

## **FINDINGS OF FACT**

### **Supplemental Report**

FPL Energy Illinois Wind, LLC (FPL) proposes to build and operate a wind farm in unincorporated DeKalb County in portions of Milan, Afton, Clinton, and Shabbona Townships. A public hearing was held before the DeKalb County Hearing Officer on March 21, 2009 to consider a request for a Special Use Permit to construct and operate up to 119, 1.5 megawatt turbines 398 feet in height and a substation in the A-1 Agricultural District Zone. The petitioner has since then submitted additional exhibits for consideration by the DeKalb County Board. The public hearing was reopened on May 11, 2009 to review the new information only. Testimony and exhibits obtained in the March 21, 2009 hearing remain incorporated into the record of proceedings of the Special Use Permit request.

### **Documents, Exhibits, and Testimonies**

New exhibits and documents incorporated into the record of proceedings and are included here by reference:

- Public Notice including legal description and tax numbers for subject parcels.
- Notice Letter and Affidavit of Service of Notice for DeKalb county Public Hearing from Pamela Berkowitz, April 24, 2009.
- DeKalb County Planning Department Memorandum, March 25, 2009.
- DeKalb County Planning Department Staff Report, May 1, 2009.
- NextEra Energy letter of March 27, 2009 including Exhibit P, regarding drainage and storm water; Exhibit Q, regarding a proposed dispute resolution process; Exhibit R, regarding decommission of towers; Exhibit S, regarding property tax estimates; Exhibit T, regarding road and bridge repair; Exhibit U, regarding setbacks; Exhibit V, regarding crop spraying; and, Exhibit W, regarding property value guarantee program.
- Exhibit X, letters supporting large wind farm development.
- Exhibit Z, Correspondence of David Markarian, September 3, 2008 to January 26, 2009.

- Exhibit AA, Online article "IL Leads Way on Wind Tower Safety Measures", April 24, 2009.
- Correspondence of Pamela Berkowitz to Mr. Muscarello, March 30, 2009.
- Statement of Richard S. Porter, May 11, 2009.
- Statement of Richard Porter, March 21, 2009.
- Supplement to Amended Motion to Dismiss.
- Statement of Beth L Einsele, May 11, 2009.
- Powerpoint copy or Testimony of Richard R. James.
- Statement of Gerry Meyer, May 11, 2009, and Wind Turbine Noise diary.
- Letter of Kevin and Donna Hickey, May 11, 2009.
- Statement of Juanita Milton, May 11, 2009.
- Affidavit of Ann Wirtz, May 8, 2008.
- Affidavit of Hal E. Graham, April 23, 2009.
- Statement of Thomas and Linda Gogol, May 11, 2009.
- Statement of Susan Flex, May 11, 2009.
- Statement of Claudia Johnson, May 11, 2009.
- Statement of Peggy Lowery, May 12, 2009.
- Statement of Richard Boris, May 12, 2009
- Letter of Dennis and Nancy Johnson, May, 2009.
- Milan Township Board statement, April 15, 2009.
- Letter of Dennis L. Johnson, May, 2009.
- Letter of Jack Bennet, May 11, 2009.
- Affidavit of Dr. Michael A. Nissenbaum, M.D., May 5, 2009.
- Affidavit of Dr. F. Owen Black, M.D., May 8, 2009.
- Affidavit of Gregg L. Owens, May 8, 2009.
- Testimony of Paul Miller, DeKalb County Planning Department.
- Testimony of David Markarium, John DiDonato, Anthony Pedroni, and Tom Factor on behalf of petitioner.
- Testimony of Charles Muscarello, Richard Porter, Tina Hass, Beth Einsele, Mel Hass, Wendy Todd, Mary Murphy, John Hart, Keith Anderson, Richard James, Mark Johnson, Jerry Meyer, Erin Herbold, John Pitstick, Janet Rosenberg, John Petersen, Heidi Petersen, Brian Hart, Alfred Aspengren, Dierdre Mihm, Mark Hass, Kim Schertz, Scott Hart, Thomas Gogol, Peggy Carlson, Charles Hart, Maria Dempsey, Jim Nilles, Susan flex, Claudia Johnson, Ron Flex, Bill Mullins, Peggy Lowery, Mitchell Heldt, Roger Craigmile, Sherry Helmuth, Juanita Milton, Kevin Hickey, Dorian Moore, Michael Kresge, John Lowery, Ron Stefanski, Richard Boris, Ginger Tuttle, John Challand, Sharon Challand, Matt Swanson, Rodney Kyler, Mark Szwla, Tammy Duriavich.

**Site Description**

The Public Notice states that various private properties included in the proposal in portions of Milan, Afton, Clinton, and Shabbona Townships have boundaries beginning at the southeast corner of Gurler Road and County Line Road, extending east to Anderland Road, south to Minnegan Road, east to Hwy. 23, south to Lee Road, west to Shabbona Road/Junes Road, south on Shabbona Road/Junes Road to Shabbona Grove Road, and west on Shabbona Grove Road to County Line Road in DeKalb County, Illinois are included in the proposal. A site review showed the area is generally in agricultural use, with some scattered non-farm residences. There are a number of communication towers on the skyline in the subject area. The proposed turbines would be located north, south and east of the Village of Lee, and north, west, and south of the Village of Shabbona.

**Relief Requested By Applicant**

First, the DeKalb County Board must determine that a wind farm is substantially similar to other listed Special Uses in an A-1 District in order to construct and operate a wind farm. Second, FPL requests a Special Use Permit in accordance with Section 9.01 of the DeKalb County Zoning Ordinance for the construction of 119 wind turbines, cross country underground collector cables, up to 4 meteorological towers, access roads, an electrical substation, and a laydown/O&M facility in unincorporated DeKalb County. The properties in question are in an A-1 Agricultural District.

**Conditions For Special Use**

- a. The proposed special use complies with all applicable provisions of the applicable district regulations.

Please review Findings of Fact of March 21, 2009.

- b. The proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or the public welfare at large.

Mr. John DiDonato testified that the FPL commitment to a Property Value Guarantee Plan (PVGP, Exhibit W) is evidence and belief that wind farms do not negatively affect

property values. FPL agreed to provide a PVGP to all participants owning property within  $\frac{3}{4}$  mile of a wind turbine. FPL will resolve disputes and pay out in 30 days.

FPL agrees to pay future property taxes (Exhibit S) in keeping with the current, existing formula for how property taxes are generated for wind farms even if the law expires or is replaced in 2011. If a new law results in lower tax payments FPL will be bound by the existing formula for the life of the project.

Mr. Richard Porter testified that the PVGP is insufficient in that the proposal protects property owners within only  $\frac{3}{4}$  mile of any wind turbine. A burden is placed on the landowner to list the property at the asking price for 270 days. The property owner may have to hire up to 4 appraisers as part of the process. An alternate PVGP was suggested.

Beth Einsele compared the PVGP offered by DeKalb County and submitted an alternative plan for consideration. Both plans require appraisals. The 270 day period in which a property is marketed may be too long and the DeKalb County plan was considered "consumer weary". The alternate plan termed "consumer friendly" proposed that when an appraisal is finalized and the agreed upon value becomes the sale price to the applicant and/or the equity value determined by that same appraisal process becomes the value for an equity check to be distributed to the landowner within 30-60 days. There is no protection plan if a wind farm is terminated or bankrupt.

Mr. John Pitstick testified that he was concerned that the language of the proposed PVGP limited the use of the property owner to sell by owner.

Mr. DiDonato testified that a licensed real estate broker keeps the transaction at an arm's length. While there would be adequate negotiation under the proposed PVGP, FPL was not wedded to the idea that the property had to be sold by a licensed real estate agent.

- c. The proposed special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district.

Mr. DiDonato testified that all wind turbine sites (Exhibit U) are at least 1000 feet from the boundary of any parcels of 20 acres or less in size with a residence on the property. In response to a request from DeKalb County Planning and Zoning Staff, measurements will be taken from the exposed edge of the tower rather than the center of the tower to 429 feet minimum setback. Pipelines have a legal right-of-way. An acceptable set back for a wind turbine from a pipeline is 60 feet. No written agreement between FPL and a pipeline company is required.

Mr. Anthony Pedroni testified that there is one residence near the proposed substation. Setbacks will meet Illinois Pollution Control Board (IPCB) standards.

Mr. Bill Mullins testified that he and his family have farmed in Shabbona Township for 150 years. He believes that he has the right to harvest the wind and wants the equipment to do so. He is concerned about turbine related health issues and would not support the proposal if there were health issues. There are 75 property owners signed up for wind turbine installation, but didn't have to. A setback of 1400 feet is adequate. It is less likely that grain yields will be good this year. The farmer can diversify with wind turbines. Mr. Mullins stated that he lives near a rail road and it is much noisier than a wind turbine.

Mr. David Markarian testified that an individual does not own the view of a neighbor's property. The view ends at your own property. Objector's rights cannot exceed those of neighbors and those willing to farm the land.

- d. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations.

Please review Findings of Fact of March 26, 2009.

- e. Adequate utility, drainage, and other such necessary facilities have been or will be provided.

Mr. DiDonato testified final road and bridge repair agreements (Exhibit T) with DeKalb County and affected townships will be executed upon approval of the wind farm proposal. FPL agrees to local on-site tile inspections and will remediate drainage problems with pre-qualified

contractors (Exhibit P). The petitioner expects to fix tiles immediately and agrees to compensate property owners.

- f. The proposed use can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area; shall in all other respects conform to the applicable regulations of the district in which it is located; and is deemed essential or desirable to preserve and promote the public health, safety, and general welfare of DeKalb County.

Mr. DiDonato testified that FPL has submitted a schedule for decommissioning wind turbines (Exhibit R) and will post a \$3.5 Million security bond at construction and will maintain that security for the first 15 years of operation. A hotline for aerial applications (Exhibit V) will be implemented to prevent FPL and property owner work crews from being in the fields. Turbines will be shut down during spraying. Aerial operators will be reimbursed for increased costs of spraying and described two options to remedy concerns about aerial spraying costs. Property owners and renters on non-adjacent property will be included in an aerial spraying agreement. A best practices plan has been supplied to the appropriate aviation agency. A formal process to mediate complaints and disputes and to mitigate problems (Exhibit Q) will be implemented which will include a 24 hour hot line during construction and through the life of the project. Construction work will begin a 7 AM and work will continue into the night depending on equipment such as cranes available at the site and weather. Snow does not affect installation of turbines. There are no problems with snow plowing and FPL will plow snow on local roads if DeKalb County and townships permit it. The FAA has approved wind turbines as no hazard. Hazardous materials are collected appropriately and sent to a HAZMAT site.

Mr. Markarian testified that animals generally stay away from construction sites and then fill in a wind turbine area after construction.

Mr. Porter testified the decommissioning proposal was insufficient in that FPL's financial assurances total only \$4 million, but the cost of removal is \$12 million.

Mr. Richard James testified about safe setbacks in a wind farm. Mitigation is necessary when sound levels exceed 10 decibels. An increase in sound levels of 5-10db is intrusive; 10-15 db is very noticeable; 15-20db is

objectionable. When sound levels rise above 35 db, 35-40% of people will report annoyance. The FPL proposal would be almost 45db at current setbacks and highly annoying to 4 of 10 people. Wind turbines are more annoying for many reasons which include swishes, thumps, whistles, mechanical sounds and rumble. There are higher annoyances at lower levels than other common community noises. The G.E. 1.5 MW wind turbine would be heard above the level of perception by 90% of people. DeKalb County will be saturated with low frequency sound. Wind turbines would raise night time sounds by over 20db creating pollution and would exceed IPCB night time sound limits.

Mr. James testified in cross examination that he had become aware that the ISO1996 (1971), the standard upon which his study was based, had been removed more than 20 years ago and replaced by other metrics. He maintained that the expired standard was easier to understand.

Mr. Markarian testified that the proposal preserves the public health, safety, and welfare by promoting income to landowners, jobs, and tax revenue. The proposal can make substantial contributions to the local economy and offers renewable energy. FPL operates 7,000 turbines in many sites.

FPL has no confirmed or documented claims of medical problems as a result of wind turbines. The literature relied upon by objectors is flawed. There are many variables in determining effects which must be studied on a case by case basis. Low Frequency Noise (LFN) caused by the G.E 1.5 MW slx turbines has been shown to fall below the level of concern by Pierpont and James. The proposed wind turbines meet all standards set by the IPBC, ANSI Standards, and the United Kingdom DEFRA Standards. No recognized organization identifies "Wind Turbine Syndrome" and studies including the Syndrome have not been peer reviewed. Public health officials around turbines have not reported an uptick in health concerns.

Erin Herbold testified that nuisance cases around wind farms have increased. A West Virginia court upheld private and public nuisance claims. More courts are recognizing wind farms as nuisances.

Mr. Richard Boris testified that wind turbines block development of the Village of Lee on three sides. The proposed 1400 foot setbacks should not protrude into village limits.

**Recommendation:**

It is recommended that, in addition to conditions and restrictions previously submitted by the petitioner, a Special Use Permit be approved to include the following conditions and restrictions:

1. The petitioner has proposed a Property Value Guarantee Plan such that the project will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or the public welfare at large.
2. The burden of proof rests with the applicant to clearly establish the proposed special use. The petitioner testified under oath that FPL has 7,000 turbines operating in many sites. There are no confirmed or documented claims of medical problems as a result of wind turbines. The petitioner will meet all established standards of the Illinois Pollution Control Board and the recommendations of the World Health Organization.
3. The petitioner will institute a 24 hour complaint hot line throughout the construction process and the life of the project and will submit to a civil mediator to resolve impasse.
4. The petitioner has presented a plan to clarify decommissioning finance.
5. The petitioner has submitted a plan regarding Property Tax Payment Estimates.
6. The petitioner has submitted a Road and Bridge Repair Agreement that must be negotiated with the DeKalb County Engineer and Township Road Commissioners.
5. Specific setbacks as shown in a setback map.
6. The petitioner has agreed and supplied a plan to repair or replace drain tile or above ground drainage systems during construction to their pre-construction condition.

7. The petitioner has submitted a plan for Agricultural Lands Aerial Applications.

Respectfully submitted,

A handwritten signature in dark ink that reads "David Dockus". The signature is written in a cursive style with a large, prominent "D" at the beginning.

David Dockus  
Hearing Officer