC 4906.97-4906.99 which we will explore in more detail on the specific sub-questions below.

#### **a. How should compliance with certificated conditions be documented both with regard to the determination of when construction may commence and through the life of the certificate/facility?**

EDPR files compliance documents in the relevant case docket at the OPSB to proactively demonstrate to the OPSB that compliance obligations have been fulfilled. While this practice is not currently required by the rules, some applicants do this voluntarily. The OPSB could consider adopting this as standard

practice. Prior to construction, applicants could be required to file documentation in the case docket showing that Certificate Conditions that are required prior to commencement of construction have been met.

It is important to note that the start of construction activities often are tied to the completion of the certificated conditions, and it is crucial that construction activities are not delayed with an additional approval or review by the OPSB after submittal. In fact, review by the OPSB staff to ensure that the applicant has complied with the certificate conditions without the need for formal approval by the OPSB has been supported by the Supreme Court of Ohio in its decision in the *Buckeye Case* (2012-Ohio-878). Ongoing communication and informal updates between the applicant and OPSB staff during the post-certificate and pre-construction phase are most helpful. EDPR meets with OPSB staff, the site construction managers, and other relevant staff members to share updates on compliance with permit conditions prior to construction. A similar approach for filing documents to verify that conditions have been met prior to operations could also be taken and the applicant can file verification in the docket. During the operational life of the facility, applicants could file documentation in the case docket on any updates to the status of Certificate Conditions.

- b. To the extent that permits, licenses or other consents must be obtained from federal, state or local authorities before the project can move forward, how should the applicant document satisfaction of these requirements and update the Staff and Board as a result of changes in circumstances that may affect the authority provided by such permits, licenses or other consents.**

Ohio's statewide siting permit from OPSB is the only state or local permit required to build an electric generating facility. Although not required, some applicants voluntarily file documentation in the case docket verifying that other approvals have been obtained. Applicants could be required to file this documentation along with copies of the documents received for the Board to have a record that reflects that these requirements have been met but the rules must not contradict the purpose of the jurisdiction given to OPSB under the statute by layering on additional permits needed to construct. RC 4906.13 provides that "[n]o public agency or political subdivision of the state may require any approval, consent, permit, certificate, or other condition for the construction of initial operation of a major utility facility...authorized by a certificate issued" by the OPSB. The OPSB cannot delegate its jurisdiction to the local authorities or other state agencies.

- c. More generally, what post-construction monitoring and enforcement procedures should apply, including during the operation and decommissioning phase?**

If there are additional conditions that apply to the operational phase of project, those could be satisfied by the applicant filing relevant materials in the docket after those conditions have been satisfied.

- d. What additional procedures should apply, if any, to certificate transfers beyond the transferee agreeing to comply with the terms, conditions, and modifications imposed upon the certificate by the Board? What enforcement mechanisms should exist to ensure compliance with certificated conditions, board orders, rules, or laws (i.e. suspension of certificate or operating authority in the event of a violation of 4906.98)?**

The transferee should be held to the same requirements as the transferor. RC 4906.04 provides that “[a] certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, conditions, and modifications contained therein.”

4906.97 provides the OPSB with the appropriate enforcement mechanism to ensure compliance. Currently in statute, 4906.97 (A) states, “Upon a finding by the power siting board that there are reasonable grounds to believe that a person has violated a provision of section 4906.98 of the Revised Code, the board shall fix a time for hearing such complaint and shall notify the person.” The Parties to the complaint are entitled to be heard, represented by counsel, and to have witnesses attend any hearing. The Board may suspend activity that is subject to the complaint during the hearing and may assess a forfeiture for each day of the violation up to certain limits. In addition, upon showing that the complaint has been satisfactorily addressed the board shall terminate the suspension.

These measures provide the Board with the appropriate authority to enforce Certificate requirements and to ensure that any non-compliance incidents are resolved in a timely fashion. These conditions, due to the time required to conduct a hearing and the financial risk posed by any delay, in addition to the ability of the Board to assess a forfeiture for each day of the violation of the provisions in the Revised Code, serve not only as appropriate enforcement of the Revised Code, but also as appropriate deterrence to non-compliance.

- e. By what process should decommissioning costs be revisited and evaluated for purposes of establishing the bond level?**

In order to evaluate and establish the appropriate decommissioning bond level, the applicant should update its initial decommissioning study conducted during the OPSB application process after the first 10 years of operation, and every five years thereafter. The revisions could include updates to decommissioning techniques, salvage values, costs of labor, and any other relevant changes. The report should provide the estimated value to decommission project infrastructure to the Board. The Board should accept a revised financial assurance in the form of a performance bond, other form of surety bond, irrevocable letter of credit, self-guarantee, or parent guarantee, as financial assurance for decommissioning.

The Board should consider the salvage value when evaluating the decommissioning bond level as this constitutes a real and tangible financial value. Many of the materials used in the construction of wind farms, such as steel, aggregate, and other components, can be sold, recycled and reused and therefore maintain a high value even at the end of the facility’s useful life. The statute does not limit the Board in considering this real value. Salvage value is a significant factor in determining the decommissioning cost and provides a more accurate representation of the actual cost to decommission. In many other

jurisdictions, the salvage value offsets the amount of money required to be held in a form of financial assurance for decommissioning (see for example permitting jurisdictions in Indiana, Illinois, Michigan, Pennsylvania, Oklahoma, Texas, North Dakota, North Carolina.)

In addition, decommissioning appears to be treated differently based on the type of electric generation. Specifically, the Board has required more onerous and expensive conditions for wind certificates than other power plants. For example, in the issuance of the Opinion, Order, and Certificate in case number 18-91-EL-BGN for the Paulding Wind Farm IV LLC, under “Minimum Adverse Environmental Impacts”

Paragraph 106 states, “Due to the fact that the project impacts such a large area, it is necessary that the Applicant secure a financial instrument that best assures the ability to completely decommission the facility. Because the project would not generate revenue until it is operational, it is necessary that the decommissioning funds be available at the start of construction.” The Paulding Wind Farm IV infrastructure impacts directly approximately 54 acres of farmland.

In contrast, in case number 16-2443-EL-BGN for the Guernsey Power Station LLC (GPS), a natural gas combined cycle power plant, its Opinion, Order, and Certificate does not stipulate any decommissioning financial assurance or decommissioning plan. However, GPS impacts a similar total footprint of land of 50 acres, and the cost to decommission the facility would be a significant financial burden to the state in the event that the company were to abandon the facility without fully decommissioning it on their own.

In review of the approved cases in the Docket, in regard to decommissioning, this requirement is not equally applied across generation types, even though all generation types must decommission or put in place a repowering plan for the facility at the end of its useful life.

### **Conclusion**

In summary, EDPR thinks that the Board’s current practices with regard to monitoring and enforcement of certificate conditions are sufficient but would be open to the Board formalizing a requirement for companies to docket their compliance measures. In addition, EDPR recommends the Board allow for a more accurate decommissioning cost estimate by allowing the cost of salvage to be included in the amount of financial assurance to be collected. This would at least allow for a more accurate decommissioning cost estimate.

Best regards,

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