



Ohio Supreme Court decision addresses certificate amendments and setback waivers for wind projects

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On June 20, 2019, the Ohio Supreme Court held that the Ohio Power Siting Board's (OPSB) approval of new wind turbine models was not an "amendment" of the certificate filed by Greenwich Windpark, L.L.C. (Greenwich) and did not trigger the current setback requirements in [In re Application of 6011 Greenwich Windpark, L.L.C. Slip Op. No. 2019-Ohio-2406](#).

In August 2014, the Board approved Greenwich's application to construct a wind farm subject to 53 conditions. The proposed facility would consist of up to 25 turbines on approximately 4,650 acres of land leased from 26 landowners in Greenwich Township, Huron County. The application was grandfathered in under the previous setback requirements, as opposed to the more stringent property line setbacks passed by the Ohio General Assembly in 2014.

Since wind turbine technology had improved, Greenwich sought to add three new turbine models to the list of acceptable turbines for its facility. In November 2015, Greenwich initiated a new proceeding by filing to amend its certificate. While two of the new models were slightly larger than the certified model, no turbine locations would change, and all new models would comply with the minimum setback requirements in place at the time when the Board originally issued Greenwich's certificate. Consequently, the Board approved Greenwich's application to add the newer models to the list.

In determining whether the turbine changes constituted an “amendment” to Greenwich’s certificate for the purposes of applying the new setback requirements, the Court reasoned that an “amendment” applied specifically where there is a “substantial change in the location of a turbine” or a material increase in an environmental impact caused by the turbine, which was not addressed in the initial application. Therefore, the current and more stringent setback requirements under R.C. 4906.20 and R.C. 4906.201 did not apply to the proposed facility.

Importantly, the Court distinguished its recent decision in *In re Application of Black Fork Wind Energy, L.L.C.* Slip Op. No. 2018-Ohio-5206. The Court noted that the issue in *Black Fork* was whether the Board could extend the deadline for beginning construction in a siting certificate by granting a motion rather than complying with the statutory process of amending the certificate. The further Court noted that, “*Black Fork* should not be interpreted as requiring that every proposed change to a wind farm’s certificate—no matter how minor or immaterial—is an amendment for purposes of applying the enhanced setback requirements.”

Additionally, the Court concluded that the Board reasonably interpreted the setback waiver provision pursuant to R.C. 4906.20(B)(2)(c). Here, the intervenors argued that Greenwich must obtain waivers from all owners of property adjacent to any portion of the proposed facility, regardless of whether the property is actually within the setback distance. However, the Court held that a waiver is required only from landowners who own property adjacent to a turbine that falls within a minimum setback.

For wind projects in Ohio, this decision provides additional clarity to the recent *Black Fork* decision concerning what kinds of changes constitute an amendment to a certificate. Importantly, the decision also confirms which property owners must provide a setback waiver.

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