

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of)
Black Fork Wind Energy, L.L.C.)
for a Certificate to Site a Wind-Powered)
Electric Generating Facility in)
Crawford and Richland Counties, Ohio)

Case No. 12-0900

On Appeal from the Ohio Power Siting
Board, Case No. 10-2865-EL-BGN

APPENDIX (VOLUME I) TO MERIT BRIEF
OF APPELLANTS GARY J. BIGLIN, BRETT A. HEFFNER, ALAN PRICE,
CATHERINE PRICE, AND JOHN WARRINGTON

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IN THE SUPREME COURT OF OHIO

PUCO

In the Matter of the Application of)
Black Fork Wind Energy, L.L.C.)
for a Certificate to Site a Wind-Powered)
Electric Generating Facility in)
Crawford and Richland Counties, Ohio)

Case No. _____

On Appeal from the Ohio Power Siting Board, Case No. 10-2865-EL-BGN

**NOTICE OF APPEAL OF APPELLANTS INTERVENORS, GARY J. BIGLIN,
BRETT A. HEFFNER, ALAN PRICE, CATHERINE PRICE,
AND JOHN WARRINGTON**

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Appellants Intervenors Gary J. Biglin, Brett A. Heffner, Alan Price, Catherine Price and John Warrington (collectively "Appellants") hereby give notice of their appeal pursuant to R.C. §4903.11, §4903.13, and R.C. §4906.12 to the Ohio Supreme Court from the following attached orders of the Ohio Power Siting Board in Case No. 10-2865-EL-BGN (hereinafter referred to as the "Orders"): (1) Opinion, Order and Certificate entered on January 23, 2012; and (2) Entry on Rehearing entered on March 26, 2012. Appellants are and were parties of record in Case No. 10-2865-EL-BGN and timely filed their Application for Rehearing of the Board's Opinion, Order and Certificate of January 23, 2012 pursuant to R.C. §4903.10. The Orders are unlawful and unreasonable in at least the following respects:

- I. The Board failed to comply with the requirements set forth in R.C. §4906.10 by not resolving the material issue of posting a decommissioning bond. The onus is on the Board to insure that adequate financial protection is available to protect the public interest in the event of decommission, prior to the issuance of the certificate. There is no evidence in the record as to the removal costs for each wind turbine from the proposed site and to the amount of bond to be posted by the Applicant for such removal. In fact, no bond is required at all for the decommissioning. Therefore, the Board's granting of the certificate to the Applicant and denial of rehearing on this issue is unreasonable and unlawful.
- II. The Board's ruling permits the Applicant to submit its final decommissioning plan to the Staff and County Engineers for review thirty (30) days prior to the preconstruction conference. Furthermore, the Applicant is to retain an independent, registered professional engineer, licensed to practice in Ohio, to estimate the total cost of decommissioning in current dollars, without regard to salvage value of the equipment seven (7) days prior to the preconstruction conference. This ruling constitutes an unlawful delegation of the Board's duties to the Applicant pursuant to R.C. §4906.02(C) and violates the Appellants due process rights to address the issue of financial security in a substantive way.
- III. The Board's decision to grant a certificate to the Applicant is not supported by the evidence. The "Joint" Stipulation and Recommendation was not entered into by all parties of record and was done in violation of the Board's own rules. Only two parties of record signed the agreed Stipulation, however, the Stipulation is not only Stipulations as to facts but also Stipulations as to post certificate conditions and conclusions of law which are not provided for pursuant to O.A.C. §4907-7-09. The Board's reliance on the facts, conditions, and conclusions of law contained in the Stipulations to arrive at its Order granting the certificate and judgment denying rehearing is unlawful and unreasonable.

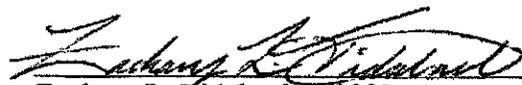
- IV. The Board's acceptance of the facts, seventy-one (71) conditions subsequent and twelve (12) conclusions of law contained in the Stipulation violated the Appellants procedural and substantive due process rights as incorporated through the Fourteenth Amendment. The Board's unbridled adoption of the Stipulation denied all the Appellants and Intervenors their right to cross-examine the proponents of the Stipulation and the opportunity to present evidence on these issues at the hearing.
- V. The Board failed to follow the mandates set forth in R.C. §4906.02(C) thereby unlawfully granting a certificate to the Applicant in accordance with R.C. §4906.10. The Opinion, Order, and Certificate and judgment denying a rehearing were not approved by the Board but rather by unknown individuals. The Board's Order granting the Certificate and judgment denying rehearing were unlawful and unreasonable. Therefore, the Board's issuance of the certificate to the Applicant is void ab initio.

Accordingly, Appellants request that the Court remand the Orders to the Ohio Power Siting Board with instructions to correct the errors identified herein.

Respectfully Submitted,



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Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that, on May 24, 2012, a copy of the foregoing Notice of Appeal was served upon the Chairman of the Public Utilities Commission and the Ohio Power Siting Board, Todd A. Snitchler, by leaving a copy at his office at 180 East Broad Street, Columbus, Ohio 43215, and upon the following counsel and parties of record by regular U.S. mail:

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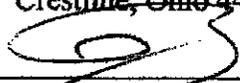
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Patrick T. Murphy—Counsel for Appellants

CERTIFICATE OF FILING

I hereby certify that, on May 24, 2012, a copy of the foregoing Notice of Appeal was filed with the Docketing Division of the Public Utilities Commission and the Power Siting Board at 180 East Broad Street, Columbus, Ohio 43215 pursuant to R.C. §4903.13, O.A.C. §4901-1-02(A), O.A.C. §4901-1-36, and O.A.C. §4906-7-18.



Patrick T. Murphy
Counsel for Appellants

BEFORE

OHIO POWER SITING BOARD

In the Matter of the Application of Black)
Fork Wind Energy, LLC for a Certificate)
to Site a Wind-Powered Electric) Case No. 10-2865-EL-BGN
Generating Facility in Richland and)
Crawford Counties, Ohio.)

ENTRY

The administrative law judge finds:

- (1) By entry of August 30, 2011, a prehearing teleconference was scheduled for September 9, 2011.
- (2) During the September 9, 2011 teleconference, staff requested that the evidentiary hearing scheduled for September 19, 2011, be continued to September 21, 2011, and that the evidentiary hearing be converted to a settlement conference. A discussion was held among the participating parties regarding staff's request. After consideration of the matter, the administrative law judges (ALJs) determined that staff's request should be granted.
- (3) Accordingly, the evidentiary hearing will commence at 10:00 a.m. on September 19, 2011. Thereafter, the ALJs will adjourn the hearing so the parties may have the opportunity to participate in settlement discussions. The evidentiary hearing will then reconvene on September 21, 2011, at 1:00 p.m.
- (4) On September 19, 2011, the company is directed to bring to the settlement conference a list of the order of its witnesses for the hearing that will commence on September 21, 2011. In addition, staff and intervenors are directed to bring, on September 19, 2011, a list of the witnesses they will be calling to testify at the evidentiary hearing, along with the dates that they will be available to testify.

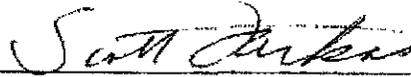
It is, therefore,

ORDERED, That the September 19, 2011 hearing be called and continued to September 21, 2011, at 1:00 p.m., so that the parties may conduct settlement discussions on September 19, 2011. It is, further,

ORDERED, That the parties comply with finding (4). It is, further,

ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

THE OHIO POWER SITING BOARD

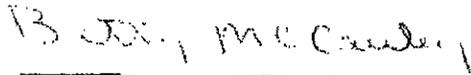


By: Scott Farkas
Administrative Law Judge



Entered in the Journal

SEP 12 2011



Betty McCauley
Secretary

BEFORE

OHIO POWER SITING BOARD

In the Matter of the Application of Black)
Fork Wind Energy, LLC for a Certificate)
to Site a Wind-Powered Electric) Case No. 10-2865-EL-BGN
Generating Facility in Richland and)
Crawford Counties, Ohio.)

ENTRY

The administrative law judge finds:

- (1) By entry of August 30, 2011, the administrative law judge (ALJ) directed that the evidentiary hearing commence on September 19, 2011, but then recess in order that the parties have the opportunity to participate in settlement discussions. Thereafter, the evidentiary hearing would reconvene on September 21, 2011.
- (2) On September 19, 2011, the evidentiary hearing began and was recessed, as directed, and the parties began settlement discussions.
- (3) On September 20, 2011, the parties requested that the evidentiary hearing be continued to October 11, 2011, in order that they have additional time to continue their settlement discussions. The parties also requested that, if a stipulation was reached between some or all of the parties, that such a stipulation should be filed by September 28, 2011. They also requested that all testimony, either supporting or opposing the stipulation, should be filed by October 5, 2011. The ALJ finds that the parties proposed time frames are reasonable.
- (4) Accordingly, the evidentiary hearing should be continued to October 11, 2011, at 10:00 a.m., in Hearing Room 11-D, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215. Any stipulation between some or all of the parties should be filed by September 28, 2011, and testimony supporting or opposing the stipulation should be filed by October 5, 2011.

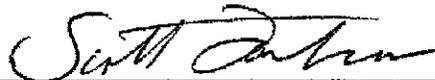
It is, therefore,

ORDERED, That the evidentiary hearing be continued to October 11, 2011, at 10:00 a.m. It is, further,

ORDERED, That the parties comply with finding (4). It is, further,

ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

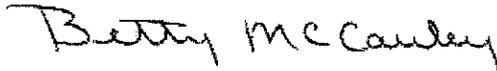
THE OHIO POWER SITING BOARD



By: Scott Farkas
Administrative Law Judge

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SEP 21 2011



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September 28, 2011

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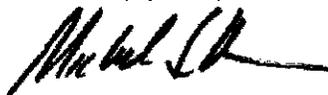
Re: OPSB Case No. 10-2865-EL-BGN
Black Fork Wind Energy, LLC

Dear Ms. McCauley:

Pursuant to the September 21, 2011 Entry, I am submitting a Joint Stipulation in this case signed by the Applicant, the Staff, and the Ohio Farm Bureau Federation. We reserve the right to file amendments or supplements to the Joint Stipulation involving additional parties.

Thank you for your cooperation.

Very truly yours,



Michael J. Settineri
Attorneys for Black Fork Wind Energy, LLC

MJS/jaw
Enclosure

cc: All Parties of Record (w/Encl.)

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BEFORE THE POWER SITING BOARD OF OHIO

In the Matter of the Application of Black Fork Wind)
Energy, LLC for a Certificate to Install Numerous) Case No. 10-2865-EL-BGN
Electricity Generating Wind Turbines in)
Crawford and Richland Counties, Ohio)

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Applicant Black Fork Wind Energy, LLC (“Black Fork” or “Applicant”), the Ohio Farm Bureau Federation and the Staff of the Ohio Power Siting Board (“OPSB Staff”), at times collectively referred to as the “Parties,” submit this Joint Stipulation and Recommendation (“Stipulation”) for adoption by the Ohio Power Siting Board (the “Board”). This Stipulation is intended by the Parties to resolve all matters pertinent to the certification and construction of a wind farm comprised of up to 91 wind turbines with a nameplate capacity between 1.6 and 3.0 MW each, with the aggregate capacity not to exceed 200 MW, and other associated facilities located in Auburn, Jackson, Jefferson, Sandusky and Vernon Townships in Crawford County and Plymouth, Sandusky and Sharon Townships in Richland County (hereinafter referred to as the “Facility”). The Facility is more fully described in Black Fork’s application as deemed complete by the Board in this proceeding.

The Staff Report was issued on August 31, 2011. A local public hearing was held at the Shelby Senior High School, 109 West Smiley Avenue, Shelby, Ohio 44875 at 6:00 pm on September 15, 2011, and the evidentiary hearing commenced on September 19, 2011, at the offices of the Public Utilities Commission of Ohio in Columbus. The Ohio Farm Bureau Federation was granted intervention by Entry of May 3, 2011. The Board of Crawford County Commissioners; the Board of Richland County Commissioners; the Richland County Engineer;

the Plymouth Township Trustees; the Sharon Township Trustees; the Sandusky Township Trustees; John Warrington; Loren Gledhill; Carol Gledhill; Mary Struder; Alan Price; Catherine Price; Thomas Karbula; Nick Rietschlin; Margaret Rietschlin; Bradley Bauer; Debra Bauer; Grover Reynolds; Brett A. Heffner; Gary Biglin; and Karel Davis were granted intervention by Entry of August 30, 2011.

This Stipulation results from discussions between the Parties who acknowledge that this agreement is amply supported by the record and thus is entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Facility.

II. STIPULATION AND RECOMMENDATION

A. Recommended Conditions

The proposed project is located in Auburn, Jackson, Jefferson, Sandusky and Vernon Townships in Crawford County, and Plymouth, Sandusky, and Sharon Townships in Richland County. The entire project area includes approximately 14,800 acres of land, of which the Applicant proposes to convert about 67 acres for use for turbine bases, access roads, substation, and other ancillary structures. The project itself involves the construction and operation of a wind farm comprised of up to 91 wind turbines with a nameplate capacity estimated from between 1.6 MW and 3.0 MW with the aggregate capacity not to exceed 200 MW. The following conditions utilize acronyms which are listed on page 23 as Appendix A.

The Parties recommend that the Board issue the Certificate of Environmental Compatibility and Public Need requested by Black Fork subject to the following conditions:

- (1) That the facility be installed at the Applicant's proposed site as presented in the application filed on March 10, 2011, and as modified and/or clarified by the Applicant's supplemental filings and further clarified by recommendations in this Staff Report of Investigation.

Acceptable turbine types shall be limited to the Vestas V100, the General Electric 1.6-100, or the Siemens SWT 2.3-101 models.

- (2) That the Applicant shall utilize the equipment and construction practices as described in the application and as modified and/or clarified in supplemental filings, and replies to data requests and recommendations in the Staff Report of Investigation as modified by this Stipulation.
- (3) That the Applicant shall implement the mitigation measures as described in the application and as modified and/or clarified in supplemental filings, and replies to data requests and recommendations in the Staff Report of Investigation as modified by this Stipulation.
- (4) That any new transmission line proposed for construction in order to deliver electricity from the wind farm shall be presented to the Board in a filing submitted by the transmission line owner, and must be approved by the Board prior to construction of the wind farm.
- (5) That any wind turbine site proposed by the Applicant but not built as part of this project shall be available for OPSB Staff review in a future case.
- (6) That if construction has commenced at a turbine location and it is determined that the location is not a viable turbine site, that site shall be restored to its original condition within thirty (30) days.
- (7) That prior to the commencement of construction, the Applicant shall obtain and comply with all applicable permits and authorizations as required by federal and state laws and regulations for any activities where such permit or authorization is required. Copies of permits and authorizations, including all supporting documentation, shall be provided to OPSB Staff within seven (7) days of issuance or receipt by the Applicant, whichever is sooner.
- (8) That the Applicant shall conduct a pre-construction conference prior to the start of any construction activities. The pre-construction conference shall be attended by OPSB Staff, the Applicant, and representatives from the prime contractor and all sub-contractors for the project. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by OPSB Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for OPSB Staff review.
- (9) That at least sixty (60) days before the pre-construction conference, the Applicant shall file a letter with the Board that identifies which of the three turbine models listed in Condition 1 have been selected.
- (10) That at least thirty (30) days before the pre-construction conference, the Applicant shall submit to OPSB Staff, for review and approval, the final turbine engineering drawings for each turbine location.
- (11) That the Applicant shall not commence construction of the facility until it has a signed Interconnection Service Agreement with PJM, the regional transmission organization, 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 OPSB Staff.

- (12) That the Applicant redesign the collection line system connecting turbines 30 and 44 to turbine 57, considering among other factors better utilization of disturbed areas of this project. Any redesign will be subject to OPSB Staff approval, prior to commencement of construction.
- (13) That at least thirty (30) days prior to the pre-construction conference and subject to OPSB Staff review and approval, the Applicant shall have in place a complaint resolution procedure in order to address potential operational concerns experienced by the public. The Applicant shall investigate and resolve any issues to the satisfaction of OPSB Staff with those who file a complaint. Any complaint submitted must be immediately forwarded to OPSB Staff.
- (14) That the Applicant develop a screening plan for the site containing the substation, laydown yard, O&M building, and temporary concrete batch plant to reduce visual and noise effects to surrounding residences, for review and approval by OPSB Staff prior to construction.
- (15) That prior to construction, the Applicant shall prepare a Phase I cultural resources survey program for archaeological work at turbine locations, access roads, construction staging areas, and collection lines acceptable to OPSB 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 OPSB Staff's acceptance. Any such mitigation effort shall be developed in coordination with the Ohio Historic Preservation Office and submitted to OPSB Staff for review and acceptance.
- (16) That prior to the commencement of construction, the Applicant shall conduct an architectural survey of the project area. The Applicant shall submit to Staff a work program that outlines areas to be studied. 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 OPSB Staff's acceptance. Any such mitigation effort shall be developed in coordination with the Ohio Historic Preservation Office and submitted to OPSB Staff for review and acceptance.
- (17) That no commercial signage or advertisements shall be located on any turbine, tower, or related infrastructure. If vandalism should occur, the Applicant shall remove or abate the damage within thirty (30) days of discovery or as extended by OPSB Staff for good cause shown, to preserve the aesthetics of the project. Any abatement other than the restoration to pre-vandalism condition is subject to approval by OPSB Staff.
- (18) That the Applicant shall avoid, where possible, or minimize to the maximum extent practicable, any damage to field tile drainage systems and soils resulting from construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems

shall be promptly repaired to at least original conditions at the Applicant's expense. Excavated topsoil, with the exception of soil excavated during the laying of cables for the collection system, shall be segregated and restored in accordance with the Applicant's lease agreement with the landowner. Severely compacted soils shall be plowed or otherwise de-compacted, if necessary, to restore them to original conditions unless otherwise agreed to by the landowner.

- (19) That the Applicant shall provide a copy of the Floodplain Development Permit to OPSB Staff within seven (7) days of issuance or receipt by the Applicant, whichever is sooner, for turbines 25, 30, 42, 43, and 83.
- (20) That at least seven (7) days before the pre-construction conference, the Applicant shall submit to OPSB Staff a copy of all NPDES permits including its approved SWPPP, approved SPCC procedures, and its erosion and sediment control plan for review and acceptance. Any soil issues must be addressed through proper design and adherence to the Ohio EPA Best Management Practices ("BMPs") related to erosion and sedimentation control.
- (21) That the Applicant shall employ the following erosion and sedimentation control measures, construction methods, and BMPs when working near environmentally-sensitive areas and/or when in close proximity to any watercourses, in accordance with the Ohio NPDES permit(s) and SWPPP obtained for the project:
 - (a) During construction of the facility, seed all disturbed soil, except within actively cultivated agricultural fields, within seven (7) days of final grading with a seed mixture acceptable to the appropriate County Cooperative Extension Service. Denuded areas, including spoils piles, shall be seeded and stabilized within seven (7) days, if they will be undisturbed for more than twenty-one (21) days. Re-seeding shall be done within seven (7) days of emergence of seedlings as necessary until sufficient vegetation in all areas has been established:
 - (b) Inspect and repair all erosion control measures after each rainfall event of one-half of an inch or greater over a twenty-four (24) hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas:
 - (c) Delineate all watercourses, including wetlands, by fencing, flagging, or other prominent means:
 - (d) Avoid entry of construction equipment into watercourses, including wetlands, except at specific locations where construction has been approved:
 - (e) Prohibit storage, stockpiling, and/or disposal of equipment and materials in these sensitive areas:
 - (f) Locate structures outside of identified watercourses, including wetlands, except at specific locations where construction has been approved: and
 - (g) Divert all storm water runoff away from fill slopes and other exposed surfaces to the greatest extent possible, and direct instead to appropriate catchment structures,

sediment ponds, etc., using diversion berms, temporary ditches, check dams, or similar measures.

- (22) That the Applicant shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to pre-construction conditions in compliance with the Ohio NPDES permit(s) obtained for the project and the approved SWPPP created for this project.
- (23) That the Applicant shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. All construction debris and all contaminated soil shall be promptly removed and properly disposed of in accordance with Ohio EPA regulations.
- (24) That the Applicant shall assure compliance with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
- (25) That the Applicant shall have an OPSB Staff-approved environmental specialist on site during construction activities that may affect sensitive areas as mutually-agreed upon between the Applicant and OPSB Staff, and as shown on the Applicant's final approved construction plan, including vegetation clearing, areas such as a designated wetland or stream, and threatened or endangered species or their identified habitat. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction.
- (26) That the Applicant shall not work in the types of streams listed below during fish spawning restricted periods (April 15 to June 30), unless a waiver is sought from and issued by the ODNR and approved by OPSB Staff releasing the Applicant from a portion of, or the entire restriction period.
 - (a) Class 3 primary headwater streams (watershed < one mi²);
 - (b) Exceptional Warmwater Habitat;
 - (c) Coldwater Habitat;
 - (d) Warmwater Habitat; and
 - (e) Streams supporting threatened or endangered species.
- (27) That sixty (60) days prior to the first turbine becoming commercially operational, the Applicant shall submit a post-construction avian and bat monitoring plan for ODNR's Division of Wildlife ("DOW") and OPSB Staff review and approval. This plan will be based on the turbine layout in conjunction with Condition 1 of this report. The Applicant's plan shall be consistent with the ODNR-approved protocol, as outlined in ODNR's *On-Shore Bird and Bat Pre- and Post-Construction Monitoring Protocol for Commercial Wind Energy Facilities in Ohio*, as amended. Unless otherwise set forth in the ODNR-approved protocol,

the post-construction monitoring shall begin within two weeks of operation and be conducted for a minimum of two seasons (April 1 to November 15), which may be split between calendar years. If monitoring is initiated after April 1 and before November 15, then portions of the first season of monitoring shall extend into the second calendar year (e.g., start monitoring on July 1, 2011 and continue to November 15, 2011; resume monitoring April 1, 2012 and continue to June 30, 2012). The second monitoring season may be waived at the discretion of ODNR and OPSB Staff. The monitoring start date and reporting deadlines will be provided in the DOW approval letter and the OPSB concurrence letter. If it is determined that significant mortality, as defined in ODNR's *On-Shore Bird and Bat Pre- and Post-Construction Monitoring Protocol for Commercial Wind Energy Facilities in Ohio*, as amended, has occurred to birds and/or bats, then the DOW and OPSB Staff will require the Applicant to develop a mitigation plan. If required, the Applicant shall submit a mitigation plan to the DOW and OPSB Staff for review and approval within thirty (30) days from the date reflected on ODNR letterhead, in coordination with OPSB Staff, in which the DOW is requiring the Applicant to mitigate for significant mortality to birds and/or bats. Mitigation initiation timeframes shall be outlined in the DOW approval letter and the OPSB concurrence letter.

- (28) That the Applicant shall contact an ODNR approved herpetologist prior to any construction in Auburn Township (Crawford Co.) and Plymouth Township (Richland Co.) to assess potential habitat for the Eastern massasauga rattlesnake. If it is determined that potential habitat exists, OPSB Staff, the DOW, and the U.S. Fish and Wildlife Service ("USFWS") shall be contacted to discuss avoidance and minimization measures.
- (29) That the Applicant shall adhere to seasonal cutting dates of September 30 through April 1 for removal of suitable Indiana bat habitat trees, if avoidance measures cannot be achieved.
- (30) That the Applicant shall reroute the underground electric collection lines proposed between turbine sites 16 and 90, to avoid impacts to the woodlot located between these turbine sites or utilize horizontal directional drilling ("HDD") or another avoidance measure acceptable to OPSB Staff.
- (31) That OPSB Staff, the DOW, and the USFWS shall be immediately contacted if state or federal threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the Applicant, OPSB Staff, and the DOW in coordination with the USFWS. If threatened or endangered species are encountered during operation activities, then the above referenced notification is required within twenty-four (24) hours. Nothing in this provision shall preclude agencies having jurisdiction over the facility with respect to threatened or endangered species from exercising their legal authority over the facility consistent with law.
- (32) That the Applicant shall conform to any drinking water source protection plan, if it exists, for any part of the facility that is located within drinking water source protection areas of the local villages and cities.

- (33) That the Applicant shall complete a full detailed geotechnical exploration and evaluation at each turbine site to confirm that there are no issues to preclude development of the wind farm. The geotechnical exploration and evaluation shall include borings at each turbine location to provide subsurface soil properties, static water level, rock quality description (RQD), percent recovery, and depth and description of the bedrock contact and recommendations needed for the final design and construction of each wind turbine foundation, as well as the final location of the transformer substation and interconnection substation. The Applicant must fill all boreholes, and borehole abandonment must comply with state and local regulations. The Applicant shall provide copies of all geotechnical boring logs to OPSB Staff and to the ODNR Division of Geological Survey prior to construction.
- (34) That, should site-specific conditions warrant blasting, the Applicant shall submit a blasting plan, at least sixty (60) days prior to blasting, to OPSB Staff for review and acceptance. The Applicant shall submit the following information as part of its blasting plan:
- (a) The name, address, and telephone number of the drilling and blasting company;
 - (b) A detailed blasting plan for dry and/or wet holes for a typical shot. The blasting plan shall address blasting times, blasting signs, warnings, access control, control of adverse effects, and blast records; and
 - (c) A plan for liability protection and complaint resolution.
- (35) That prior to the use of explosives, the Applicant or explosive contractor shall obtain any required license or temporary permit from the local county authority or county sheriff. The Applicant shall submit a copy of the license or permit to OPSB Staff within seven days of obtaining it from the local authority.
- (36) That the blasting contractor shall utilize two blasting seismographs that measure ground vibration and air blast for each blast. One seismograph should be placed at the nearest dwelling and the other placed at the discretion of the blasting contractor.
- (37) That at least thirty (30) days prior to the initiation of blasting operations, the Applicant must notify, in writing, all residents or owners of dwellings or other structures within 1,000 feet of the blasting site. The Applicant or explosive contractor shall offer and conduct a pre-blast survey of each dwelling or structure within 1,000 feet of each blasting site, unless waived by the resident or property owner. The survey must be completed and submitted to OPSB Staff at least ten (10) days before blasting begins.
- (38) That the Applicant shall comply with the turbine manufacturer's most current safety manual and shall maintain a copy of that safety manual in the O&M building of the facility.
- (39) That the Applicant shall become a member of the Ohio Utilities Protection Service prior to commencement of operation of the facility. Notification of membership shall be provided to OPSB Staff and the applicable Board of County Commissioners.

- (40) That the Applicant shall adhere to a setback distance of at least one and one-tenth (1.1) times the total height of the turbine structure, as measured from the tower's base (excluding the subsurface foundation) to the tip of its highest blade, from any natural gas pipeline in the ground at the time of commencement of facility construction. Specifically to conform to this setback distance, the Applicant shall resize and/or relocate turbines 8, 15, 18, 33, and 37 elsewhere on the same or contiguous parcels under control of the Applicant as proposed in the Application or Application Supplement, as necessary. At least thirty (30) days before the pre-construction conference, the Applicant shall submit to OPSB Staff, for review and acceptance, any required studies that changed due to resized and/or relocated turbines.
- (41) That at least thirty (30) days before the pre-construction conference, the Applicant shall submit to OPSB Staff, for review, 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. Before the first turbine is operational, the Applicant shall submit to OPSB Staff, for review, a fire protection and medical emergency plan to be used during operation of the facility and that addresses training of emergency responders, which shall be developed in consultation with the first responders having jurisdiction over the area.
- (42) That the Applicant shall restrict public access to the site at all times with appropriately placed warning signs or other necessary measures.
- (43) That the Applicant shall instruct workers on the potential hazards of ice conditions on wind turbines.
- (44) The Applicant shall install and utilize an ice warning system that may include an ice detector installed on the roof of the nacelle, ice detection software for the wind turbine controller, automatic vibration monitoring software (Manufacturer warrants it will detect ice) or an ice sensor alarm that triggers an automatic shutdown.
- (45) That the Applicant shall relocate and/or resize turbines 44 and 51 to conform to a setback distance that equals 150 percent of the sum of the hub height and rotor diameter from occupied structures, including businesses. At least thirty (30) days before the pre-construction conference, the Applicant shall submit to OPSB Staff, for review and acceptance, any required studies that changed due to resized turbines and/or relocated turbines.
- (46) That the Applicant shall provide the final delivery route plan and the results of any traffic studies to OPSB Staff, the Crawford County Engineer, and the Richland County Engineer thirty (30) days prior to the pre-construction 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 may deviate from the final delivery route as necessary, provided the deviation from the final delivery route is submitted to OPSB Staff, ODOT, the applicable Board of County Commissioners and to the applicable County Engineer prior to the use of the alternative delivery route and is approved by the OPSB Staff, ODOT, the applicable Board of County Commissioners and the applicable County

Engineer. The Applicant's delivery route plan and subsequent road modifications shall include, but not be limited to, the following:

- (a) Perform a survey of the final delivery routes to determine the exact locations of vertical constraints where the roadway profile will exceed the allowable bump and dip specifications and outline steps to remedy vertical constraints;
 - (b) Identify locations along the final delivery routes where overhead utility lines may not be high enough for over-height permit loads and coordinate with the appropriate utility company if lines must be raised;
 - (c) Identify roads and bridges that are not able to support the projected loads from delivery of the wind turbines and other facility components and make all necessary upgrades; and
 - (d) Identify locations where wide turns would require modifications to the roadway and/or surrounding areas and make all necessary alterations. Any alterations for wide turns shall be removed and the area restored to its pre-construction condition unless otherwise specified by the County Engineer(s).
- (47) That the Applicant repair damage to government-maintained (public) roads and bridges caused by construction activity. Any damaged public roads and bridges shall be repaired promptly to their pre-construction state by the Applicant under the guidance of the appropriate regulatory agency. Any temporary improvements shall be removed unless the applicable Board of County Commissioners request that they remain. The Applicant shall provide financial assurance to the counties that it will restore the public roads it uses to their pre-construction condition. The Applicant shall also enter into a Road Use Agreement with the applicable Boards of County Commissioners prior to construction and subject to OPSB Staff review. The Road Use Agreement shall contain provisions for the following:
- (a) A pre-construction survey of the conditions of the roads;
 - (b) A post-construction survey of the condition of the roads;
 - (c) An objective standard of repair that obligates the Applicant to restore the roads to the same or better condition as they were prior to construction; and
 - (d) A timetable for posting of the construction road and bridge bond prior to the use or transport of heavy equipment on public roads or bridges.
- (48) That the facility owner and/or operator 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 having jurisdictional authority. 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 applicable Board of

County Commissioners prior to construction. The Road Use Agreement shall be subject to OPSB Staff review and shall contain provisions for the following:

- (a) A pre-decommissioning survey of the condition of public roads and bridges conducted within a reasonable time prior to decommissioning activities;
 - (b) A post-decommissioning survey of the condition of public roads and bridges conducted within a reasonable time after decommissioning activities;
 - (c) An objective standard of repair that obligates the facility owner and/or operator to restore the public roads and bridges to the same or better condition as they were prior to decommissioning; and
 - (d) A timetable for posting of the decommissioning road and bridge bond prior to the use or transport of heavy equipment on public roads or bridges.
- (49) That the Applicant shall obtain all required county and township transportation permits and all necessary permits from ODOT. Any temporary or permanent road closures necessary for construction and operation of the proposed facility shall be coordinated with the appropriate entities including, but not limited to, the Crawford County Engineer, the Richland County Engineer, ODOT, local law enforcement, and health and safety officials.
- (50) That at least thirty (30) days prior to the pre-construction conference and upon selection of the turbine model to be developed, the Applicant shall provide the following to OPSB for Staff review and approval to the extent such information exists and is released to the Applicant by the turbine manufacturer:
- (a) The low frequency sound values (SPL, dB, Hz) expected to be produced;
 - (b) The A-weighted and C-weighted sound power levels, as well as one-third octave band measurements for the 20 and 25 Hz bands, and a separate evaluation of the data for low frequency and impulsivity in accordance with the methodologies set forth within IEC 61400-11, Annex A, A.3, *Low Frequency Noise*, and A.4, *Impulsivity*; and
 - (c) The tonal audibility.
- (51) That if pre-construction acoustic modeling indicates a facility contribution that exceeds the project ambient nighttime LEQ (43 dBA) plus 5 dBA at the exterior of any non-participating residences within one mile of the facility boundary, the facility shall be subject to further study of the potential impact and possible mitigation prior to construction. Mitigation, if required, shall consist of either reducing the impact so that the facility contribution at the exterior of the non-participating residence does not exceed the project ambient nighttime LEQ (43 dBA) plus 5 dBA, or other means of mitigation approved by OPSB Staff in conjunction with the affected receptor(s).
- (52) That after commencement of commercial operation, the Applicant shall conduct further review of the impact and possible mitigation of all project noise complaints. Mitigation shall

be required if the project contribution at the exterior of any non-participating residence within one mile of the project boundary exceeds the greater of (a) the project ambient nighttime LEQ (43 dBA) plus 5 dBA, or (b) the validly measured ambient LEQ plus five dBA at the location of the complaint and during the same time of day or night as that identified in the complaint. Mitigation, if required, shall consist of either reducing the impact so that the project contribution does not exceed the greater of (a) the project ambient nighttime LEQ (43 dBA) plus 5 dBA, or (b) the validly measured ambient LEQ plus 5 dBA at the location of the complaint and at the same time of day or night as identified in the complaint, or other means of mitigation approved by OPSB Staff in coordination with the affected receptor(s).

- (53) That general construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 pm. This limitation shall not apply to nacelle, tower, and rotor erection activities which may need to be carried out during low wind, nighttime hours for safety reasons. Impact pile driving and blasting operations, if required, shall be limited to the hours between 7:00 a.m. to 7:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm. Code 4906-5-08(C)(3), of upcoming construction activities including potential for nighttime construction activities.
- (54) That at least thirty (30) days prior to the pre-construction conference, the Applicant shall complete a "realistic" shadow flicker analysis for all inhabited non-participating receptors already modeled to be in excess of 30 hours per year of shadow flicker and provide the results to OPSB Staff for review and acceptance. This analysis shall incorporate reductions for trees, vegetation, buildings, obstructions, turbine line of sight, operational hours, wind direction, and sunshine probabilities.
- (55) That any turbine forecasted prior to construction to create in excess of 30 hours per year of shadow flicker at a non-participating habitable receptor within 1,000 meters shall be subject to further review and possible mitigation. Mitigation shall be completed before commercial operation commences and consist of either reducing the turbine's forecasted impact to 30 hours per year, or other measures approved by OPSB Staff in consultation with the affected receptor(s).
- (56) That prior to construction, the Applicant shall submit the final layout and turbine locations to the National Telecommunications and Information Administration for review and approval. Any concerns identified regarding obstruction to microwave or other communication systems shall be forwarded to OPSB Staff for review and acceptance prior to construction.
- (57) That the Applicant must meet all Federal Communications Commission and other federal agency requirements to construct an object that may affect communications and, subject to OPSB Staff approval, mitigate any effects or degradation caused by wind turbine operation. For any residence that is shown to experience a degradation of TV and cell phone reception due to the facility operation, the Applicant shall provide, at its own expense, cable or direct broadcast satellite TV service and/or cell phone service.

- (58) That at least thirty (30) days prior to the pre-construction conference, the Applicant shall complete a baseline television reception and signal strength study and provide the results to OPSB Staff for review and acceptance.
- (59) That all licensed microwave paths and communication systems, as identified within the application and all other communications studies performed for this project, shall be subject to avoidance or mitigation. The Applicant shall complete avoidance or mitigation measures prior to construction for impacts that can be predicted in sufficient detail to implement appropriate and reasonable avoidance and mitigation measures. After construction, the Applicant shall mitigate all observed impacts of the project to microwave paths and systems existing or planned prior to construction within seven (7) days or within a longer time period approved by OPSB Staff. Avoidance and mitigation measures for any known point-to-point microwave paths shall consist of either shifting the location of the turbine(s) so as to not affect any known microwave paths, or other measures approved by OPSB Staff, the Applicant, and the affected path owner, operator, or licensee(s). If interference with an omnidirectional or multi-point system is observed after construction, mitigation would be required only for the affected receptor(s).
- (60) That the Applicant must meet all FAA and federal agency requirements to construct an object that may affect existing local and/or long-range radar, and mitigate any effects or degradation caused by wind turbine operation as required by the FAA or any federal agency.
- (61) That if any turbine is determined to cause NEXRAD interference, the Applicant shall propose a technical or administrative work plan, protecting proprietary interests in wind speed data, which provides for the release of real-time meteorological data to the National Weather Service office in Wilmington, Ohio. If an uncontrollable event should render this data temporarily unavailable, the Applicant shall exert reasonable effort to restore connectivity in a timely manner
- (62) That the Applicant must meet all recommended and prescribed FAA and ODOT Office of Aviation requirements to construct an object that may affect navigable airspace. This includes submitting all final turbine locations for ODOT Office of Aviation and FAA review prior to construction, and the non-penetration of any FAA *Part 77* surfaces.
- (63) That thirty (30) days prior to any construction, the Applicant notify, in writing, any owner of an airport located within two miles of the project boundary, whether public or private, whose operations, operating thresholds/minimums, landing/approach procedures and/or vectors are expected to be altered by the siting, operation, maintenance, or decommissioning of the facility.
- (64) That during construction and after operation, all applicable structures be lit in accordance with FAA circular 70/7460-1 K Change 2, *Obstruction Marking and Lighting*; Chapters 4, 12, and 13 (Turbines); or as otherwise prescribed by the FAA.
- (65) That the Applicant shall file all 7460-2 forms with the FAA at least forty-two (42) days prior to construction and to OPSB Staff for review and acceptance.

(66) That the Applicant, facility owner, and/or facility operator shall comply with the following conditions regarding decommissioning:

(a) That the Applicant, facility owner, and/or facility operator shall provide the final decommissioning plan to OPSB Staff and the County Engineer(s) for review, and for OPSB Staff approval, at least thirty days prior to the pre-construction conference.

The plan shall:

- i. Indicate the intended future use of the land following reclamation;
- ii. Describe the following: engineering techniques and major equipment to be used in decommissioning and reclamation; a surface water drainage plan and any proposed impacts that would occur to surface and ground water resources and wetlands; and a plan for backfilling, soil stabilization, compacting, and grading; and
- iii. Provide a detailed timetable for the accomplishment of each major step in the decommissioning plan, including the steps to be taken to comply with applicable air, water, and solid waste laws and regulations and any applicable health and safety standards in effect as of the date of submittal.

(b) That the facility owner and/or facility operator shall file a revised decommissioning plan to the OPSB Staff and the County Engineer(s) every five (5) years from the commencement of construction. The revised plan shall reflect advancements in engineering techniques and reclamation equipment and standards. The revised plan shall be applied to each five-year decommissioning cost estimate. The decommissioning plan and any revisions shall be reviewed and approved by the OPSB Staff prior to implementation.

(c) That the facility owner and/or facility operator shall, at its expense, complete decommissioning of the facility, or individual wind turbines, within twelve months after the end of the useful life of the facility or individual wind turbines. If no electricity is generated for a continuous period of twelve (12) months, or if the Board deems the facility or turbine to be in a state of disrepair warranting decommissioning, the wind energy facility or individual wind turbines will be presumed to have reached the end of its useful life. The Board may extend the useful life period for the wind energy facility or individual turbines for good cause as shown by the facility owner and/or facility operator. The Board may also follow the procedures provided for under Ohio Adm. Code Chapter 4906-9, including holding an evidentiary hearing on an alleged violation, to require decommissioning of individual wind turbines due to safety, wildlife impact, or other issues that prevent the turbine from operating within the terms of the Certificate.

(d) That decommissioning shall include the removal and transportation of the wind turbines off site. Decommissioning shall also include the removal of buildings, cabling, electrical components, access roads, and any other associated facilities,

unless otherwise mutually agreed upon by the facility owner and/or facility operator and the landowner. All physical material pertaining to the facility and associated equipment shall be removed to a depth of at least thirty-six inches beneath the soil surface and transported off site. The disturbed area shall be restored to the same physical condition that existed before erection of the facility. Damaged field tile systems shall be repaired to the satisfaction of the property owner.

- (e) That during decommissioning, all recyclable materials, salvaged and non-salvaged, shall be recycled to the furthest extent practicable. All other non-recyclable waste materials shall be disposed of in accordance with state and federal law.
- (f) That the facility owner and/or facility operator shall not remove any improvements made to the electrical infrastructure if doing so would disrupt the electric grid, unless otherwise approved by the applicable regional transmission organization and interconnection utility.
- (g) That subject to approval by OPSB Staff, and seven days prior to the pre-construction conference, an independent, registered Professional Engineer, licensed to practice engineering in the state of Ohio, shall be retained by the Applicant, facility owner, and/or facility operator to estimate the total cost of decommissioning in current dollars, without regard to salvage value of the equipment. Said estimate shall include: (1) an identification and analysis of the activities necessary to implement the most recent approved decommissioning plan including, but not limited to, physical construction and demolition costs assuming good industry practice and based on ODOT's *Procedure for Budget Estimating and RS Means* material and labor cost indices or any other publication or guidelines approved by OPSB Staff; (2) the cost to perform each of the activities; (3) an amount to cover contingency costs, not to exceed 10 percent of the above calculated reclamation cost. Said estimate will be converted to a per-turbine basis (the "Decommissioning Costs"), calculated as the total cost of decommissioning of all facilities as estimated by the Professional Engineer divided by the number of turbines in the most recent facility engineering drawings. This estimate shall be conducted every five years by the facility owner and/or facility operator.
- (h) That 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. The funds, surety bond, or financial assurance need not be posted separately for each turbine so long as the total amount reflects the aggregate of the Decommissioning Costs for all turbines constructed or under construction. For purposes of this condition, a turbine is considered to be under construction at the commencement of excavation for the turbine foundation. The form of financial assurance or surety bond shall be a financial instrument mutually agreed upon by OPSB Staff and the Applicant, the facility owner, and/or the facility operator. The financial assurance shall ensure the faithful performance of all requirements and reclamation conditions of the most recently filed and approved decommissioning and reclamation plan. At least thirty

(30) days prior to the pre-construction 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. Prior to commencement of construction, the Applicant, the facility owner, and/or the facility operator shall provide a statement from the holder of the financial assurance demonstrating that adequate funds have been posted for the scheduled construction. Once the financial assurance is provided, the Applicant, facility owner and/or facility operator shall maintain such funds or assurance throughout the remainder of the applicable term and shall adjust the amount of the assurance, if necessary, to offset any increase or decrease in the Decommissioning Costs.

- (i) That the decommissioning funds, surety bond, or financial assurance shall be released by the holder of the funds, bond, or financial assurance when the facility owner and/or facility operator has demonstrated, and the OPSB Staff concurs, that decommissioning has been satisfactorily completed, or upon written approval of the Board, in order to implement the decommissioning plan.

(67) That at least thirty (30) days before the pre-construction conference, the Applicant shall submit to OPSB Staff, for review and acceptance, the following documents:

- (a) One set of detailed engineering drawings of the final project design, including all turbine locations, collection lines, access roads, the crane route, permanent meteorological towers, substations, construction staging areas, and any other associated facilities and access points, so that OPSB 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 plan shall include both temporary and permanent access routes, as well as the measures to be used for restoring the area around all temporary sections, and a description of any long-term stabilization required along permanent access routes. The plan shall consider the location of streams, wetlands, wooded areas, and sensitive plant species as identified by the ODNR Division of Natural Areas and Preserves, and explain how impacts to all sensitive resources will be avoided or minimized during construction, operation, and maintenance
- (b) A stream and/or wetland crossing plan including details on specific streams and/or ditches to be crossed, either by construction vehicles and/or facility components (e.g., access roads, electric collection lines), as well as specific discussion of proposed crossing methodology for each stream crossing and post-construction site restoration. The stream crossing plan shall be based on final plans for the access roads and electric collection system.
- (c) A detailed frac-out contingency plan for stream and wetland crossings that are expected to be completed via HDD. Such contingency plan may be incorporated within the required stream and/or wetland crossing plan.
- (d) A tree clearing plan describing how trees and shrubs around turbines, along access routes, in electric collection line corridors, at construction staging areas, and in

proximity to any other project facilities will be protected from damage during construction, and, where clearing cannot be avoided, how such clearing work will be done so as to minimize removal of woody vegetation. Priority should be given to protecting mature trees throughout the project area, and all woody vegetation in wetlands and riparian areas, both during construction and during subsequent operation and maintenance of all facilities.

- (68) That if any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to OPSB Staff in hard copy and as geographically-referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally-sensitive areas will be subject to OPSB Staff review and approval prior to construction.
- (69) That within sixty (60) days after the commencement of commercial operation, the Applicant shall submit to OPSB Staff a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (70) That the certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five (5) years of the date of journalization of the certificate.
- (71) That the Applicant shall provide to OPSB Staff the following information as it becomes known:
 - (a) The date on which construction will begin;
 - (b) The date on which construction was completed; and
 - (c) The date on which the facility began commercial operation.

B. Other Terms and Conditions

(1) This Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially modifies all or part of this Stipulation or imposes additional conditions or requirements upon the parties, each party shall have the right, within thirty (30) days of the Board's order, to file an application for rehearing with the Board. Upon rehearing by the Board, each party shall have the right, within ten (10) days of the Board's order on rehearing, to file a notice of termination of, and withdrawal from, the Stipulation. Upon notice of termination and withdrawal of the Stipulation by any party, pursuant to the above provisions, the Stipulation shall immediately become null and void. In such an event, a hearing shall go forward, and the parties shall be afforded the opportunity to present

evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

(2) The Parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation as factual or legal precedent on any issue. The Parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the parties in entering into this Stipulation.

III. FINDINGS

The Parties agree that the record in this case, provided the Board approves the conditions in this Stipulation, contains sufficient probative evidence for the Board to find and determine, as Findings of Fact and Conclusions of Law, that:

A. Findings of Fact

- (1) Black Fork Wind Energy, LLC is a wholly-owned subsidiary of Element Power US, LLC and licensed to do business in the State of Ohio.
- (2) The Facility qualifies as a major utility facility as defined in 4906.01(B)(1) of the Ohio Revised Code and a wind-powered electric generation facility defined in OAC Rule 4906-17-01.
- (3) On December 1, 2010, the Applicant filed a pre-application notice of a public informational meeting.
- (4) On January 11, 2011, the Applicant filed Proofs of Publication made on December 7, 2010 in the *Mansfield News Journal* and the *Bucyrus Telegraph Forum* of the public informational meeting held on December 16, 2010 in accordance with OAC Rule 4906-05-08.
- (5) The Applicant held the public informational meeting at the Shelby High School, David A. Jones Theatre, 109 W. Smiley Avenue, Shelby, Ohio 44875 on December 16, 2010 from 6:00 PM to 8:00 PM.
- (6) On March 9, 2010, the Applicant filed a motion for waivers of certain filing requirements in OAC Chapter 4906-17, as well as for a waiver of the requirement to file an application one year prior to commencement of construction under Section 4906.06(A)(6) of the Ohio Revised Code.

- (7) The Applicant formally submitted its application for a certificate to construct the proposed wind-powered electric generating facility in Crawford and Richland Counties, Ohio on March 10, 2011.
- (8) The Administrative Law Judge, by Entry dated May 3, 2011, granted in part the Applicant's waiver requests subject to some clarifications.
- (9) On June 10, 2011, the Chairman of the Board issued a letter to the Applicant stating that the application, as filed on March 10, 2011 and as supplemented, was found to comply with OAC Chapter 4906.
- (10) On June 17, 2011, the Applicant filed a Certificate of Service indicating that copies of the application were served upon local public officials and libraries.
- (11) On June 22, 2011, the Administrative Law Judge issued an Entry scheduling a local public hearing for this case on September 15, 2011, at the Shelby Senior High School, 109 W. Smiley Avenue, Shelby, Ohio 44875 and an adjudicatory hearing for September 19, 2011, at the offices of the PUCO; and accepted the Application for filing for purposes of publication.
- (12) On July 19, 2011, the Applicant filed the first Proofs of Publication indicating that notice was published in the *Mansfield News Journal* and in the *Bucyrus Telegraph Forum* on June 30, 2011, describing the application and listing the hearing dates in accordance with OAC Rule 4906-5-08(C)(1).
- (13) On August 30, 2011, the Applicant filed a sample letter sent to over 1,086 Ohio property owners and affected tenants which was mailed August 13, 2011 by first class mail. The complete list of property owners was included as Attachment B attached to the filings. The August 13, 2011 mailing complies with OAC Rule 4906-5-08(C)(3).
- (14) The Staff Report was filed on August 31, 2011.
- (15) On September 12 and 19, 2011, the Applicant filed the second Proofs of Publication indicating that notice was published in the *Mansfield News Journal*, the *Bucyrus Telegraph Forum* and the *Crestline Advocate* on September 7, 2011 describing the application and listing the hearing dates in accordance with OAC Rule 4906-5-08(C)(2).
- (16) A local public hearing was held on September 15, 2011 in Shelby, Ohio.
- (17) An adjudicatory hearing commenced on September 19, 2011 in Columbus, Ohio.
- (18) The basis of need requirement in Section 4906.10(A)(1) of the Ohio Revised Code is inapplicable to this project.

- (19) Adequate data on the project has been provided to determine the nature of the probable environmental impact as required by Section 4906.10(A)(2) of the Ohio Revised Code.
- (20) Adequate data on the project has been provided to determine that the Facility described in the Application and subject to the conditions in this Stipulation represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by Section 4906.10(A)(3) of the Ohio Revised Code.
- (21) Adequate data on the project has been provided to determine that the proposed electric generating facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the State of Ohio and interconnected utility systems, that the Facility will serve the interests of electric system economy and reliability, and the requirements of Section 4906.10(A)(4) of the Ohio Revised Code are met.
- (22) Adequate data on the project has been provided to determine that the wind farm project will either comply with, or is not subject to, the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, air navigation, and all regulations there under, as required by Section 4906.10(A)(5) of the Ohio Revised Code.
- (23) Adequate data on the project has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by Section 4906.10(A)(6) of the Ohio Revised Code.
- (24) Adequate data on the project has been provided to determine what the Facility's impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Ohio Revised Code that is located within the site of the proposed Facility, as required by Section 4906.10(A)(7) of the Ohio Revised Code.
- (25) Adequate data on the project has been provided to determine that the Facility as proposed incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives as required by Section 4906.10(A)(8) of the Ohio Revised Code.
- (26) The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

B. Conclusions of Law

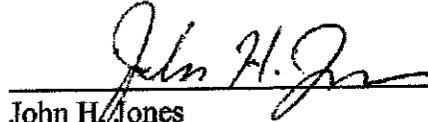
- (1) Black Fork Wind Energy, LLC is a "person" under Section 4906.01(A) of the Ohio Revised Code.

- (2) The proposed Facility is a major utility facility as defined in Section 4906.01(B)(1) of the Ohio Revised Code.
- (3) Black Fork's Application complies with the requirements of OAC Chapter 4906-17.
- (4) The requirement for the need for the Facility under Section 4906.10(A)(1) of the Ohio Revised Code is inapplicable.
- (5) The record establishes the nature of the probable environmental impact from construction, operation and maintenance of the Facility under Section 4906.10(A)(2) of the Ohio Revised Code.
- (6) The record establishes that the Facility described in the Application and subject to the conditions in this Stipulation represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under Section 4906.10(A)(3) of the Ohio Revised Code.
- (7) The record establishes that the Facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the State of Ohio and interconnected utility systems, and will serve the interests of electric system economy and reliability as required by Section 4906.10(A)(4) of the Ohio Revised Code.
- (8) The record establishes, as required by Section 4906.10(A)(5) of the Ohio Revised Code, that to the extent that any of them are applicable, construction of the proposed Facility will comply with the requirements in the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, air navigation, and all rules and standards adopted under the relevant Chapters of the Ohio Revised Code.
- (9) The record establishes that the Facility described in the Application and subject to the conditions in this Stipulation will serve the public interest, convenience and necessity under Section 4906.10(A)(6) of the Ohio Revised Code.
- (10) The Facility's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under Section 4906.10(A)(7) of the Ohio Revised Code.
- (11) The record establishes that the Facility would incorporate maximum feasible water conservation practices under Section 4906.10(A)(8) of the Ohio Revised Code.
- (12) Based on the record, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation, and maintenance of the Facility.

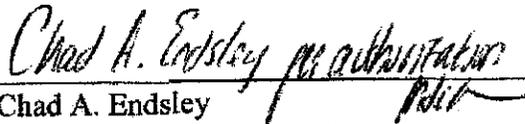
The undersigned hereby stipulate, agree and represent that they are authorized to enter into this Joint Stipulation and Recommendation on this 28th day of September, 2011. Furthermore, the parties expressly agree that this Joint Stipulation and Recommendation may be amended and/or supplemented in a writing executed by the Parties.



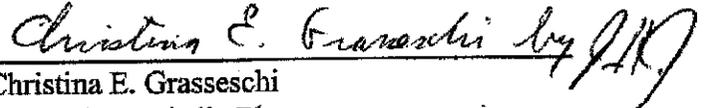
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APPENDIX A

ACRONYMS

AEP American Electric Power
BMP best management practices
dBA decibels (A-weighted)
DOW ODNR Division of Wildlife
FAA Federal Aviation Administration
HDD horizontal directional drill(ing)
Hz hertz
kV kilovolts
MW megawatts
NERC North American Electric Reliability Corporation
NPDES National Pollutant Discharge Elimination System
NRHP National Register of Historic Places
O&M operations and maintenance
OAC Ohio Administrative Code
ODA Ohio Department of Agriculture
ODD Ohio Department of Development
ODH Ohio Department of Health
ODNR Ohio Department of Natural Resources
ODOT Ohio Department of Transportation
Ohio EPA Ohio Environmental Protection Agency
OHPO Ohio Historic Preservation Office
OPSB Ohio Power Siting Board
ORC Ohio Revised Code
PUCO Public Utilities Commission of Ohio
SPCC Spill Prevention, Containment, and Countermeasure
SWPPP Storm Water Pollution Prevention Plan
USACE U.S. Army Corps of Engineers
USFWS U.S. Fish and Wildlife Service

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by hand delivery upon John Jones and Stephen Reilly, Assistant Attorneys General, Public Utilities Section, 180 E. Broad Street, 6th Floor, Columbus, OH 43215 and via overnight mail upon the following persons listed below this 28th day of September 2011:

Debra Bauer and Bradley Bauer 7298 Remlinger Road Crestline, Ohio 44827-9775	Margaret and Nick Rietschlin 4240 Baker Road Crestline, Ohio 44827-9775
Gary Biglin 5331 State Route 61 South Shelby, Ohio 44875	Orla Collier III Benesch, Friedlander, Coplan & Arnoff LLP 41 South High Street, 26 th Floor Columbus, Ohio 43215
Karel A. Davis 6675 Champion Road Shelby, Ohio 44875	Mary Studer 6716 Remlinger Road Crestline, Ohio 44827-9775
Carol and Loren Gledhill 7256 Remlinger Road Crestline, Ohio 44827-9775	John Warrington 7040 SR 96 Tiro, Ohio 44887
Brett A. Heffner 3429 Stein Road Shelby, Ohio 44875	Thomas Karbula 3026 Solinger Road Crestline, Ohio 44827-9775
Ohio Farm Bureau Federation Chad A. Endsley 280 North High Street PO Box 182383 Columbus, Ohio 43218	Alan and Catherine Price 7956 Remlinger Road Crestline, Ohio 44827-9775
Grover Reynolds 7179 Remlinger Road Crestline, Ohio 44827-9775	


Michael J. Settineri

FILE

5

BEFORE
THE OHIO POWER SITING BOARD

RECEIVED-DOCKETING DIV
2011 OCT -5 PM 5:00

PUCO

In The Matter Of The Application Of Black)
Fork Wind Energy, LLC For A Certificate To)
Site A Wind-Powered Electric Generating)
Facility In Richland And Crawford Counties.)

CASE NO. 10-2865-EL-BGN

AMENDMENT TO JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

On September 28, 2011, Black Fork Wind Energy, LLC (the "Applicant"), the Ohio Farm Bureau Federation and the Staff of the Ohio Power Siting Board (collectively the "Parties") filed a Joint Stipulation and Recommendation (the "Stipulation") in this proceeding. In the Stipulation, the Parties expressly reserved the right to amend the Stipulation. Accordingly, this amendment to the Stipulation is submitted for filing on the case docket.

II. RECOMMENDED CONDITIONS

The parties to this amendment hereby agree to amend Section II of the Stipulation to add the following recommended conditions to the Stipulation:

72. Applicant shall comply with Crawford County's Rules Regarding the Issuance of Permit for Movement of Overweight and Over Dimension Vehicles as existing or as may be modified or amended in the future.

73. Applicant shall enter into a written "Road Use Agreement" with the appropriate county officials and supported by adequate financial assurances. The "Road Use Agreement" must be subject to approval by the Board of County Commissioners. Further,

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unless otherwise approved by the Board of County Commissioners, this "Road Use Agreement" must not supplant the County's rules regarding issuance of permits for movement of overweight and over dimension vehicles which are independently enforceable by the County.

74. Where improvements or repairs are necessary, Applicant shall comply with all applicable statutory requirements for the engineering, design, construction, improvement or repair of roads and bridges necessitated by the Project during the construction, maintenance and decommissioning phases. All work must be completed in accordance with the applicable statutory requirements and, as required, under the jurisdiction of the local governmental authorities. This would include compliance with all applicable statutes addressing engineering and design, construction, competitive bid requirements and prevailing wage and other statutory requirements, as well as a signed road use agreement between the Applicant and the Board of County Commissioners . All work must be completed at Applicant's cost, including engineering review and design work, preparation of plans and specifications, preparation of construction bid documents and contracts, preparation of bond and surety obligations, supervision and inspection costs, attorneys fees and other professional costs.

75. Applicant shall finalize, and provide to the County Engineer, the final delivery route plan and the required traffic and roadway improvement structures at least sixty (60) days prior to the preconstruction conference.

76. Applicant shall repair at its cost, or reimburse the County or Township, for any damage to public roadways, bridges and other transportation improvements to restore the improvement to at least original condition and to reimburse the County or Township for any

other costs incurred. Again, any repair work must comply with all applicable statutory requirements.

77. Applicant shall coordinate with, and obtain all approvals from, local authorities for all temporary or permanent road closures, road restoration or road improvements necessary for construction and operation.

78. Applicant shall post a bond, escrow or other financial assurance acceptable to the County and sufficient to provide adequate assurance for any damage to the public roadways and to cover all costs incurred during the construction, maintenance and decommissioning phases.

79. Applicant shall avoid where possible or minimize any damage to field tile drainage systems and to make proper repair for any damage to field tile in coordination with the County Soil and Water Conservation District or other local authority.

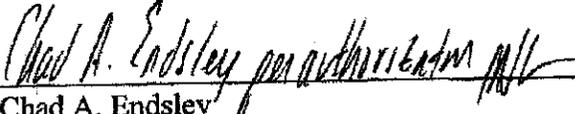
80. The collection systems should not be permitted in the public right-of-way without compliance with all safety requirements and subject to the County approval.

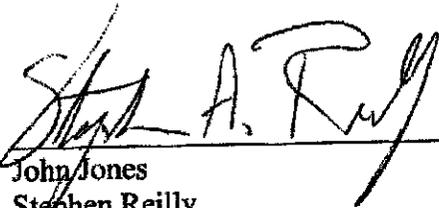
III. EFFECT OF SIGNATURE.

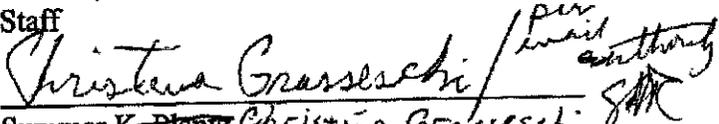
By executing this amendment, the Board of County Commissioners of Crawford County hereby state that it does not oppose the Stipulation, and supports and adopts recommended conditions 72 through 80 of this amendment. By executing this amendment, the Staff of the Ohio Power Siting Board hereby states that it does not oppose this amendment.

The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this amendment to the Joint Stipulation and Recommendation on this 5th day of October, 2011.


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Michael J. Settineri
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per email authority
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Environmental Enforcement
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Attorneys for the Board of County
Commissioners of Crawford County

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by hand delivery upon John Jones and Stephen Reilly, Assistant Attorneys General, Public Utilities Section, 180 E. Broad Street, 6th Floor, Columbus, OH 43215 and via Overnight Mail upon the following persons listed below this 5th day of October, 2011:

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Grover Reynolds 7179 Remlinger Road Crestline, Ohio 44827-9775	



Michael J. Settineri

MINUTES

REGULAR MEETING OF THE OHIO POWER SITING BOARD

January 23, 2012

Members Present:

Todd A. Snitchler, C
Dr. Theodore Wymyslo
Rocky Black for Dr.
Brian Cook for Scott
Chad Smith for Christ
Fred Shimp for Jim Ze
Senator Seitz, Designe
Representative Jay Go

Agriculture
n Agency
Development
l Resources

MINUTES
1/23/2012

Members Absent:

Public Member (Vacant
Senator Tom Sawyer
Representative Louis W

Resolution 426-12 -- Minutes of the Regular Board Meeting, November 28, 2011.
Chairman Snitchler moved to accept the minutes of the prior Board meeting. B. Cook seconded the motion. The resolution passed.

Resolution 427-12 -- Case No. 10-2865-EL-BGN. In the Matter of the Application of Black Fork Wind Energy, LLC for a Certificate to Site a Wind-Powered Electric Generating Facility in Richland and Crawford Counties, Ohio. Chairman Snitchler moved to approve the application. T. Wymyslo seconded the motion. The resolution passed.

Resolution 428-12 -- Case No. 11-902-EL-BGN. In the Matter of the Application of Glacier Ridge Wind Farm, LLC for a Certificate to Site a Wind-Powered Electric Generation Facility in Hardin and Logan Counties, Ohio. Chairman Snitchler moved to approve the request to withdraw the application. F. Shimp seconded the motion. The resolution passed.

Resolution 429-12 -- Case Nos. 10-2439-EL-BSB and 10-2440-EL-BTX. In the Matter of the Applications of the City of Hamilton and American Municipal Power, Inc. for a Certificate of Environmental Compatibility and Public Need for the Construction of a Transmission Line and Substation in Franklin and Washington Townships. Chairman Snitchler moved to deny the requests for rehearing and leave to intervene. C. Smith seconded the motion. The resolution passed.

(March 26, 2012)

Todd A. Snitchler, Chairman

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Black Fork)
Wind Energy, L.L.C. for a Certificate to Site a) Case No. 10-2865-EL-BGN
Wind-Powered Electric Generating Facility In)
Crawford and Richland Counties, Ohio.)

OPINION, ORDER, AND CERTIFICATE

The Ohio Power Siting Board (Board), coming now to consider the above-entitled matter, having appointed administrative law judges to conduct the hearings, having reviewed the exhibits and testimony introduced into evidence in this matter, and being otherwise fully advised, hereby issues its Opinion, Order, and Certificate in this case as required by Chapter 4906, Revised Code.

APPEARANCES:

Vorys, Sater, Seymour and Pease LLP, by M. Howard Petricoff, Stephen M. Howard, and Michael J. Settineri, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008, on behalf of the applicant, Black Fork Wind Energy, LLC.

Mike DeWine, Ohio Attorney General, by John J. Jones, Assistant Section Chief, and Stephen A. Reilly and Devin D. Parram, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215, and Christina E. Grasseschi, Summer J. Koladin Plantz, Assistant Attorneys General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, on behalf of the Board's Staff.

Chad A. Endsley, 280 North High Street, P.O. Box 18238, on behalf of the Ohio Farm Bureau Federation.

Benesch, Friedlander, Coplan, & Aronoff, LLP, by Orla Collier III, 41 South High Street, 26th Floor, Columbus, Ohio 43215, on behalf of the Board of Crawford County Commissioners, the Board of Richland County Commissioners, the Richland County Engineer, the Plymouth Township Trustees, the Sharon Township Trustees, and the Sandusky Township Trustees.

John Warrington, Loren Gledhill, Carol Gledhill, Mary Studer, Alan Price, Catherine Price, Nick Rietschlin, Margaret Rietschlin, Bradley Bauer, Debra Bauer, Grover Reynolds, Brett Heffner, Gary Biglin, and Karel Davis, pro se.

OPINION:I. SUMMARY OF THE PROCEEDINGS

All proceedings before the Board are conducted in accordance with the provisions of Chapter 4906, Revised Code, and Chapter 4906, Ohio Administrative Code (O.A.C.).

On December 1, 2010, Black Fork Wind Energy, LLC (applicant, company, or Black Fork) filed a preapplication notification letter, pursuant to Rule 4906-5-08(A), O.A.C., regarding a public informational meeting to be held in Shelby, Ohio regarding an application for a certificate of environmental compatibility and public need (certificate) that it planned to file with the Board (Applicant Ex. 1) for a proposed wind farm located in Crawford and Richland counties. On January 11, 2011, Black Fork filed proof of publication of the notice of the public information meeting which appeared in the *Mansfield News Journal* and the *Bucyrus Telegraph Forum*. On December 16, 2010, the applicant held the public informational meeting at the Shelby High School in Shelby, Ohio. Black Fork is a corporation and a person within the definition of Section 4906.01(A), Revised Code. The project is a major utility facility as defined in Section 4906.01(B)(1), Revised Code.

On March 9, 2011, Black Fork filed a motion for waivers of certain filing requirements under Rule 4906-17, O.A.C., including a waiver of the requirement to file an application one year prior to commencement of construction under Section 4906.06(A)(6), Revised Code. On March 10, 2011, Black Fork filed its application for a certificate to construct the proposed wind-powered electric generating facility. Also on March 10, 2011, Black Fork filed a motion for a protective order for certain documents as part of its application. On March 22, 2011, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene. On April 28, 2011, Black Fork and the Board's Staff (Staff) filed a joint motion to extend the time of the completeness review period pursuant to Rule 4906-7-12, O.A.C. By entry of May 3, 2011, the OFBF's motion to intervene was granted; the applicant's requests for waiver of Section 4906.06(A)(6), Revised Code, and for waiver of Rules 4906-17-05(A)(4), 4906-17-05(B)(2)(h), and 4906-17-08(C)(2)(c), O.A.C., were granted; the applicant's request for a waiver of Rule 4906-17-04, O.A.C., was denied; the motion for protective order was granted; and the parties' joint motion for an extension of time was granted.

On June 10, 2011, the Board notified Black Fork that, pursuant to Rule 4906-1-14, O.A.C., the application had been found to be complete, whereupon copies of the application were served upon local government officials. By entry of June 22, 2011, a local public hearing was scheduled on September 15, 2011, at the Shelby Senior High School, in Shelby, Ohio and an adjudicatory hearing was scheduled for September 19, 2011, in Columbus, Ohio. In accordance with Rule 4906-5-08, O.A.C., public notice of the hearings

was published in the *Mansfield News-Journal* and in the *Bucyrus Telegraph Forum* on June 30, 2011. Proof of publication was filed with the Board on July 19, 2011, and September 12, 2011. In accordance with Rule 4906-5-08(C)(3), O.A.C., the applicant filed a sample letter sent to adjoining and affected property owners. By entry of August 30, 2011, the following jurisdictions and individuals were granted intervention in this case: the Board of Crawford County Commissioners (Crawford County), the Board of Richland County Commissioners, the Richland County Engineer, the Plymouth Township Trustees, the Sharon Township Trustees, the Sandusky Township Trustees, John Warrington, Loren Gledhill, Carol Gledhill, Mary Studer, Alan Price, Catherine Price, Thomas Karbula, Nick Rietschlin, Margaret Rietschlin, Bradley Bauer, Debra Bauer, Grover Reynolds, Brett Heffner, Gary Biglin, and Karel Davis. The motion to intervene filed by William Alt was denied. Staff conducted an investigation concerning the environmental and social impacts of the project and filed its report of investigation (Staff Report) on August 31, 2011.

The local public hearing was held on September 15, 2011 in Shelby, Ohio. At the hearing, 25 witnesses gave public testimony. The adjudicatory hearing commenced on September 19, 2011, and was recessed in order to allow the parties an opportunity to conduct settlement negotiations. On September 20, 2011, the parties requested that the evidentiary hearing be continued to October 11, 2011. By entry of September 21, 2011, the evidentiary hearing was continued to October 11, 2011. On September 28, 2011, as amended on October 5, 2011, Staff, the applicant, the OFBF, and Crawford County filed a Joint Stipulation and Recommendation (Stipulation) (Jt. Ex. 1). The evidentiary hearing reconvened and was held on October 11, 12, and 13, 2011. On October 21, 2011, Thomas Karbula filed a notice of withdrawal of his intervention.

II. PROPOSED FACILITY

The applicant proposes to construct and operate the Black Fork Wind Farm project with up to 91 wind turbines and 200 megawatt (MW) of capacity near Shelby, Ohio. The project area covers 24,200 acres in Auburn, Jackson, Jefferson, and Vernon townships in Crawford County and Plymouth, Sandusky, and Sharon townships in Richland County. The facilities in the project area would be located on approximately 14,800 acres of leased private land, with 150 participating landowners. The applicant has designed the project to accommodate three possible turbine models depending on availability and cost at the time of ordering. The structures would consist of a three-bladed horizontal axis turbine and nacelle on top of an off-white monopole tubular steel tower. The turbine layout will not change as a result of the turbine model selected by the applicant; however, the number of turbines constructed will depend on the turbine model chosen for the project, as each model has a different generation capacity. The total height would vary by turbine model, ranging from 426 feet to 494 feet. The hub height for the turbines would be between 262 feet and 328 feet. The maximum rotor diameter would be 331 feet. A 34.5 kilovolt (kV) underground electric collection system would be installed to transfer the power from

each wind turbine location to a collection substation where it would be connected to American Electric Power's (AEP) 138 kV electric transmission line at the AEP Howard substation. The applicant intends on utilizing an open arm of AEP's existing Howard-Fostoria Central 138 kV towers to place a new 138 kV conductor that would transport energy generated from the project from the applicant's new substation to AEP's existing Howard Substation, then distribute it to the electric power grid. The applicant has proposed three permanent meteorological (met) towers, up to 80 meters in height, in the project area in order to monitor wind resources during the operation of the wind farm. Up to approximately 29.6 miles of new or improved access roads would be needed to support the facility. (Staff Ex. 1 at 6-7; Applicant Ex. 7 at 3.)

III. CERTIFICATION CRITERIA

Pursuant to Section 4906.10(A), Revised Code, the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas or natural gas transmission line.
- (2) The nature of the probable environmental impact.
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility system and that the facility will serve the interests of electric system economy and reliability.
- (5) The facility will comply with Chapters 3704, 3734, and 6111, Revised Code, and all rules and standards adopted under those chapters and under Sections 1501.33, 1501.34, and 4561.32, Revised Code.
- (6) The facility will serve the public interest, convenience, and necessity.
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under

Chapter 929, Revised Code, that is located within the site and alternate site of the proposed major facility.

- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

The record in this case addresses all of the above-required criteria. In accordance with Chapter 4906, Revised Code, the Board promulgated rules which are set forth in Chapter 4906-17, O.A.C., prescribing regulations regarding wind-powered electric generation facilities and associated facilities.

IV. SUMMARY OF THE LOCAL PUBLIC HEARING

At the local public hearing held on September 15, 2011, 13 witnesses testified in support of Black Fork's application and 12 witnesses testified against the application. Those testifying in favor of the application highlighted, among other things, the economic benefit that would be gained by the affected counties and schools, the fact that wind power is renewable and a clean source of power, that concerns about how this project will impact local roads and drainage have largely been resolved, and that this wind project will create jobs and not be expected to have a significant adverse impact on agricultural production in the area (September 15, 2011, Local Hearing Transcript at 21-23, 58, 68, 70-71, 75, 77, 80-82, 89, 98). Those testifying in opposition to the proposed project emphasized, among other things, issues pertaining to noise, shadow flicker, ice throw, the loss of an unobstructed landscape, as well as concerns regarding whether the project will negatively impact property values, public health, existing wildlife, existing telephone, television (TV), and internet reception, existing water wells and aquifers, and the environment in general. Opponent testimony also raised questions regarding whether the project would make use of turbines produced in foreign countries, whether wind turbines require back-up power, and whether government subsidies would function to obscure the project's true costs. Other opponent testimony raised claims that the applicant has engaged in harassing behavior towards local property owners, and questioned whether the applicant can be trusted and be properly bonded (*Id.* at 14-18, 20-21, 26, 28, 32-33, 56, 91).

V. SUMMARY OF THE STAFF REPORT

A. Basis of Need - Section 4906.10(A)(1), Revised Code

Staff states that the basis of need criterion specified under Section 4906.10(A)(1), Revised Code, applies only if the major utility facility under review is an electric transmission line or gas or natural gas transmission line. Because the major utility facility

components, concrete, gravel, and heavy equipment to each turbine site; however, the applicant does not expect construction and operation of the wind farm to noticeably increase local traffic or impact other local services in the project area.

- (13) Wind farm construction activity would impact local roads and bridges. The pavement condition of the state, county, and township roads along the regional delivery route could be impacted by construction and material delivery equipment. Truck loads heavier than the state legal limit may impact the existing state, county, and township bridges.
- (14) The large turning radius required for the transport of wind turbine generator components may cause the truck and/or trailer to travel outside the existing pavement at intersections. In areas where wide turns are required, temporary alterations to the intersections would be required, including installation of gravel fill outside of the pavement limits as a temporary surface for truck/trailer turns, installation of drainage pipes and temporary culverts as an alternate means of drainage, and relocation of utility poles, signs, and other installations.
- (15) The applicant expects that post-construction and operational impacts to roads and bridges would be limited, as the roads would be sufficient in handling any traffic from operational and maintenance requirements that the applicant may need to perform on the wind turbine generator components.
- (16) No wetlands, ponds, or lakes would be impacted by this project during construction or operation.
- (17) The applicant has indicated that 20 bodies of water (streams and ditches) would be crossed by electrical collection lines. The applicant has committed to utilizing horizontal directional drilling (HDD) under these bodies of water to install the electrical collection lines, resulting in no disturbance to the bed and banks.
- (18) The applicant requested information from the Ohio Department of Natural Resources (ODNR) and the United States (U.S.) Fish and Wildlife Service (USFWS) regarding state and federally listed threatened and endangered plant and animal species on June 23, 2009. Additionally, during field

assessments of the survey corridor and areas, Ecology and Environment, Inc. (E&E), a consulting firm retained by the applicant identified state and federal listed species, in addition to common wildlife species.

- (19) The applicant has performed a preliminary review of the geology of both Crawford and Richland counties. At this time, there does not appear to be any geological conditions present that would restrict or constrain the construction of the facility in the designated project area.
- (20) The project would not alter any groundwater patterns or cause any significant or lasting impacts to the groundwater resources. Groundwater wells used for domestic water supplies should not be affected in any way during and after the construction of the wind turbines in the project area.
- (21) No significant adverse impacts to public or private water supplies are anticipated due to construction or operation of the project.
- (22) The applicant has stated that turbines 25, 30, 42, 43, and 83 would be located within Zone A of the Federal Emergency Management Authority's 100-year floodplain, and would not increase the base flood elevation.
- (23) All of the turbines under consideration cut-out¹ at wind speeds of at least 25 meters per second (m/s), or 56 miles per hour (mph). All proposed turbines are certified by the International Electrotechnical Commission that they are designed to withstand high wind speeds of at least 37.5 m/s or 84 mph.
- (24) The applicant plans to install Vestas V100, GE 1.6-100, or Siemens SWT 2.3-101 wind turbines. The project would include a substation with a locked security fence, transformer fire suppression system, a lightning protection system, and would comply with NFPA 70E standards and OSHA requirements.
- (25) Noise impacts from construction activities would include the operation of various trucks and heavy equipment. Impacts

¹ Cut-out wind speed refers to the wind speed at which a wind turbine ceases to produce energy.

from construction noise would be temporary and would be primarily restricted to daylight hours.

- (26) The applicant conducted baseline sound measurements at eight points within the project area in order to estimate the actual ambient noise levels. Recorded ambient noise levels (L_{EQ})² across these eight points ranged from 49 to 58 decibels (dBA) during the day and from 38 to 52 dBA at night.
- (27) In order to limit potentially high levels of sound to residents and other individuals, a 1,250-foot minimum separation distance was utilized by the applicant when siting wind turbines.
- (28) The applicant states that the Vestas V100 turbine would not generate operational noise in excess of the ambient L_{EQ} plus five dBA at any nonparticipating receptor. The Siemens SWT 2.3-101 and the GE 1.6-100 turbines result in 20 and 52 dBA, respectively, nonparticipating receptors that would experience sound levels in excess of the ambient L_{EQ} plus five dBA.
- (29) The applicant's realistic shadow flicker simulations identified 17 nonparticipating receptors modeled to receive 30 hours or greater per year of shadow flicker. The receptors exposed to greater than 30 hours per year are not identical across turbine technologies/layouts.
- (30) TV stations most likely to produce off-air coverage to Crawford and Richland counties are those at a distance of 40 miles or less. Specific impacts to TV reception could include noise generation at low channels in the very-high frequency (VHF) range within one-half mile of turbines and reduced picture quality. Signal loss could occur after construction.
- (31) The applicant states that the facility will not impact radio, TV, and other communication services in the project area, and that the facility has been sited to avoid known tower structures in the project area.
- (32) The applicant identified 10 microwave paths intersecting the project area. Based upon the calculated worst-case scenario and subsequent internal analysis, no proposed turbine

² L_{EQ} refers to the equivalent continuous sound level, or average sound level, over a specific period of time.

locations are expected to obstruct the identified microwave paths.

- (33) Wireless telephone network communications should be unaffected by wind turbine presence and operation.
- (34) On February 28, 2011, the applicant submitted the turbine coordinates to the National Telecommunications and Information Administration (NTIA) for review. No potential for radar interference was identified through this government agency review.
- (35) The proposed facility would be decommissioned once it is no longer operational. Decommissioning includes the dismantling and removal of all towers, turbine generators, transformers, and overhead cables; removal of underground electric cables; removal of foundations, buildings, and ancillary equipment; removal of surface road material; and restoration of the roads and turbine sites to the same physical condition that existed immediately prior to erection of the commercial wind-powered electric generating facility.
- (36) The applicant has not proposed the posting of a bond or equivalent financial security in an amount to ensure that funds are available to complete decommissioning. They have proposed posting a financial instrument within 180 days after the twentieth anniversary of the operations date, per landowner lease agreements. Staff believes this schedule is inadequate.

(Staff Ex. 1 at 18-26.)

Based on the preceding considerations, Staff recommends that the Board find that the nature of the probable environmental impact has been determined for the proposed facility and that the application complies with the requirements specified in Section 4906.10(A)(2), Revised Code, provided that any certificate issued by the Board for the proposed facility include the conditions specified in Staff's recommended conditions of certificate. (Staff Ex. 1 at 26.)

C. Minimum Adverse Environmental Impact - Section 4906.10(A)(3), Revised Code

Section 4906.10(A)(3), Revised Code, states that the Board may not grant a certificate for the construction, operation, and maintenance of a major utility facility unless

it finds and determines that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations. The Staff Report includes the following information concerning the topic of whether the facility represents the minimum adverse environmental impact, considered in light of the criteria set out in Section 4906.10(A)(3), Revised Code:

(1) Site Selection

The applicant received a waiver from providing a comprehensive site selection study due to specific requirements of a wind-powered electric generation facility. The applicant provided a general discussion that addressed the factors deemed necessary for a viable wind project and illustrated the process by which the project was micro-sited within the project area. Abundant wind resources, agricultural land, and available transmission interconnections were discovered in Richland and Crawford counties. Additionally, Colorado-based energy developer, Gary Energetics, had already initiated preliminary technical and environmental studies and secured lease agreements from land owners for the construction of a wind farm in the area. Having identified this project site as promising for wind generation, the applicant acquired the Black Fork Wind Farm from Gary Energetics. The project area had, thus, already been established prior to acquisition of the project and no other regional sites were considered. Additional factors were considered in the siting of individual wind turbines, collection lines, and access roads within the project area. The applicant installed three additional meteorological towers in March, April, and May 2009 to measure wind resources in the project area. The wind data from these towers was used to predict electric production from potential turbine locations, using various turbine models. The applicant identified and implemented setback requirements for residences, property lines, public rights-of-way, and other features. Additionally, the applicant evaluated visual effects, ice throw, blade shear, shadow flicker, impacts to local fauna, flora, and wetlands, as well as effects on local roads, cultural resources, and agricultural lands. Access roads were sited to avoid or minimize crossing wetlands, streams, and forested areas, as well as to minimize loss of agricultural land. (Staff Ex. 2 at 27.)

(2) Collection Line System

The applicant is proposing to place all collection lines underground, minimizing impacts to waterways and aesthetic impacts. However, Staff does not find the collection system between turbines 30 and 44 running to turbine 57 to represent minimal adverse impacts. This portion of line runs nearly four miles between the nearest turbines, across agricultural fields. Staff recommends that the applicant design a system to incorporate these lines into the western portion of the project, bundled with other proposed collection corridors. (Staff Ex. 2 at 27.)

(b) Recreational Areas

Two recreational use areas are within one mile of the project area: Woody Ridge Golf Course and Lowe-Volk Park. Woody Ridge Golf course is a public, 18-hole golf course that is located approximately 0.5 miles south of the northern project boundary. The nearest turbine to the course is 0.5 miles. At this distance, visual and noise impacts and shadow flicker are expected to be minimal. Lowe-Volk Park, located 0.7 miles south of the southwestern project boundary, is a 38-acre park with hiking trails, a picnic area, fishing, and a nature center. The closest wind turbines would be 1.5 miles from the park. While visible from some areas of the park, forested zones would act as natural screening, reducing the visual impact of the wind project. Noise impacts and shadow flicker are not expected to impact park visitors. (Staff Ex. 2 at 28.)

(c) Cultural and Archaeological Resources

The applicant has identified 27 historic structures, six archaeological sites, and six Ohio Genealogical Society-listed cemeteries within the project area for the facility. The applicant determined that the indirect visual impact from the project would not alter or affect the qualities or attributes that contribute to the historical or architectural significance of each identified landmark or NRHP-listed and NRHP-eligible structure. The applicant has noted that although mitigation options are limited due to the nature of the project, it has considered and incorporated mitigation options to reduce the visual impacts, including screening, uniform turbine design, and turbine color to blend with the sky at the horizon. (Staff Ex. 2 at 29.)

(d) Aesthetics

The applicant conducted a view-shed analysis, considering topography and project structure heights, to determine the visibility of the turbines within a five-mile radius of the project area. No vegetative or structural screening was accounted for in the study. Based on this analysis, the applicant estimates that one or more wind turbines would be visible from most vantage points within the study area. Wind turbines would also be visible from recreational use areas, cultural landmarks, and area residences. The project area is predominantly open land used for agriculture, making vegetative screening impractical. Furthermore, due to the height of the wind turbines, the applicant is required to implement a Federal Aviation Administration (FAA) lighting plan, in which red flashing lights are placed atop the nacelle of several turbines to assure safe flight navigation through the area. When complying with FAA lighting requirements, the applicant will install the minimum number of lights at the minimum intensity required by the FAA to diminish potential visual impacts. The project is expected to have a long-term aesthetic impact on residences near the facility. The facility would be visible from many of the

residences in the project area. Screening the turbines from view is not a practical mitigation measure as the project area is predominantly open land used for agriculture, and visual impacts would be unavoidable. (Staff Ex. 2 at 29.)

(e) Economics

Construction of the project would result in \$290 to \$400 million in spending. Between \$51 and \$69 million of total construction costs would be spent within the region on equipment, materials, labor, site preparation, and associated development costs. The facility would have a direct and indirect economic benefit to the region during construction and operation of the project. Total construction employment is estimated to be between 70 and 95 on-site workers, with an estimated construction payroll of \$5.7 to \$7.2 million during the one-year construction phase. Operations and maintenance (O&M) activities would require eight to 10 full-time employees with a total annual payroll between \$443,000 and \$575,000. Once fully constructed, this project could indirectly create between 37 and 51 jobs locally for operational and maintenance support. The local economy would benefit from direct and indirect purchases for locally-supplied goods and services. (Staff Ex. 2 at 29-30.)

(5) Ecological Impacts

(a) Surface Waters

The project area is located on the Lake Erie-Ohio River Basin Divide with 64 percent of the project area falling into the Lake Erie Watershed and 36 percent in the Ohio River Watershed. No major rivers are present in the project area; however, there are several perennial and intermediate streams draining to three watersheds. The project is not expected to impact any high-quality surface waters because the area is predominately being used to produce cultivated crops. However, the project could pose some impacts to surface waters, primarily associated with erosion and sedimentation that can impact downstream surface waters. The use of best management practices (BMPs) will minimize impacts associated with turbidity and downstream sedimentation. (Staff Ex. 2 at 30.)

Impacts to water bodies (streams and ditches) would be minimized by utilizing HDD for installing the underground electric collection system. Potential waterbody impacts associated with HDD would include disturbances around the bore pits and impacts from potential frac-outs.³ In order to minimize impacts during HDD, the drilling equipment would be set up away from riparian corridors and the drilling activity would be closely monitored for signs of frac-outs. Staff recommends that the applicant submit a detailed frac-out contingency plan for Staff review and approval. (Staff Ex. 2 at 30.)

³ Frac-outs occur when drilling mud or other lubricants used during the drilling process escape through fractures in the underlying material.

(b) Vegetation

The applicant determined that approximately four acres of forested areas would be removed as a result of construction of the project, with the majority of the tree clearing occurring as a result of electric collection line installation. To avoid the cutting of trees within a high-quality woodlot, Staff would require the applicant to reroute the underground electric collection lines proposed between turbine sites 16 and 90, so as to avoid the woodlot between these two turbine sites, or utilize HDD or another avoidance measure acceptable to Staff. (Staff Ex. 2 at 30.)

Installing culverts or other crossing methods can damage stream banks, which can lead to more erosion. The applicant would utilize BMPs to minimize erosion during the placement of a permanent culvert to access turbine 37. After construction, the applicant would immediately reseed the bank to minimize erosion. Additionally, Staff, ODNR-Division of Wildlife (ODNR-DOW), and the USFWS recommend that the applicant adhere to seasonal cutting dates (September 30th to April 1st) for the clearing of trees that exhibit suitable Indiana bat summer habitat, such as roosting and maternity roost trees. (Staff Ex. 2 at 30-31.)

(c) Wildlife

Segments of this project contain habitats likely to support common reptilian, amphibian, avian, mammalian, and aquatic species. These species would likely be impacted, both directly and indirectly, during the construction, operation, and maintenance of the proposed facility. Faunal impacts would include the loss of habitat; increased habitat fragmentation; increased disturbance such as noise, lighting, and human activity; and temporary and permanent displacement. In addition, operational impacts are expected to include bird and bat mortalities through direct strikes. Furthermore, mortality to bats is likely to occur from barotraumas.⁴ (Staff Ex. 2 at 31.)

The findings from the mist-netting survey report conducted by E&E suggested that there are breeding populations of five bat species within the project boundaries. The applicant used a minimum turbine setback of at least 100 meters (328 feet) from turbine centers, and approximately 50 meters (164 feet) from the blade tip, to forest edges to eliminate the potential for turbine blades to spin over forested areas where bat activity is most concentrated. The applicant further states that it does not anticipate that operation of the project would have a significant impact on bat populations in the project area. Staff states that, if it is determined that significant mortality, as defined in ODNR's approved, standardized protocol, has occurred, then a mitigation plan will be required to reduce the risk of mortality to birds and bats. (Staff Ex. 2 at 31.)

⁴ Barotraumas are any of several injuries arising from changes in pressure upon the body.

(d) Public and Private Water Supplies

The applicant has stated that no significant adverse impacts to public or private water supplies are anticipated due to construction of the project. Staff states that the applicant should conduct spill response training to construction and O&M Staff as needed to limit potential for impact. According to Staff, the applicant should also use prudent design including, but not limited to, the use of containment structures for oil and chemicals used during construction, operation, and/or maintenance. Staff also recommends compliance with any drinking water source protection plans developed by cities and villages within the project boundaries. Staff explains that compliance with these control mechanisms minimizes the potential impact to public and private water supplies. (Staff Ex. 2 at 31.)

(6) Geology and Seismology

(a) Geology

The applicant identified, in general, the geologic units within the project area for Richland and Crawford counties. Glacial drift covers the entire project area, although this material thins to the south, and overlies bedrock material consisting of shale and sandstone. According to Staff, the geotechnical exploration report shall include an evaluation of site specific conditions at each wind turbine location. This evaluation will include soil characteristics, static water level, rock quality description (RQD) percent recovery, depth and description of the bedrock contact, and recommendations needed for the final design and construction of each wind turbine foundation, as well as the final location of the transformer substation and interconnection substation. The applicant will be required to fill all boreholes, and borehole abandonment must be in accordance to state and local regulations. Staff also notes that the applicant shall also complete a full and detailed geotechnical report for each wind turbine location to confirm that there are no issues that would restrict or constrain the construction of the facility. The applicant has requested and received a waiver to allow for an extension in submitting site-specific information regarding wind turbine locations. Staff states that, although the applicant does not anticipate the need to blast at this project, should site-specific conditions warrant blasting, the applicant must submit a blasting plan to the Staff for review and acceptance at least 60 days in advance of any blasting. (Staff Ex. 2 at 32.)

(b) Soil Suitability

The applicant has identified 81 different soil types within the facility area. The site-specific engineering qualities and characteristics of the soils have yet to be determined. CTL Thompson, Inc., has provided a preliminary summary of the soil suitability within

the project area. The applicant does not anticipate any restrictions or hazards that would prevent construction of this project. (Staff Ex. 2 at 32.)

(7) Public Safety

(a) Public Services and Facilities

The project is not expected to cause any significant impacts on local services or facilities. During facility construction, local, state, and county roads might experience increased traffic; however, sufficient road capacity exists to absorb these increases. Demand for certain public services, like permit issuance and/or traffic guidance, might also increase temporarily. Project-related increases in local school enrollment are expected to be negligible, as the wind farm would employ only 8 to 10 permanent operators. Finally, required adherence to strict hazard and safety standards will mitigate the potential for fire or medical accidents during facility construction. (Staff Ex. 2 at 32.)

The applicant states that existing roads are adequate to handle increases in traffic during construction. Some traffic management may be necessary during construction and some modifications to existing roads may be needed to facilitate the delivery of turbine components. The applicant claims that road modifications will be authorized by the Richland County Engineer and Crawford County Engineer prior to construction and the applicant would obtain all necessary traffic permits from the Ohio Department of Transportation (ODOT), the Richland County Engineer, and the Crawford County Engineer. Because local emergency responders would likely be unfamiliar with addressing emergencies related to wind turbines, the applicant would meet with local emergency personnel to provide training and review site-specific risks prior to construction. (Staff Ex. 2 at 32.)

Staff explains that the electric collection system for the wind farm would be buried four feet underground. By law, anyone with underground facilities must be a member of a one-call system such as the Ohio Utilities Protection Service (OUPS). The OUPS establishes a communication link between the wind farm owner and individuals planning any digging activity. Staff notes that the owner of the buried facilities is required to mark underground lines before any digging or excavation work begins. (Staff Ex. 2 at 33.)

(b) Roads and Bridges

Wind farm construction equipment is expected to impact local roads. The pavement condition of state, local, and county thoroughfares along regional delivery routes could be damaged by construction and material delivery equipment, particularly dump truck and concrete truck traffic. The Staff Report notes that some modifications to local roads would be needed, including the expansion of intersection turns to accommodate specialized

turbine component delivery vehicles and conventional construction trucks. (Staff Ex. 2 at 33.)

All intersections in the area would need improvements to accommodate the oversized/overweight vehicles for turbine delivery from the manufacturer. These trucks require minimum clearances due to their size and turning radii. According to Staff, there does not appear to be any significant construction challenges such as steep grades, existing structures, or significant clearing with the proposed improvements. Clearing of vegetation, relocating traffic signs, grading of the terrain, extension and/or reinforcement of existing drainage pipes and/or culverts, reestablishment of a ditch line, if necessary, and construction of a suitable roadway surface to carry construction traffic must be addressed for each public roadway. Staff states that it is waiting to review the final route study to determine the roads used for delivery, road conditions, and obstructions. (Staff Ex. 2 at 33.)

(c) Construction Noise

Noise impacts from construction activities would include the operation of various trucks and heavy equipment. The applicant provided estimates of sound levels associated with operation of this construction equipment. Although the applicant intends to use BMPs for noise abatement during construction, many of the construction activities would generate significant noise levels. However, Staff believes that the adverse impact of construction noise would be minimal because it is temporary and intermittent, it would occur away from most residential structures, and most construction activities would be limited to normal daytime working hours. (Staff Ex. 2 at 33.)

(d) Operational Noise

The applicant retained Resource Systems Group, Inc. (RSG) to conduct noise studies of potential impacts from operation of the facility. Staff notes that some atmospheric conditions can further propagate or amplify sound, e.g., wind shear and temperature inversions. Wind shear can result in aerodynamic modulation, a rhythmic noise pattern, or pulsing, which occurs as each blade passes through areas of different wind speed/direction. (Staff Ex. 2 at 33.)

The noise impact of the wind farm also depends on the existing ambient noise level of the project area. An acoustic survey of the project area was conducted between June 3 and 11, 2009. Eight survey locations were acoustically sampled. Recorded ambient noise levels across the three points within the project area ranged from 49 to 58 dBA during the day and from 38 to 52 dBA at night. In order to limit sound levels to residents and other individuals, 1,250-foot buffer areas were utilized by the applicant when siting wind turbine generators. The applicant utilized an operational sound output of 48 dBA at all

nonparticipating receptors as a design goal. The Vestas V100 turbine meets this goal. The Vestas turbine would not result in operational increases to the ambient Leq by greater than five dBA at any nonparticipating receptor. However, the Siemens SWT 2.3-101 and the GE 1.6-100 turbines do not meet this goal; they result in 20 and 52 nonparticipating receptors that, respectively, would exceed the applicable standard. (Staff Ex. 2 at 34.)

A 2001 New York State Department of Environmental Conservation (NYSDEC) document⁵ states that "in non-industrial settings the noise level should probably not exceed ambient noise by more than 6 dBA at the receptor. An increase of 6 dBA may cause complaints. There may be occasions where an increase in noise levels of greater than 6 dBA might be acceptable." The NYSDEC recommends that, while it may be acceptable in some nonindustrial settings, an increase in ambient noise levels of greater than 6 dBA warrants further study of potential impacts. The Vestas V100 layout presents the minimum adverse acoustical impact to nonparticipating residents within one-mile of the project area. (Staff Ex. 2 at 34.)

(e) Shadow Flicker

The applicant used WindPRO to calculate how often and in which intervals a specific receptor could be affected by shadows generated by one or more wind turbines. The calculation of the potential shadow impact at a given shadow receptor, defined as a one-meter square area located one meter above ground level, is carried out by stimulating the environment near the wind turbines and shadow receptors. The position of the sun relative to the turbine rotor disk and the resulting shadow is calculated in time steps of one minute throughout a complete year. If the shadow of the rotor disk, which in the calculation is assumed solid, at any time casts a shadow on a receptor, then this step is registered as one minute of potential shadow impact. These calculations took into account the wind turbine location, elevation, and dimensions, and the receptor location and elevation. (Staff Ex. 2 at 35.)

A wind turbine's total height and rotor diameter were included in the WindPRO shadow flicker models. The taller the turbine, the more likely shadow flicker could have an effect on the local receptors, as the longer shadow has greater potential to reach beyond obstacles such as trees or hills. The larger the rotor diameter, the more area on the ground could be affected by shadow flicker. The Vestas V100 turbine creates the most shadow flicker impact to receptors. The Vestas turbine would expose 17 nonparticipating receptors to greater than 30 hours per year. The GE 1.6-100 turbine creates the least shadow flicker impact to receptors. The GE turbine would expose 13 nonparticipating receptors to greater than 30 hours per year. (Staff Ex. 2 at 35.)

⁵ NYSDEC. (February 2, 2001). *Assessing and Mitigating Noise Impacts* (p. 14). Albany, New York. Retrieved from the NYSDEC Web site: http://www.dec.ny.gov/docs/permits_ej_operations_pdf/noise2000.pdf

Realistic conditions based on the turbine's operational time, operational direction, and sunshine probabilities were used to calculate a realistic amount of shadow flicker to be expected at each shadow receptor. The applicant simulated shadow flicker from the proposed turbines out to one kilometer (3,280 feet). Shadow flicker beyond one kilometer from a turbine in northern latitudes such as Ohio can occur seasonally at sunrise and sunset when lower sun elevation angles occur. Staff notes that no state or national standards exist for frequency or duration of shadow flicker from wind turbine projects. However, according to Staff, international studies and guidelines from Germany and Australia have suggested 30 hours of shadow flicker per year as the threshold of significant impact, or the point at which shadow flicker is commonly perceived as an annoyance. This 30-hour standard is used in at least four other states, including Michigan, New York, Minnesota, and New Hampshire. Accordingly, the applicant and Staff utilized a threshold of 30 hours of shadow flicker per year for their analyses. (Staff Ex. 2 at 35.)

Additional screening factors such as trees and adjacent buildings were not considered within the realistic analysis. The same is true for receptors expected to receive greater than 30 hours of shadow flicker exposure. Staff points out that, if additional screening were modeled, this could result in lower shadow flicker exposure amounts and possibly reduce receptors above 30 hours per year to below that threshold. (Staff Ex. 2 at 35.)

Staff explains that shadow flicker frequency is related to the wind turbine's rotor blade speed and the number of blades on the rotor. Shadow flicker at certain frequencies may potentially affect persons with epilepsy. For about three percent of epileptics, exposure to flashing lights at certain intensities or to certain visual patterns may trigger seizures. This condition is known as photosensitive epilepsy. The frequency or speed of flashing light that is most likely to cause seizures varies from person to person. Flashing lights most likely to trigger seizures are between the frequency of five to 30 flashes per second or hertz (Hz).⁶ Staff states that this project's maximum wind turbine rotor speed translates to a blade pass frequency of approximately 0.8 Hz and, therefore, would not be likely to trigger seizures. As modeled, the GE 1.6-100 turbine presents the minimum adverse shadow flicker impact to nonparticipating residents within one-mile of the project area. (Staff Ex. 2 at 35-36.)

(f) Communication Interference

Staff explains that off-air TV stations transmit broadcast signals from terrestrial facilities. The signals can be received directly by a TV receiver or house-mounted antenna. TV stations most likely to produce off-air coverage to Crawford and Richland counties are

⁶ Epilepsy Foundation of America: Retrieved Dec. 21, 2009, from Epilepsy Foundation Web site: <http://www.epilepsyfoundation.org/about/photosensitivity>

those at a distance of 40 miles or less. Specific impacts to TV reception could include noise generation at low channels in the VHF range within one-half mile of turbines, and reduced picture quality. Signal loss could occur after facility construction; therefore, the applicant proposes to mitigate accordingly. According to Staff, the transition to digital signal has reduced the likelihood of these effects occurring. (Staff Ex. 2 at 36.)

The applicant states that the facility will not impact radio, TV, and other communication services in the project area, and that the facility has been sited to avoid known tower structures in the project area. The applicant does not offer mitigation for these towers should an impact occur but proposes coordination and mitigation if any unanticipated impacts to TV or AM/FM radio reception were to occur. Mitigation could include offering TV hookups, where a cable system is available, or direct broadcast satellite TV reception systems to those affected. Staff believes a third party should complete a baseline TV reception study prior to facility construction and that any subsequent losses to reception during facility operation should be mitigated. (Staff Ex. 2 at 36-37.)

Staff states that microwave telecommunication systems are wireless point-to-point links that communicate between two antennas and require clear line-of-sight conditions between each antenna. The applicant identified 10 microwave paths intersecting the project area. Based upon the calculated worst-case scenario, no proposed turbine locations are expected to obstruct the identified microwave paths. The applicant concluded that no potential for microwave interference exists for the turbine locations considered within the application. Signal blockage caused by the wind turbines would not degrade the wireless telephone network because of the way these systems are designed to operate. If the signal cannot reach one cell, the network design allows it to be able to reach one or more other cells in the system. As such, Staff asserts that local obstacles are not normally an issue for wireless telephone systems. (Staff Ex. 2 at 36.)

(g) Local and Long Range Radar Interference

Wind turbines can interfere with civilian and military radar in some scenarios. The potential interference occurs when wind turbines reflect radar waves and cause ghosting (false returns) or shadowing (dead zones) on receiving monitors. Radar interference thus raises national security and safety concerns. In the majority of cases, the U.S. Department of Defense finds that the interference is either not present, is not deemed significant, or can be readily mitigated. Potential interference is highly site-specific and depends on local features, the type of radar, and wind farm characteristics. In some cases, radar interference can be corrected with software that deletes radar signals from stationary targets. On February 28, 2011, the applicant submitted the turbine coordinates to the National Telecommunications and Information Administration (NTIA) for review. No

potential for radar interference was identified through this government agency review. (Staff Ex. 2 at 36-37.)

(h) Blade Shear and Ice Throw

Staff explains that blade shear is the phenomenon where a rotating wind turbine blade, or segment, separates from the nacelle and is thrown a distance from the tower. The applicant asserts that past incidences of blade shear have generally been the results of human error. Staff has also found that past incidences can be attributed to design defects during manufacturing, poor maintenance, control system malfunction, or lightning strikes. Staff points out that the GE Energy (GE) 1.6-100, Siemens SWT 2.3-101, and Vestas V100 are certified to international engineering standards. The turbines have the following safety features to address blade shear: two independent braking systems, a pitch control system, a lightning protection system, and turbine shut down at excessive wind speeds and at excess blade vibration or stress, and the use of setbacks. The applicant has incorporated a wind turbine layout with a minimum residential setback distance of 1,250 feet, and a property setback of 563 feet. Staff believes that installing and utilizing these safety control mechanisms minimizes the potential for blade shear and associated impacts. (Staff Ex. 2 at 37.)

Similarly, Staff explains that ice throw is the phenomenon where accumulated ice on the wind turbine blades separates from the blade and falls or is thrown from the tower. The applicant indicates that all turbines would have the following safety features to address ice throw: two independent braking systems, ice detection software, automatic turbine shut down at excessive vibration, and automatic turbine shut down at excessive wind speeds. The applicant has incorporated a wind turbine layout with a minimum residential setback distance of 1,250 feet. (Staff Ex. 2 at 37.)

GE, the manufacturer of one of the turbine models under consideration by the applicant, has developed specific safety standards for ice throw and blade shear for all of their turbine models and has recommended the use of an ice detector and other measures if people or objects (e.g., occupied structures, roads) are within a distance of 150 percent of the sum of the hub height and rotor diameter. Staff offers that it has been determined that turbines of the similar dimensions as the GE models would need to be located a distance of approximately 301.5 meters (989 feet) from any structure or roads. (Staff Ex. 2 at 37.)

Staff's evaluation of the turbine locations, utilizing this study, determined that turbines 44 and 51 would need to be relocated or resized to meet this minimum setback distance. Staff recommends that public access be restricted with hazards of ice conditions, and that the applicant would install ice detection software for the site and an ice detector/sensor alarm that triggers an automatic shutdown. Staff also recommends that the applicant relocate and/or resize proposed turbines 44 and 51 to conform to a setback

distance of 150 percent of the sum of the hub height and rotor diameter from roads and structures. Staff believes that adhering to these safety measures would sufficiently address the issue of ice throw. (Staff Ex. 2 at 37-38.)

(i) High Winds

Staff explains that the turbines are designed to withstand high wind speeds and have the following safety features in case of high winds: two independent braking systems and automatic turbine shut down at excessive wind speeds. The GE 1.6-100 and Siemens SWT 2.3-101 turbines are certified by the International Electrotechnical Commission (IEC) as Class II wind turbines, and have been designed to withstand wind speeds of 42.5 m/s or 95 mph. The Vestas V100 wind turbine has been certified by the IEC as a Class S wind turbine, and has been designed to withstand 42.5 m/s or 95 mph wind speeds. The applicant has incorporated a wind turbine layout with a minimum residential setback distance of 1,250 feet, and a property setback of 563 feet. Staff submits that installing and utilizing these safety control mechanisms minimizes the potential impacts from high winds. (Staff Ex. 2 at 38.)

(j) Pipeline Protection

Staff has found that there are at least five natural gas pipelines within the project area. In order to avoid a serious safety risk and significant environmental impact, Staff recommends that all turbines be located a minimum setback distance from natural gas pipelines of at least 1.1 times the total height of the turbine structure as measured from its tower's base, excluding the subsurface foundation, to the tip of its highest blade. This setback would ensure that, if a turbine were to fall with a blade fully extended, the tower and/or blade would not land on the pipeline right-of-way and affect the operation of the pipeline. Based on the tallest turbine model proposed for this project, with a tip height of 150.6 meters, the recommended pipeline setback would equate to 166 meters (544 feet). The applicant has indicated that proposed turbines 8, 15, 18, 33, and 37 are located approximately 166 meters or less from the pipelines. Staff recommends that these turbines be resized and/or relocated in order to meet the recommended setback from the pipelines. (Staff Ex. 2 at 38.)

(k) Decommissioning

According to Staff, MW-scale wind turbine generators typically have a life expectancy of 20 to 25 years. The current trend has been to upgrade older turbines with more efficient ones, while retaining existing tower structures. If not upgraded, turbines may go into a period of nonoperation, where no expectation of reoperation exists, and they are generally decommissioned at such time. Staff states that, upon decommissioning, the site must be restored and reclaimed to the same general topography that existed prior to

the beginning of the construction of the commercial facility, with topsoil re-spread over the disturbed areas at a depth similar to that in existence prior to the disturbance. (Staff Ex. 2 at 38.)

Staff notes that the applicant has not proposed the posting of a bond or equivalent financial security in an amount to ensure that funds are available to complete decommissioning. According to Staff, the applicant has proposed posting a financial instrument within 180 days after the twentieth anniversary of the operations date, per landowner lease agreements. Staff believes this schedule is inadequate due to the time that would elapse before assurance funds would be posted. Staff also believes that the application lacks specificity in a schedule and method by which requisite decommissioning funds are to be posted. Staff states that a project-specific decommissioning plan, which provides a proposed timetable and methodology for posting adequate decommissioning funds, should be required at least 30 days prior to a preconstruction conference for Staff review and acceptance. (Staff Ex. 2 at 39.)

(I) Staff Recommendation Regarding Whether the Record Supports a Board Determination That the Proposed Facility Complies with the Requirements of Section 4906.10(A)(3), Revised Code

Overall, the Staff concludes that the project, as proposed, would result in both temporary and permanent impacts to the project area and surrounding areas. Staff has recommended several conditions in order to address and minimize these impacts. With the recommended conditions, Staff concludes that minimum adverse environmental impacts would be realized. (Staff Ex. 2 at 39.)

The Staff recommends that the Board find that the proposed facility represents the minimum adverse environmental impact, and, therefore, complies with the requirements specified in Section 4906.10(A)(3), Revised Code, provided that any certificate issued by the Board for the proposed facility include the conditions specified in the section of the Staff Report. (Staff Ex. 2 at 39.)

D. Electric Grid - Section 4906.10(A)(4), Revised Code

Pursuant to Section 4906.10(A)(4), Revised Code, the Board must determine that the proposed electric generation facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the facility will serve the interests of electric system economy and reliability. In its report, Staff evaluates the impact of interconnecting the project into the existing regional electric transmission system and would be located in the AEP zone of the PJM Interconnection (PJM) control area. According to Staff, the applicant plans to use a 34.5 kV collection system to gather the energy into a single project substation owned by

the applicant. Staff explains that the energy from the applicant's substation and AEP's operated switchyard would step up the voltage to 138 kV. The power would be delivered to the AEP Howard Substation via a 138 kV AEP transmission line for distribution to the local and regional electric grid. (Staff Ex. 2 at 40.)

Staff notes that PJM is a regional transmission organization (RTO) that coordinates the movement of wholesale electric in all or parts of 13 states including Ohio and the District of Columbia. In addition, PJM administers the interconnection process of new generation to the system. Generators wanting to interconnect to the bulk electric transmission system located in the PJM control area are required to submit an interconnection application for review of potential impacts to the system and system upgrades necessary to maintain system reliability. (Staff Ex. 2 at 40.)

Staff points out that PJM has completed the Feasibility Study and System Impact Study for the project. The studies summarized the impacts of adding 200 MW from the proposed facility to the regional bulk power system and identified any transmission system upgrades caused by the project that would be required to maintain the reliability of the regional transmission system. The applicant has not yet signed a construction service agreement for the upgrades identified in the studies or an interconnection service agreement with PJM for the proposed facility. According to Staff, these agreements will need to be completed before the applicant will be allowed to interconnect the proposed facility to the bulk electric transmission system. (Staff Ex. 2 at 40.)

The Staff Report indicates that the applicant provided PJM's generation interconnection analysis to Staff for review of the impacts of connecting the Black Fork Wind Farm to the regional transmission grid. These studies were performed by PJM and comply with North American Electric Reliability Corporation standards for adding new facilities. The studies indicated the project would cause no new problems on the local AEP system or the PJM regional system, the project is consistent with plans for expansion of the regional power system, and serves the interests of electric system economy and reliability. (Staff Ex. 2 at 43.)

Staff recommends that the Board find that the proposed facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the facility would serve the interests of electric system economy and reliability. Therefore, the facility complies with the requirements specified in Section 4906.10(A)(4), Revised Code, provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 2 at 43.)

E. Air, Water, Solid Waste, and Aviation - Section 4906.10(A)(5),
Revised Code

Pursuant to Section 4906.10(A)(5), Revised Code, the facility must comply with specific sections of the Ohio Revised Code regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation.

(1) Air

Staff explains that the applicant provided ambient air quality data for the proposed project area. There are no air monitoring stations in Richland and Crawford counties; however, air monitoring stations in Knox, Franklin, Lorain, and Cuyahoga counties monitor for the pollutants. The Ohio Environmental Protection Agency (OEPA) lists Richland and Crawford counties as in attainment with the National Ambient Air Quality Standards (NAAQS). According to the Staff Report, the operation of the wind farm would not produce air pollution, therefore, there are no applicable air quality limitations, NAAQS, prevention of significant deterioration increments, or the need for permits to install and operate an air pollution source. Staff notes that a permit-to-install or permit-to-install and operate may be required for access roads. The applicant plans on using an existing concrete batch plant, which already has an approved permit and would not require a new permit for a concrete batch plant. The applicant may also need to obtain the OEPA *General Permit for Unpaved Roadways and Parking Areas, with a maximum of 120,000 Vehicle Miles Traveled per Year* (General Permit 5.1). In addition, Staff states that the applicant plans to minimize emissions during site clearing and construction by using BMPs such as using water to wet down open soil surfaces to prevent dust emission. (Staff Ex. 2 at 44.)

Staff believes that construction and operation of the facility, as described by the applicant and in accordance with the conditions included in the Staff Report, would be in compliance with air emission regulations in Chapter 3704, Revised Code, and the rules and laws adopted under that chapter. (Staff Ex. 2 at 44.)

(2) Water

The Staff Report notes that neither construction nor operation of the proposed facility would require the use of significant amounts of water, so requirements under Sections 1501.33 and 1501.34, Revised Code, are not applicable to this project. Approximately 13 acres of impervious surface would be generated as a result of the facility, including turbine foundations and the substation. The facility would not significantly alter flow patterns or erosion and, given the small increase in impervious surface within the facility, no modifications in the direction, quality, or flow patterns of storm water run-off are anticipated. Therefore, Staff believes that construction and

operation of this facility would comply with requirements of Chapter 6111, Revised Code, and the rules and laws adopted under that chapter. (Staff Ex. 2 at 44-45.)

(3) Solid Waste

The applicant has indicated that it is not aware of preconstruction solid waste except for limited amounts of woody vegetation debris in the project area. Waste generated during construction would be approximately 3,500 pounds per turbine and would consist of packing materials (i.e., plastic, wood, cardboard, and metal packing) construction scrap, and general refuse. Solid waste generated during operation would not be a significant amount. The solid waste would be disposed of through the local solid waste disposal services. Staff believes that the applicant's solid waste disposal plans would comply with solid waste disposal requirements in Chapter 3734, Revised Code, and the rules and laws adopted under that chapter. (Staff Ex. 2 at 45.)

(4) Aviation

Three general aviation public use airports exist within 10 miles of the proposed facility: Shelby Community Airport (FAA Identifier 12G), which is located two miles east of the proposed facility and is a privately-owned airport that maintains two active runways; Galion Municipal Airport (FAA Identifier KGQQ), which is located 3.6 miles south-southeast of the proposed facility and is a publicly-owned, airport that maintains one active runway; and Port Bucyrus-Crawford County Airport (FAA Identifier 17G), which is located 8.6 miles south of the project boundary and is a publicly-owned airport that maintains two active runways. (Staff Ex. 2 at 45-46.)

Any structure that the FAA deems to be an impact to air travel and/or would have an adverse physical or electromagnetic interference effect upon navigable airspace or air navigation facilities will receive a presumed hazard designation. According to Staff, as of the date the Staff Report was prepared, all turbine locations had been submitted for FAA review, and had received determinations of no hazard to aviation. The applicant also filed with the ODOT-Office of Aviation (ODOT-OA) for review, and received notices of clearance for this case. (Staff Ex. 2 at 46.)

In accordance with Section 4561.32, Revised Code, Staff contacted ODOT-OA during review of this application in order to coordinate review of potential impacts the facility might have on local airports. When creating the recommended conditions for the certificate, Staff implemented FAA and/or ODOT-OA recommendations where deemed justified through conversation and exchange with subject matter experts. (Staff Ex. 2 at 46.)

(5) Staff Recommendation Regarding Whether the Record Supports a Board Determination That the Proposed Facility Complies with the Requirements of Section 4906.10(A)(5), Revised Code

Staff states that the proposed facility complies with the requirements specified in Section 4906.10(A)(5), Revised Code, provided that any certificate issued by the Board for the certification of the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 2 at 46.)

F. Public Interest, Convenience, and Necessity - Section 4906.10(A)(6), Revised Code

Pursuant to Section 4906.10(A)(6), Revised Code, the Board must determine that the facility will serve the public interest, convenience, and necessity.

(1) Public Notice

In the Staff Report it is noted that, pursuant to Rule 4906-5-06, O.A.C., a copy of the accepted, complete application in this proceeding was duly served upon the Richland and Crawford county commissioners, the Crawford County Economic Development Partnership, the Richland County Regional Planning Commission, and the Auburn, Jackson, Jefferson, Sandusky, Vernon, Richland, Plymouth, Sandusky, and Sharon township trustees on June 17, 2011. On the same date a copy of the application was sent as well to the Bucyrus, Galion, Mansfield-Richland County (Main and Ontario branches), and Marvin Memorial (Shelby, Ohio) libraries. (Staff Ex. 2 at 47.)

Furthermore, Staff notes that, in accordance with Rule 4906-7-07(C), O.A.C., the ALJ scheduled a local public hearing for September 15, 2011, in Shelby, Ohio, and an adjudicatory hearing for September 19, 2011. The applicant was also directed to issue public notice of these hearings in newspapers of general circulation in the project area. The public notice for these hearings appeared in the *Mansfield News Journal* and the *Bucyrus Telegraph Forum* on June 30, 2011. Staff verifies that the applicant submitted proof of publication on July 19, 2011. (Staff Ex. 2 at 47.)

(2) Public Interaction

Staff states that, pursuant to Rule 4906-17-08(E)(1), O.A.C., an application for a certificate of environmental compatibility and public need must include a description of the applicant's public interaction programs. According to the applicant, company representatives have been meeting with local government officials, as well as participating landowners, since 2010, and the applicant has maintained an official community presence

since that time and plans to open a local office near the project area to help further communications with project stakeholders during facility construction. (Staff Ex. 2 at 47.)

Staff also summarizes that the applicant hosted a public informational meeting on December 16, 2010, to provide project information to the general public and to answer any questions about the project, and notice of the meeting appeared in the *Mansfield News Journal* and the *Bucyrus Telegraph Forum* on December 7, 2010. According to the applicant, almost 200 people attended the public meeting and many of the questions at the public meeting covered topics discussed in the certificate application, including construction impact on traffic, groundwater, birds and bats, as well as public services, tax subsidies, and renewable energy resources. (Staff Ex. 2 at 47-48.)

(3) Public Comment

According to the Staff Report, to date, 20 entities have requested leave for intervention in this proceeding and many of them have expressed opposition to the project as proposed by the applicant. The most common complaint is the proximity of turbines and associated facilities to residential structures. Other complaints include risks to health and safety, noise, damage to the environment, and the use of public funds. Blade shear, ice throw, shadow flicker, and interference with communication equipment are also mentioned. At the time of the Staff Report, Staff notes that there was one letter of support filed in this proceeding. (Staff Ex. 2 at 48.)

(4) Liability Insurance

Staff notes that, pursuant to Rule 4906-17-08(E)(2), O.A.C., a certificate application must also include a description of any insurance programs for providing liability compensation for damages to the public during construction or operation of the proposed facility. According to the applicant, liability insurance will be maintained at all times during the development, construction, and operation of the proposed project. The company will maintain in force a general liability policy with \$1 million per occurrence and \$2 million in the aggregate during the construction phase. Excess liability coverage will insure against claims of \$4 million per occurrence and in the aggregate. Following construction, the applicant will maintain in force general and excess liability coverage with a combined limit of no less than \$10 million per occurrence and in the aggregate. Participating landowners are listed as additional insured on the policies and can obtain a copy of the certificate by submitting a written request to the applicant. As indicated above, the applicant began meeting with participating landowners in 2010. Since then, the applicant has entered into voluntary lease agreements with about 150 landowners for the use of more than 14,800 acres of land in Richland and Crawford counties. According to the applicant, approximately 99 percent of the land leased for this project would be returned to its current use once construction is complete. In addition, all participating

landowners, at the election of the applicant, would receive annual payments during facility operations. According to the applicant, total lease payments are expected to fall between about \$120,000 to \$250,000 annually. The lease agreements are valid for 30 years from the date of commercial operation with an option to extend for two additional 10-year terms. According to the applicant, a memorandum of each executed lease agreement has been filed with the County Recorder's Offices of Richland and Crawford counties. (Staff Ex. 2 at 48.)

(5) Alternative Energy Portfolio Standard

Staff notes that Amended Substitute Senate Bill Number 221 (SB 221) of the 127th General Assembly requires that, beginning in 2009, a portion of the electricity sold to retail customers in Ohio come from renewable energy resources. Renewable energy resources include wind generation technologies. At least 50 percent of the renewable energy requirement must be satisfied with resources located within the state of Ohio. Electric distribution utilities or electric services companies may, at their discretion, comply with all or part of the renewable energy requirements through an electricity supply contract or through the use of renewable energy credits (RECs). (Staff Ex. 2 at 48-49.)

According to the applicant, the proposed facility would provide up to 200 MW of renewable energy to the bulk transmission system operated by PJM. Staff notes that the applicant intends to fill the need for a more diverse national energy portfolio and to enable Ohio electric utilities and services companies to meet the renewable energy requirements of SB 221. Staff believes the proposed facility would likely qualify as an in-state renewable energy resource under SB 221 and could play an important role in helping Ohio electric utilities meet their requirements under the law. However, to date, the applicant has not signed a power purchase agreement for the electricity or any RECs that may be generated by the proposed facility. (Staff Ex. 2 at 48-49.)

(6) Economics

Staff provides that, in accordance with Rule 4906-17-08(C)(2), O.A.C., an application for an environmental certificate must also describe the economic impact of the proposed facility. Staff explains that economic impacts from this type of project are usually divided into three categories: direct, indirect, and induced. Direct impacts are the result of spending that otherwise would not have occurred in the area and typically include spending on construction materials, supplies, and labor. Indirect impacts refer to the economic output of businesses that provide goods and services essential to the project. These are sometimes called supplier impacts. Induced impacts are those that result from increased household spending on such items as food and housing. (Staff Ex. 2 at 49.)

Staff estimates that the total economic impact of construction activities ranges from \$85.39 million to \$116.68 million, depending on the type and size of the turbine selected by the applicant. Construction activities could add anywhere between 660 and 896 new direct, indirect, and induced jobs with estimated earnings between \$31.64 million and \$42.95 million. Estimates for total economic activity during facility operations range from \$10.23 million to \$13.98 million. Operation-type activities could add anywhere between 56 and 77 additional direct, indirect, and induced jobs with estimated earnings between \$2.60 million and \$3.53 million each year. (Staff Ex. 2 at 49.)

(7) State and Local Taxes

Staff notes that, on June 4, 2010, the Ohio General Assembly passed Senate Bill 232, which adjusted the tax structure for advanced energy projects in Ohio. Subject to certain requirements, qualifying wind energy projects under construction before January 1, 2012, and placed into service before January 1, 2013, are exempt from real and personal property taxation. Owners and lessees of such projects are instead required to make annual payments in lieu of taxes (PILOT) of up to \$9,000 per MW of installed capacity. This provision was later extended to qualifying wind energy projects under construction before January 1, 2015, and placed into service before January 1, 2016.⁷ The applicant anticipates paying the maximum annual PILOT of \$9,000 per installed MW, about \$1.8 million per year for the proposed project. (Staff Ex. 2 at 50.)

(8) Federal Tax

Staff further offers that the American Recovery and Reinvestment Act of 2009 (ARRA) directed about \$16.8 billion towards the U.S. energy industry with the intent of increasing investment in energy efficiency, renewable energy technology, and grid modernization. Among other things, the ARRA provided until January 1, 2013, for wind facilities, and until January 1, 2014, for other qualified renewable facilities, a renewable energy production credit, i.e., Section 45 credit. It also provided until January 1, 2012, a renewable energy investment credit, i.e., Section 48 credit, and established a cash grant, i.e., Section 1603 grant, for any person who placed a qualified energy facility into service before the end of 2010. In December of 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 extended the availability of Section 1603 cash grants by extending the in-service requirement to December 31, 2011.⁸ According to Staff, now any qualifying wind facility placed into service during 2011 or after 2011, if construction of the facility began during 2009, 2010, or 2011, and the facility is placed into service before January 1, 2013, is eligible for the Section 1603 cash grant. The project

⁷ House Bill 153, 129th General Assembly (Enacted June 29, 2011).

⁸ Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. Title VII, Subtitle A, Section 707 of P.L. 11-312 (Enacted December 17, 2010).

schedule submitted by the applicant reveals that construction is intended to begin in 2012. Thus, Staff notes that the applicant is not eligible for the 1603 cash grant, but is eligible for renewable energy production credits. However, according to the applicant, this project could be constructed with or without ARRA grants. (Staff Ex. 2 at 50.)

(9) Staff Recommendation Regarding Whether the Record Supports a Board Determination That the Proposed Facility Complies with the Requirements of Section 4906.10(A)(6), Revised Code

Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and, therefore, complies with the requirements specified in Section 4906.10(A)(6), Revised Code, provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 2 at 50.)

G. Agricultural Districts - Section 4906.10(A)(7), Revised Code

Staff notes that, pursuant to Section 4906.10(A)(7), Revised Code, the Board must determine the facility's impact on the viability as agricultural land of any land in an existing agricultural district within the site of the proposed facility. Within the project area, a total of 196 acres of temporary impacts and 60.9 acres of permanent impacts would occur to agricultural land. The impacts to the agricultural district land would not affect the agricultural district designation of any of the properties within the project area. (Staff Ex. 2 at 51.)

Staff explains that construction-related activities, such as vehicle traffic and materials storage, could lead to temporary reductions in farm productivity caused by direct crop damage, soil compaction, broken drainage tiles, and reduction of space available for planting. However, the applicant has discussed and approved the siting of facility components with landowners in order to minimize impacts, and also intends to take steps in order to address such potential impacts to farmland, including: repairing all drainage tiles damaged during construction, removing construction debris, compensating farmers for lost crops, and restoring temporarily impacted land to its original use. After construction, only the agricultural land associated with turbines and access roads would be removed from farm production. (Staff Ex. 2 at 51.)

Staff recommends that the Board find that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined, and, therefore, the application complies with the requirements specified in Section 4906.10(A)(7), Revised Code, provided that any certificate issued by the Board for the

proposed facility include the conditions specified in the section of the Staff Report. (Staff Ex. 2 at 51.)

H. Water Conservation Practice - Section 4906.10(A)(8), Revised Code

As Staff notes, pursuant to Section 4906.10(A)(8), Revised Code, the proposed facility must incorporate maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives. Staff states that it has reviewed the information pertaining to the consumptive use of water for the construction and operation of the proposed facility. According to Staff, wind-powered electric generating facilities do not utilize water in the process of electricity production; therefore, water consumption associated with the proposed electric generation equipment does not warrant specific conservation efforts. A potable water supply would be provided to the O&M building for project and personal needs of the several employees using the facility, but Staff believes the amount of water consumed for these purposes would be minimal. (Staff Ex. 2 at 52.)

Based on its review, the Staff recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and, therefore, it complies with the requirements specified in Section 4906.10(A)(8), Revised Code. (Staff Ex. 2 at 52.)

VI. STIPULATION'S RECOMMENDED CONDITIONS ON THE CERTIFICATE

As stated previously, the parties to the Stipulation recommend that the Board issue the certificate requested by applicant, subject to certain conditions, as spelled out in the Stipulation. The following is a summary of the conditions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation. The stipulating parties agree that:

- (1) The facility shall be installed at applicant's proposed site presented in the March 10, 2011, application, as modified or clarified by applicant's supplemental filings and by recommendations in the Staff Report. Acceptable turbine types shall be limited to the Vestas V100, the General Electric 1.6-100, or the Siemens SWT 2.3-101 models.
- (2) The applicant shall utilize the equipment and construction practices described in the application, as modified or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report, as modified by the Stipulation.

- (3) The applicant shall implement the mitigation measures described in the application, as modified and/or clarified in supplemental filings, replies to data requests and recommendations in the Staff Report, as modified by the Stipulation.
- (4) Any new transmission line proposed for construction in order to deliver electricity from the wind farm shall be presented to the Board in a filing submitted by the transmission line owner, and must be approved by the Board prior to construction of the wind farm.
- (5) Any wind turbine site proposed by applicant, but not built as part of this project, shall be available for Staff review in a future case.
- (6) If, once construction has commenced at a turbine location, it is determined that the location is not a viable turbine site, that site shall, within 30 days, be restored to its original condition.
- (7) Prior to the commencement of construction, the applicant shall obtain and comply with all applicable permits and authorizations required under federal and state law. Within seven days of issuance, copies of permits and authorizations, including all supporting documentation, shall be provided to Staff.
- (8) The applicant shall conduct a preconstruction conference prior to the start of any construction activities. The preconstruction conference shall be attended by Staff, applicant, and representatives from the prime contractor and all subcontractors for the project. The conference shall include a presentation of the measures to be taken by the applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the applicant shall provide a proposed conference agenda for Staff review.
- (9) At least 60 days before the preconstruction conference, the applicant shall file a letter with the Board that identifies which of the three acceptable turbine models has been selected.

- (10) At least 30 days before the preconstruction conference, the applicant shall submit to Staff, for review and approval, the final turbine engineering drawings for each turbine location.
- (11) The applicant shall not commence construction of the facility until it has a signed interconnection service agreement with PJM. The agreement shall address 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 to Staff either a copy of the signed agreement or a letter stating that the agreement has been signed.
- (12) The applicant shall redesign the collection line system connecting turbines 30 and 44 to turbine 57. Better utilization of disturbed areas of this project shall be among the factors considered by the applicant in such redesign. Any redesign will be subject to Staff approval prior to commencement of construction.
- (13) At least 30 days prior to the preconstruction conference and subject to Staff review and approval, the applicant shall have in place a complaint resolution procedure in order to address potential operational concerns experienced by the public. Any complaint submitted must be immediately forwarded to Staff. The applicant shall, to the satisfaction of Staff, investigate and resolve any issues complained of.
- (14) The applicant shall develop a screening plan for the site containing the substation, laydown yard, O&M building, and temporary concrete batch plant. Such screening plan shall reduce visual and noise effects to surrounding residences and shall be subject to Staff review and approval prior to construction.
- (15) The applicant shall prepare, subject to review and approval by Staff prior to construction, a Phase I cultural resources survey program for archaeological work at turbine locations, access roads, construction staging areas, and collection lines. If the resulting survey work discloses a finding of cultural or archaeological significance, or a site that could be eligible for inclusion on the NRHP, then the applicant shall submit for Staff's acceptance, an amendment, modification, or mitigation.

plan. Any such mitigation effort shall be developed in coordination with the Ohio Historic Preservation Office (OHPO) and be submitted to Staff for review and acceptance.

- (16) Prior to the commencement of construction, the applicant shall conduct an architectural survey of the project area. The applicant shall submit to Staff a work program that outlines areas to be studied. If the architectural survey discloses a find of cultural or architectural significance, or a structure that could be eligible for inclusion on the NPHP, then the applicant shall submit for Staff's review and acceptance, an amendment, modification, or mitigation plan. Any such mitigation effort shall be developed in coordination with the OHPO and be submitted to Staff for review and acceptance.
- (17) No commercial signage or advertisements shall be located on any turbine, tower, or related infrastructure. If vandalism occurs, the applicant shall remove or abate the damage within 30 days of discovery or as extended by Staff for good cause shown, to preserve the aesthetics of the project. Any abatement other than the restoration to prevandalism condition is subject to approval by Staff.
- (18) The applicant shall avoid, where possible, or minimize to the maximum extent practicable, any damage to field tile drainage systems and soils resulting from construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems shall be promptly repaired to at least original conditions at the applicant's expense. Excavated topsoil, with the exception of soil excavated during the laying of cables for the collection system, shall be segregated and restored in accordance with the applicant's lease agreement with the landowner. Severely compacted soils shall be plowed or otherwise decompacted, if necessary, to restore them to original conditions, unless otherwise agreed to by the landowner.
- (19) The applicant shall provide a copy of the Floodplain Development Permit to Staff within seven days of issuance or receipt by the applicant, whichever is sooner, for turbines 25, 30, 42, 43, and 83.

- (20) At least seven days before the preconstruction conference, the applicant shall submit to Staff for review and acceptance a copy of all national pollutant discharge elimination system (NPDES) permits including its approved: stormwater pollution prevention plans (SWPPP); spill prevention, containment, and countermeasure (SPCC) procedures; and erosion and sediment control plan. Any soil issues must be addressed through proper design and adherence to the OEPA's BMPs related to erosion and sedimentation control.
- (21) The applicant shall employ erosion and sedimentation control measures, construction methods, and BMPs when working near environmentally-sensitive areas and/or when in close proximity to any watercourses, in accordance with the NPDES permits and SWPPP obtained for the project.
- (22) The applicant shall remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas shall be restored to preconstruction conditions in compliance with NPDES permits obtained for the project and the approved SWPPP created for this project.
- (23) The applicant shall not dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. All construction debris and all contaminated soil shall be promptly removed and properly disposed of in accordance with OEPA regulations.
- (24) The applicant shall assure compliance with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
- (25) The applicant shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas as mutually-agreed upon between the applicant and Staff, and as shown on the applicant's final approved construction plan, including vegetation clearing, areas such as a designated wetland or stream, and threatened or endangered species or their identified habitat.

- (26) The applicant shall not work Class 3 primary headwater streams, exceptional warm water habitat, coldwater habitat, warm water habitat, or streams supporting threatened or endangered species during fish spawning restricted periods (April 15 to June 30), unless a waiver is sought from and issued by the ODNR and approved by Staff releasing the applicant from a portion of or the entire restriction period.
- (27) Sixty days prior to the first turbine becoming commercially operational, the applicant shall submit a post-construction avian and bat monitoring plan for ODNR-DOW and Staff review and approval. This plan will be based on the turbine layout in conjunction with Condition 1 of the Staff Report. The applicant's plan shall be consistent with the ODNR-approved protocol, as outlined in ODNR's *On-Shore Bird and Bat Pre- and Post-Construction Monitoring Protocol for Commercial Wind Energy Facilities in Ohio* (ODNR's *Protocol*), as amended. If it is determined that significant mortality, as defined in ODNR's *Protocol* has occurred to birds and/or bats, then ODNR-DOW and Staff will require the applicant to develop a mitigation plan. If required, the applicant shall submit a mitigation plan to ODNR-DOW and Staff for review and approval within 30 days from the date reflected on ODNR's letterhead, in coordination with Staff, in which ODNR-DOW is requiring the applicant to mitigate for significant mortality to birds and/or bats. Mitigation initiation time frames shall be outlined in the ODNR-DOW approval letter and the Board concurrence letter.
- (28) The applicant shall contact an ODNR approved herpetologist prior to any construction in Auburn Township (Crawford County) and Plymouth Township (Richland County) to assess potential habitat for the Eastern Mississauga rattlesnake. If it is determined that potential habitat exists, Staff, ODNR-DOW, and the USFWS shall be contacted to discuss avoidance and minimization measures.
- (29) The applicant shall adhere to seasonal cutting dates of September 30 through April 1 for removal of suitable Indiana bat habitat trees, if avoidance measures cannot be achieved.
- (30) The applicant shall reroute the underground electric collection lines proposed between turbine sites 16 and 90, to avoid

impacts to the woodlot located between these turbine sites or utilize HDD or another avoidance measure acceptable to Staff.

- (31) Staff, ODNR-DOW, and the USFWS shall be immediately contacted if state or federal threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the applicant, Staff, and ODNR-DOW in coordination with the USFWS. If threatened or endangered species are encountered during operation activities, then the above referenced notification is required within 24 hours.
- (32) The applicant shall conform to any drinking water source protection plan, if it exists, for any part of the facility that is located within drinking water source protection areas of the local villages and cities.
- (33) The applicant shall complete a full detailed geotechnical exploration and evaluation at each turbine site to confirm that there are no issues to preclude development of the wind farm. The geotechnical exploration and evaluation shall include borings at each turbine location. The applicant must fill all boreholes, and borehole abandonment must comply with state and local regulations. The applicant shall provide copies of all geotechnical boring logs to Staff and to the ODNR Division of Geological Survey prior to construction.
- (34) Should site-specific conditions warrant blasting, the applicant shall submit a blasting plan, at least 60 days prior to blasting, to Staff for review and acceptance.
- (35) Prior to the use of explosives, the applicant or explosive contractor shall obtain any required license or temporary permit from the local county authority or county sheriff. The applicant shall submit a copy of the license or permit to Staff within seven days of obtaining it from the local authority.
- (36) The blasting contractor shall utilize two blasting seismographs that measure ground vibration and air blast for each blast. One seismograph should be placed at the nearest dwelling and the other placed at the discretion of the blasting contractor.

- (37) At least 30 days prior to the initiation of blasting operations, the applicant must notify, in writing, all residents or owners of dwellings or other structures within 1,000 feet of the blasting site. The applicant or explosive contractor shall offer and conduct a preblast survey of each dwelling or structure within 1,000 feet of each blasting site, unless waived by the resident or property owner. The survey must be completed and submitted to Staff at least 10 days before blasting begins.
- (38) The applicant shall comply with the turbine manufacturer's most current safety manual and shall maintain a copy of that safety manual in the operation and maintenance O&M building of the facility.
- (39) The applicant shall become a member of the OUPS prior to commencement of operation of the facility. Notification of membership shall be provided to Staff and the applicable board of county commissioners.
- (40) The applicant shall adhere to a setback distance of at least one and one-tenth times the total height of the turbine structure, as measured from the tower's base, excluding the subsurface foundation, to the tip of its highest blade, from any natural gas pipeline in the ground at the time of commencement of facility construction specifically to conform to this setback distance. At least 30 days before the preconstruction conference, the applicant shall submit to Staff, for review and acceptance, any required studies that changed due to resized and/or relocated turbines.
- (41) At least 30 days before the preconstruction conference, the applicant shall submit to Staff, for review, 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. Before the first turbine is operational, the applicant shall submit to Staff, for review, a fire protection and medical emergency plan to be used during operation of the facility and that addresses training of emergency responders, which shall be developed in consultation with the first responders having jurisdiction over the area.

- (42) The applicant shall restrict public access to the site at all times with appropriately placed warning signs or other necessary measures.
- (43) The applicant shall instruct workers on the potential hazards of ice conditions on wind turbines.
- (44) The applicant shall install and utilize an ice warning system that may include an ice detector installed on the roof of the nacelle, ice detection software for the wind turbine controller, automatic vibration monitoring software, or an ice sensor alarm that triggers an automatic shutdown.
- (45) The applicant shall relocate and/or resize turbines 44 and 51 to conform to a setback distance that equals 150 percent of the sum of the hub height and rotor diameter from occupied structures, including businesses. At least 30 days before the preconstruction conference, applicant shall submit to Staff, for review and acceptance, any required studies that changed due to resized turbines and/or relocated turbines.
- (46) The applicant shall provide the final delivery route plan and the results of any traffic studies to Staff, the Crawford County Engineer, and the Richland County Engineer 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 may deviate from the final delivery route as necessary, provided the deviation from the final delivery route is submitted to and approved by Staff, ODOT, the applicable board of county commissioners, and the applicable county engineer prior to the use of the alternative delivery route.
- (47) The applicant shall repair damage to government-maintained, public roads and bridges caused by construction activity. Any damaged public roads and bridges shall be repaired promptly to their preconstruction state by the applicant under the guidance of the appropriate regulatory agency. Any temporary improvements shall be removed unless the applicable board of county commissioners request that they remain. The applicant

shall provide financial assurance to the counties that it will restore the public roads it uses to their preconstruction condition. The applicant shall also enter into a road use agreement with the applicable boards of county commissioners prior to construction and subject to Staff review.

- (48) The facility owner and/or operator 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 predecommissioning state by the facility owner and/or operator under the guidance of the appropriate regulatory agency having jurisdictional authority. The applicant shall provide financial assurance to the counties that it will restore the public roads and bridges it uses to their predecommissioning condition. These terms shall be defined in a road use agreement between the applicant and the applicable board of county commissioners prior to construction.
- (49) The applicant shall obtain all required county and township transportation permits and all necessary permits from ODOT. Any temporary or permanent road closures necessary for construction and operation of the proposed facility shall be coordinated with the appropriate entities including, but not limited to, the Crawford County Engineer, the Richland County Engineer, ODOT, local law enforcement, and health and safety officials.
- (50) At least 30 days prior to the preconstruction conference and upon selection of the turbine model to be developed, the applicant shall provide the following to Staff for review and approval to the extent such information exists and is released to the applicant by the turbine manufacturer:
- (a) The low frequency sound values [sound pressure level (SPL), dB, Hz] expected to be produced.
 - (b) The A-weighted and C-weighted sound power levels, as well as one-third octave band measurements for the 20 and 25 Hz bands, and a separate evaluation of the data for low frequency and impulsivity in accordance with the

methodologies set forth within IEC 61400-11, Annex A, A.3, *Low Frequency Noise*, and A.4, *Impulsivity*.

- (c) The tonal audibility.
- (51) If preconstruction acoustic modeling indicates a facility contribution that exceeds the project ambient nighttime L_{EQ} (43 dBA) plus 5 dBA at the exterior of any nonparticipating residences within one mile of the facility boundary, the facility shall be subject to further study of the potential impact and possible mitigation prior to construction.
- (52) After commencement of commercial operation, the applicant shall conduct further review of the impact and possible mitigation of all project noise complaints. Mitigation shall be required if the project contribution at the exterior of any nonparticipating residence within one mile of the project boundary exceeds the greater of: (a) the project ambient nighttime L_{EQ} (43 dBA) plus 5 dBA; (b) the validly measured ambient L_{EQ} plus five dBA at the location of the complaint and during the same time of day or night as that identified in the complaint; or (c) other means of mitigation approved by Staff in coordination with the affected receptors.
- (53) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 pm. This limitation shall not apply to nacelle, tower, and rotor erection activities which may need to be carried out during low wind, nighttime hours for safety reasons. Impact pile driving and blasting operations, if required, shall be limited to the hours between 7:00 a.m. to 7:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The applicant shall notify property owners or affected tenants within the meaning of Rule 4906-5-08(C)(3), O.A.C., of upcoming construction activities including potential for nighttime construction activities.
- (54) At least 30 days prior to the preconstruction conference, the applicant shall complete a realistic shadow flicker analysis for

all inhabited nonparticipating receptors already modeled to be in excess of 30 hours per year of shadow flicker and provide the results to Staff for review and acceptance. This analysis shall incorporate reductions for trees, vegetation, buildings, obstructions, turbine line of sight, operational hours, wind direction, and sunshine probabilities.

- (55) Any turbine forecasted prior to construction to create in excess of 30 hours per year of shadow flicker at a nonparticipating habitable receptor within 1,000 meters shall be subject to further review and possible mitigation. Mitigation shall be completed before commercial operation commences and consist of either reducing the turbine's forecasted impact to 30 hours per year, or other measures approved by Staff in consultation with the affected receptor(s).
- (56) Prior to construction, the applicant shall submit the final layout and turbine locations to the NTIA for review and approval. Any concerns identified regarding obstruction to microwave or other communication systems shall be forwarded to Staff for review and acceptance prior to construction.
- (57) The applicant must meet all Federal Communications Commission and other federal agency requirements to construct an object that may affect communications and, subject to Staff approval, mitigate any effects or degradation caused by wind turbine operation. For any residence that is shown to experience a degradation of TV and cell phone reception due to the facility operation, the applicant shall provide, at its own expense, cable or direct broadcast satellite TV service and/or cell phone service.
- (58) At least 30 days prior to the preconstruction conference, the applicant shall complete a baseline TV reception and signal strength study and provide the results to Staff for review and acceptance.
- (59) All licensed microwave paths and communication systems, as identified within the application and all other communications studies performed for this project, shall be subject to avoidance or mitigation. The applicant shall complete avoidance or mitigation measures prior to construction for impacts that can be predicted in sufficient detail to implement appropriate and

reasonable avoidance and mitigation measures. After construction, the applicant shall mitigate all observed impacts of the project to microwave paths and systems existing or planned prior to construction within seven days or within a longer time period approved by Staff.

- (60) The applicant must meet all FAA and federal agency requirements to construct an object that may affect existing local and/or long-range radar, and mitigate any effects or degradation caused by wind turbine operation as required by the FAA or any federal agency.
- (61) If any turbine is determined to cause next-generation radar (NEXRAD) interference, the applicant shall propose a technical or administrative work plan, protecting proprietary interests in wind speed data, which provides for the release of real-time meteorological data to the National Weather Service office in Wilmington, Ohio. If an uncontrollable event should render this data temporarily unavailable, the applicant shall exert reasonable effort to restore connectivity in a timely manner.
- (62) The applicant must meet all recommended and prescribed FAA and ODOT-OA requirements to construct an object that may affect navigable airspace. This includes submitting all final turbine locations for ODOT-OA and FAA review prior to construction, and the nonpenetration of any FAA Part 77 surfaces.
- (63) Thirty days prior to any construction, the applicant shall notify, in writing, any owner of an airport located within two miles of the project boundary, whether public or private, whose operations, operating thresholds/minimums, landing/approach procedures and/or vectors are expected to be altered by the siting, operation, maintenance, or decommissioning of the facility.
- (64) During construction and after operation, all applicable structures be lit in accordance with FAA circular 7017460-1 K Change 2, *Obstruction Marking and Lighting*; Chapters 4, 12, and 13 (Turbines); or as otherwise prescribed by the FAA.
- (65) The applicant shall file all 7460-2 forms with the FAA at least 42 days prior to construction and provide such to Staff for review and acceptance.

- (66) The applicant, facility owner, and/or facility operator shall comply with the following conditions regarding decommissioning:
- (a) Provide the final decommissioning plan to Staff and the county engineers for review, and for Staff approval, at least 30 days prior to the preconstruction conference.
 - (b) Provide a revised decommissioning plan to Staff and the county engineers every five years from the commencement of construction. The revised plan shall reflect advancements in engineering techniques and reclamation equipment and standards. The revised plan shall be applied to each five-year decommissioning cost estimate. The plan and any revisions shall be reviewed and approved by Staff prior to implementation.
 - (c) At its expense, complete decommissioning of the facility, or individual wind turbines, within 12 months after the end of the useful life of the facility or individual wind turbines. If no electricity is generated for a continuous period of 12 months, or if the Board deems the facility or turbine to be in a state of disrepair warranting decommissioning, the wind energy facility or individual wind turbines will be presumed to have reached the end of its useful life. The Board may extend the useful life period for the wind energy facility or individual turbines for good cause as shown by the facility owner and/or facility operator.
 - (d) Decommissioning shall include the removal and transportation of the wind turbines off site. Decommissioning shall also include the removal of buildings, cabling, electrical components, access roads, and any other associated facilities, unless otherwise mutually agreed upon by the facility owner and/or facility operator and the landowner. All physical material pertaining to the facility and associated equipment shall be

removed to a depth of at least 36 inches beneath the soil surface and transported off site. The disturbed area shall be restored to the same physical condition that existed before erection of the facility. Damaged field tile systems shall be repaired to the satisfaction of the property owner.

- (e) During decommissioning, all recyclable materials, salvaged and nonsalvaged, shall be recycled to the furthest extent practicable. All other nonrecyclable waste materials shall be disposed of in accordance with state and federal law.
- (f) Improvements made to the electrical infrastructure shall not be removed if doing so would disrupt the electric grid, unless otherwise approved by the applicable RTO and interconnection utility.
- (g) Subject to approval by Staff, and seven days prior to the preconstruction conference, an independent, registered professional engineer, licensed to practice engineering in the state of Ohio, shall be retained by the applicant, facility owner, and/or facility operator to estimate the total cost of decommissioning in current dollars, without regard to salvage value of the equipment.
- (h) 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. The funds, surety bond, or financial assurance need not be posted separately for each turbine so long as the total amount reflects the aggregate of the decommissioning costs for all turbines constructed or under construction. Prior to commencement of construction, the applicant, the facility owner, and/or the facility operator shall provide a statement from the holder of the financial assurance demonstrating that adequate funds have been posted for the scheduled

construction. Once the financial assurance is provided, the applicant, facility owner and/or facility operator shall maintain such funds or assurance throughout the remainder of the applicable term and shall adjust the amount of the assurance, if necessary, to offset any increase or decrease in the decommissioning costs.

- (i) The decommissioning funds, surety bond, or financial assurance shall be released by the holder of the funds, bond, or financial assurance when the facility owner and/or facility operator has demonstrated, and the Staff concurs, that decommissioning has been satisfactorily completed, or upon written approval of the Board, in order to implement the decommissioning plan.
- (67) At least 30 days before the preconstruction conference, the applicant shall submit to Staff, for review and acceptance, the following documents:
- (a) One set of detailed engineering drawings of the final project design, including all turbine locations, collection lines, access roads, the crane route, permanent meteorological towers, substations, 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.
 - (b) A stream and/or wetland crossing plan including details on specific streams and/or ditches to be crossed, either by construction vehicles and/or facility components (e.g., access roads, electric collection lines), as well as specific discussion of proposed crossing methodology for each stream crossing and post-construction site restoration.
 - (c) A detailed frac-out contingency plan for stream and wetland crossings that are expected to be completed via HDD. Such contingency plan may

be incorporated within the required stream and/or wetland crossing plan.

- (d) A tree clearing plan describing how trees and shrubs around turbines, along access routes, in electric collection line corridors, at construction staging areas, and in proximity to any other project facilities will be protected from damage during construction, and, where clearing cannot be avoided, how such clearing work will be done so as to minimize removal of woody vegetation.
- (68) If any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to Staff in hard copy and as geographically referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally-sensitive areas will be subject to Staff review and approval prior to construction.
- (69) Within 60 days after the commencement of commercial operation, the applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (70) 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.
- (71) The applicant shall provide to Staff the following information as it becomes known: the date on which construction will begin; the date on which construction was completed; and the date on which the facility began commercial operation.
- (72) The applicant shall comply with Crawford County's rules regarding the issuance of permit for movement of overweight

and over-dimension vehicles as existing or as may be modified or amended in the future.

- (73) The applicant shall enter into with the appropriate county officials a written road use agreement supported by adequate financial assurances. The agreement must be subject to approval by the board of county commissioners. Further, unless otherwise approved by the board of county commissioners, the agreement must not supplant the county's rules regarding issuance of permits for movement of overweight and over dimension vehicles which are independently enforceable by the county.
- (74) Where improvements or repairs are necessary, the applicant shall, during the construction, maintenance and decommissioning phases, comply with all applicable statutory requirements for the engineering, design, construction, improvement or repair of roads and bridges necessitated by the project. All work must be completed in accordance with the applicable statutory requirements and, as required, under the jurisdiction of the local governmental authorities. This would include compliance with all applicable statutes addressing engineering and design, construction, competitive bid requirements and prevailing wage and other statutory requirements, as well as a signed road use agreement between the applicant and the board of county commissioners. All work must be completed at the applicant's cost, including engineering review and design work, preparation of plans and specifications, preparation of construction bid documents and contracts, preparation of bond and surety obligations, supervision and inspection costs, attorneys fees, and other professional costs.
- (75) The applicant shall finalize, and provide to the county engineer, the final delivery route plan and the required traffic and roadway improvement structures at least 60 days prior to the preconstruction conference.
- (76) The applicant shall repair, at its cost, or reimburse the county or township, for any damage to public roadways, bridges and other transportation improvements to restore the improvement to at least original condition and to reimburse the county or

township for any other costs incurred. Any repair work must comply with all applicable statutory requirements.

- (77) The applicant shall coordinate with, and obtain all approvals from, local authorities for all temporary or permanent road closures, road restoration or road improvements necessary for construction and operation.
- (78) The applicant shall post a bond, escrow, or other financial assurance acceptable to the county and sufficient to provide adequate assurance for any damage to the public roadways and to cover all costs incurred during the construction, maintenance, and decommissioning phases.
- (79) The applicant shall avoid, where possible, or minimize any damage to field tile drainage systems and make proper repair for any damage to field tile in coordination with the county soil and water conservation district or other local authority.
- (80) Without compliance with all safety requirements and subject to the county approval, the collection systems should not be permitted in the public right-of-way.

(Jt. Ex. 1 at 2-17; Jt. Ex. 2 at 1-3)

VII. EVIDENCE PRESENTED BY NONSIGNATORY PARTIES TO THE STIPULATION

At the evidentiary hearing held on October 11 through 13, 2011, the intervenors who were not parties to the Stipulation engaged in cross examination of company witnesses, Staff's witness, and presented their own testimony which, purported to challenge and/or provide clarification regarding the testimony presented by the applicant's witnesses, and the information contained in the applicant's hearing exhibits, the Staff Report, and/or the Stipulation. These challenges and/or clarifications addressed, primarily, 14 areas. The Board will consider each of the 14 areas individually below.

A. Impact on Property Values

(1) Hearing Testimony

Several of the intervenors raised a concern about the potential for the project to negatively impact the property values of the community (Rietschlin Ex. 1, at 2; Warrington Ex. 1 at 1-2, 5). Further, Mr. Warrington requested that the Board require that the applicant provide a property value guaranty that would protect homeowners from the

possibility of a reduction in property values as a result of the project (Warrington Ex. 1 at 7).

Two Black Fork witnesses, David Stoner and Scott Hawken, were questioned on this topic. Mr. Stoner is a Senior Vice President for Element Power, LLC, and, as such, is responsible for the development of the company's renewable energy projects in the eastern U.S, including Ohio, and the project in this case. He has 25 years experience in the electric utility and independent power business, primarily in project development, including specifically overseeing the development of wind energy projects for the last eight years (Applicant Ex. 7 at 1). Mr. Hawken is the Senior Project Manager for the Black Fork wind project. His duties, in this capacity, include initial site selection, land acquisition, land negotiation, land owner relations, public relations, outreach to local officials, preliminary design and layout, environmental impacts and assessment, environmental permitting, local zoning, and land use permitting. (Applicant Ex. 9 at 1.)

Mr. Stoner testified that, based on his experience, the proposed Black Fork facility would likely have no negative impact on property values in the area (Tr. at 36). He notes that, while clearly the project would positively and directly impact both Black Fork and those who have signed leases, the broader community could also expect to gain in terms of tax revenue and economic development (Tr. at 44). Black Fork witness Hawken testified that the project is projected to create, during construction, an estimated full-time equivalent of 70 to 95 workers and an estimated eight to 10 full-time jobs during the project's operational stage. In some cases, these jobs will require specialized skills or training. (Tr. at 192.)

While questioned on the issue of a property value guaranty, both company witnesses Stoner and Hawken indicated that Black Fork does not support a property value guaranty. Mr. Stoner explained that no property value guaranty is necessary for two reasons: first, there will likely be no negative impact from the project on property values in the area; and second, providing a property value guaranty is both unworkable and not a standard practice within the wind power industry specifically, or within other business sectors more generally. (Tr. at 40, 133.)

(2) Board Analysis and Conclusion

Upon review of the record, the Board finds that there is no substantive evidence that supports a finding that the proposed Black Fork facility would have a negative impact on property values in the area or that a property value guaranty would be appropriate. The Board believes that the numerous conditions set forth in the Stipulation provide the framework necessary to mitigate the effect of the project on the community. Therefore, the Board finds that the request for a property guaranty should be denied.

B. Use and Storage of Hazardous Materials, and Impact on Water Wells and Groundwater Resources

(1) Hearing Testimony

Black Fork witness Courtney Dohoney is a senior environmental scientist, whose duties include overseeing preconstruction biological surveys, reviewing and preparing comprehensive environmental reports, and obtaining applicable environmental permits. For the project, she oversaw the design, management, and implementation of studies and field activities (regarding wetlands, vegetation, wildlife, and threatened and endangered species, land use, soils, and water impacts) conducted to determine the impact of the proposed project on the environment. (Applicant Ex. 13 at 1-2.)

Ms. Dohoney stated that the project is not expected to impact potable water wells in the project area (Applicant Ex. 13 at 5). On cross examination, Ms. Dohoney testified that, during the construction phase of the project, certain types of hazardous materials, such as diesel fuel in storage tanks and small quantities of hydraulic fluids would be on site, because they are necessary during construction to maintain and operate the construction equipment (Tr. at 269). She also indicated that small quantities of some hydraulic fluids used for turbine maintenance are typically stored on site during the operational phase. She noted that, frequently, it is the turbine manufacturer, rather than the operator of the turbine, who is responsible for turbine maintenance. Thus, whether, after construction is complete, there will be hydraulic fluids on site used for turbine maintenance largely depends on which turbine manufacturer is selected. (Tr. at 269.) She submitted that, overall, given the localized impact that is expected to result from excavation and dewatering of turbine foundations along with the implementation of a SPCC plan designed to minimize the potential release of hazardous substances, impacts to potable water in the project area are not expected to occur (Applicant Ex. 13 at 5).

(2) Board Analysis and Conclusion

The Board notes that, as provided for in the Stipulation, the applicant will implement an SPCC plan designed to minimize the potential release of hazardous substances. Moreover, under the Stipulation, the applicant is, among other things, also mandated to: have, on site, an environmental specialist familiar with water quality protection issues, during construction activities that may affect sensitive areas; conform to any drinking water source protection plan, if it exists, for any part of the facility that is located within drinking water source protection areas of the local villages and cities; promptly remove and properly dispose of all construction debris and all contaminated soil, in accordance with OEPA regulations; obtain and comply with all permits and authorizations required under federal and state law; recycle to the furthest extent practicable, during decommissioning, all recyclable materials, whether salvaged or

nonsalvaged; and have in place a complaint resolution procedure for addressing any potential operational concerns experienced by the public. The Board finds that all of these conditions, considered together, support a finding that the applicant has taken sound and sufficient measures to minimize the environmental impact posed by its use of hazardous materials in constructing and operating its proposed wind farm.

C. Impact on Bird Breeding

(1) Hearing Testimony

Brett Heffner, testifying on his own behalf, explained his concerns that the project would negatively impact birds and bird habitat in the project area. He claimed that the area is not considered suitable nesting habitat and that birds and that bats would be killed as a result of the wind turbines. (Heffner Ex. 1 at 2, 5.) Karel Davis also expressed concerns that the project would affect bald eagles that lived in the project area (Davis Ex. 1 at 2).

The Staff Report indicated that breeding bird surveys were not conducted because agricultural land is not considered to be suitable nesting habit for most species of birds (Staff Ex. 2 at 22). On cross examination, Black Fork witness Mahoney was questioned whether this premise for avoiding bird breeding surveys was faulty if, in fact, much of the nonleased land within the project area is not primarily agricultural and, as such, might be suitable nesting habitat for most species of birds. Ms. Mahoney indicated that the conclusion that the project area is primarily agricultural is based on the location of the turbines. The relevant concern, according to Ms. Mahoney, is whether, by clearing the land for turbines, the applicant would be destroying habitat where birds breed. The witness admitted that there is certainly breeding habitat within the project area, but the project is not impacting those areas, and, in building the turbines, Black Fork will not disturb breeding habitat land. (Tr. at 283-286.) Ms. Mahoney also noted that, subsequent to doing surveys in the project area, Black Fork was notified by ODNR-DOW, as well as USFWS, that two active bald eagle nests exist within three miles of the project boundary. As a result, Black Fork has engaged in nest monitoring according to protocols established in consultation with ODNR-DOW and USFWS. (Tr. at 272- 273.)

(2) Board Analysis and Conclusion

Upon review, the Board finds that the evidence of record supports the conclusion that the project will not cause a destruction of the habitat where birds breed. Furthermore, the record reflects that Black Fork took the appropriate actions to protect the bald eagles that are known to exist in proximity to its project. We also note that Conditions 25 through 28 reasonably address issues related to threatened and endangered species and that Condition 29 will ensure that the applicant adheres to seasonal cutting dates for

removal of suitable Indiana bat habitat trees. Accordingly, we find that the concern about the impact of the project on bird breeding has been sufficiently addressed by the applicant and the stipulating parties.

D. Shadow Flicker

(1) Hearing Testimony

Jay Haley, P.E., was the Black Fork witness who presented testimony describing shadow flicker studies that he and his firm, EAPC Wind Energy (EAPC) performed on behalf of the applicant, as well as testimony regarding shadow flicker issues generally (Applicant Ex. 15 at 2-4). Mr. Haley indicated that his firm performed visual simulations and calculations to determine the shadow flicker impacts on 604 residences near the wind farm for three different wind turbine models. More detailed studies were conducted on the 17 nonparticipating residences⁹ that were predicted, based on the initial study results, to experience more than 30 hours of flicker per year if the Vestas V100 turbine was used for the project. On cross examination, Mr. Haley testified that this further analysis shows that only 11 of the 17 nonparticipating residences are predicted to exceed the 30 hours per year threshold. The reduction in anticipated impact is due to the use during the detailed analysis of more accurate directional flicker sensors, rather than the omnidirectional sensors used in the preliminary study. Steps that could be taken to reduce the impact of shadow flicker at these 11 residences would include planting trees or adding window blinds, or, as a last resort, curtailing the wind turbine causing the flicker during the times of flicker. (Applicant Ex. 15 at 2-3.) Mr. Haley conceded that, in order to be an effective method of mitigation, a tree would have to be at least as high as the window or other location where the shadow flicker was occurring (Tr. at 364).

(2) Board Analysis and Conclusion

Upon review, the Board believes that, as reflected in the record, the preliminary and follow-up shadow flicker studies conducted by the applicant appear to have been appropriately conducted. Moreover, we find that the Stipulation appears to adequately address the shadow flicker issues identified in those studies. Therefore, we conclude that, while the applicant should continue to work with Staff and any affected receptor to mitigate any potential affects of shadow flicker, at this time, there are no further conditions, other than those espoused in the Stipulation that should be imposed.

⁹ In this context, a nonparticipating residence refers to a residence owned by someone who does not have a lease allowing Black Fork to make use of the resident's property in developing the proposed facility.

E. Ice Throw(1) Hearing Testimony

Karel Davis, testifying on her own behalf, expressed her view that wind energy is not appropriate for Ohio, based on her conclusion that Ohio is too heavily populated to allow for setback distances that she considers to be necessary (Davis Ex. 1 at 5).

Black Fork witness Haley cited an ice throw risk assessment that was performed for the Colebrook South Phase of a wind project in Litchfield County, Connecticut, which estimated the probability of being struck by a one kilogram ice fragment at a distance of 280 meters from a GE 1.6 – 100 wind turbine to be less than once in 100,000 years. Mr. Haley believed that the probability of an ice throw for the project would be even lower than for the Colebrook South project based on the fact that Black Fork experiences approximately four fewer icing days per year. (Tr. at 373-374, 387-388.) Mr. Haley testified that, despite his extensive research and experience in the area, he is not personally aware, nor does he know anyone else that is aware of even a single incidence of an ice strike ever happening (Tr. at 380). Mr. Haley explained that most ice throw risk assessment studies do not factor into consideration the manner in which ice detection software functions to even further reduce the risk of an ice throw by shutting down a turbine during an icing event (Tr. at 396-397). Mr. Haley testified that there are at least 30 different types of ice detection sensors; however, he acknowledges that no ice detection sensor is 100 percent reliable. According to Mr. Haley, this is why wind farm owners commonly deploy more than one type of sensor on their turbines (Tr. 366). He stated that, because multiple types of ice detection sensors are installed on every turbine, the likelihood is extremely remote that every sensor on every turbine will fail to detect icing conditions (Tr. at 211, 400-402).

Condition 45 of the Stipulation provides that Black Fork should relocate or resize two particular turbines to conform to a setback distance that equals 150 percent of the sum of the hub height and rotor diameter from occupied structures, including businesses. Mr. Haley, along with Mr. Hawken, testified that Condition 45 of the Stipulation is acceptable to applicant. However, Mr. Haley further explained that the setback formula presented in Condition 45 of the Stipulation, should not be applied on a general basis, considering the extremely low risk for this project of ice throw to individuals, buildings, and automobiles. (Tr. at 377.) In Mr. Haley's opinion, it is the right decision to apply the setback formula referenced in Condition 45 of the Stipulation to occupied residences, but, given the fact that ice detection systems will be used on all turbines, he does not believe it should apply globally across the entire project as regards roads (Tr. at 398). The Stipulation establishes ice throw setback requirements that apply to occupied structures, rather than to individuals who may be moving about upon a given property. The probability that an individual would be hit by an ice throw is practically nil, according to

Black Fork witness Hawken, who joined another Black Fork witness in testifying that they are unaware of anyone ever being injured by an ice throw. (Tr. at 186, 380.)

(2) Board Analysis and Conclusion

Upon consideration of the record, the Board finds that the risk of ice throw has been adequately addressed by the Stipulation. Specifically, it appears that safeguards, both automatic and manual will be sufficient to protect those residing in the surrounding area from the risk of ice throw. Additionally, Conditions 43 and 44 that will provide instruction to workers on the potential hazards of ice conditions on wind turbines and the use of an ice warning system will provide additional safeguards. Therefore, the Board finds that, with the conditions of the Stipulation, at this time, the risk of ice throw has been adequately addressed.

F. Setback

(1) Hearing Testimony

There were questions raised by the nonstipulating parties regarding the minimum setbacks that will be utilized for the project. Some of these parties believe that, while the setback distances are based from inhabited residences, they should be based on the distance to property lines and public roadways because property owners are able to use any part of their property or develop their property. (Tr. at 750, 803.) Gary Biglin testified regarding his concern that the setbacks followed for this application were insufficient for residences and roadways (Biglin Ex. 1 at 2).

As noted by Staff witness Pawley, the setbacks recommended in the Staff Report follow the Ohio Revised Code; therefore, if the Stipulation is adopted, the project must comply with those setback standards (Tr. at 670-672.) Dale Arnold, Director of Energy, Utility, and Local Government Policy for the OFBF, stated that the setback requirements for this project are the minimum setbacks created by state law and House Bill 562, as well as the rules promulgated by the Board, given the current technology. He also explained that the OFBF believes that those particular rules and regulations set very good minimum standards and that the current setback requirements create no disincentive to property owners because they do not preclude a property owner who signs a lease from subdividing his property or selling it to new landowners. (Tr. at 300-302, 326.) Black Fork witness Hawken also testified that, while there was some concern raised regarding how close the collection lines will be to property lines, all collection lines will be underground and this should alleviate those concerns (Tr. at 160).

(2) Board Analysis and Conclusion

Upon consideration of the record, the Board finds that the conditions addressing the requisite setback in the Stipulation comply with the mandates established in the statute and promulgated in the rules. Furthermore, we find that no evidence has been presented on the record which would lead us to believe that additional measures should be taken, at this time. We believe that the stipulated conditions appropriately address the concerns raised by the nonstipulating parties. Therefore, we find that no additional measures should be imposed through this order regarding setback requirements.

G. Noise

(1) Hearing Testimony

Catherine Price, testifying on her own behalf, raised the concern that the noise impacts noted by the applicant and Staff would adversely impact her and her husband. She noted that her family spends a lot of time working inside and outside of their property and the opportunity to open the windows of their home would be diminished as a result of the noise cause by the wind turbines. (Price Ex. 2 at 2.)

Kenneth Kaliski, an employee of Resource System Group, Inc. (RSG), was the Black Fork witness who presented testimony describing noise impact studies that he and his firm performed on behalf of the applicant, as well as testimony regarding operational noise issues generally. Mr. Kaliski noted that, to determine what is the preconstruction background level for the Black Fork area, his firm set up sound level meters at eight monitoring sites to record background sound levels over an eight-day period. Subsequently, the firm modeled sound levels from construction and operation of the project wind turbines and prepared a noise impact study. Daytime and nighttime sound levels were calculated. While there was variation hour-to-hour and between the monitoring locations, according to the witness, the overall average nighttime sound level was 43 dBA and the average daytime sound level was 53 dBA. Based on the formula of nighttime noise level plus 5 dBA, which was established in prior cases before the Board, Mr. Kaliski stated that the design standard noise level for the project was established at 48 dBA. (Applicant Ex. 17 at 3-9.)

Mr. Kaliski admitted that, in 2009, when the sound monitoring that was conducted to determine the baseline background sound level for the project, certain sound monitoring locations were chosen that are no longer within the project's current boundaries. This is so due to the fact that the project's footprint has evolved since 2009, and certain turbine locations that, in 2009, were part of the proposed project have since that time been removed. In Mr. Kaliski's view, the chosen monitoring locations that are

located beyond the project's current boundaries consist of rural farmland that have soundscapes which are representative of areas within the project area. (Tr. at 442-447.)

When asked if the applicant could install permanent noise monitoring fixtures at, for example, each of the noise monitoring locations from which its initial noise monitoring studies were conducted, Mr. Kaliski stated that continuous sound monitoring, all day, everyday, over the life of the project, is possible, but that to do so would be very costly. He estimated that it would cost roughly \$40,000 to \$50,000 to set up each sound monitoring site, with annual operating costs applying on top of that amount. However, the costs of doing temporary monitoring at a particular location in response to individual complaints concerning noise would be considerably less. (Tr. at 428-431.)

When asked whether, in conducting his noise studies, he factored into consideration the possibility that the age of a turbine, due to wear and tear over time, might cause it to be noisier than when it was new, Mr. Kaliski responded that his studies were based on the manufacturer's guarantee, with a margin of error provided by the manufacturer. Mr. Kaliski stated that he has never been called upon to conduct any noise level measurements in response to complaints that are related to the deterioration of wind turbines due to age and/or wear and tear. He noted that issues that increase sound levels from a wind turbine over time, such as blade wear and gearbox deterioration, are things that also affect the power output for a wind turbine and, as such, are the types of things that are addressed in the normal maintenance of wind turbines. (Tr. at 424.)

Black Fork witness Kaliski testified that, if the Vesta V100 turbine model is used to complete the project, the project should meet the established design standard of 48 dBA. If the project is designed with either of the other two turbine models under consideration, then additional mitigation may be needed in order to achieve the established designed standard. (Applicant Ex. 17 at 4.) Mr. Kaliski indicated that a noise complaint resolution protocol will be developed prior to operating the project (Tr. at 413). He explained that the most common method of noise mitigation is putting select turbines into a noise-reduced operating (NRO) mode. The side effect of NRO is that it reduces the electric output from the turbine, which reduces the amount of renewable energy generated by the project. (Applicant Ex. 17 at 5.)

(2) Board Analysis and Conclusion

Upon review, we find no evidence of record to support a finding that the applicant should have acted differently than it did in identifying and taking sufficient and adequate steps, including those called for in the Stipulation, to address noise issues. The Board believes that, with continued monitoring and an appropriate complaint resolution process, as called for by the Stipulation, any concerns raised during the operation of the facility should be appropriately addressed on a case-by-case basis. Accordingly, the Board

concludes that no additional conditions, beyond those set forth in the Stipulation, should be imposed, at this time.

H. Impact on Farm Families in Ohio.

(1) Hearing Testimony

Margaret Rietschlin, testifying on her own behalf, raised concerns that the project would negatively impact farm families and farm life. She also claimed that the OFBF had not sent any information to her address with respect to the project. (Rietschlin Ex. 1 at 3.)

OFBF witness Dale Arnold, explained that the OFBF is a nonprofit educational and service organization made up of over 200,000 members, including members in each of Ohio's 88 counties. The OFBF is concerned with the quality of life for those engaged in agriculture and the protection of natural resources necessary to preserve the long-term capability of Ohio farmers to produce food, fiber, and energy. Mr. Arnold's duties with the OFBF are to oversee and implement the energy-related services the OFBF provides for its members. The stated purpose of Mr. Arnold's testimony was to explain how the proposed Black Fork wind project will impact farm families in Ohio. According to Mr. Arnold, assuming the Board adopts all of the conditions set forth in the Stipulation, the OFBF supports the Black Fork wind project, because it enhances farm income, protects natural resources, preserves open farm ground, permits Ohio agriculture to contribute to achieving the renewable goals establish in Ohio law, and helps meet the national energy goal of less dependence on foreign oil. (Applicant Ex. 14 at 1-3, 6.)

Mr. Arnold testified that, in his opinion, the Black Fork wind project will promote farmland preservation, in that it does allow the area to remain open and rural for farming development (Tr. 293). According to Mr. Arnold, a farmer who signs a lease allowing a turbine to be built on his land still has the ability to subdivide and sell his land to others; however, he still has the ability to use his property and sell it for commercial property (Tr. at 300, 302). By attending meetings with OFBF meetings, Mr. Arnold has heard that many farmers appreciate the idea that this particular project provides the community with an opportunity to generate taxes and provide community resources for the benefit of schools and county townships. Also, the project will reduce the pressure on farmers to sell some of their property for other types of development. (Tr. at 314.)

Mr. Arnold testified concerning his support for some of the specific conditions set forth in the Stipulation. For example, he stated that Condition 18 imposes soil separation and maintenance of field tile drainage systems, in a manner consistent with longstanding policies of both OFBF and the Ohio Land Improvement Contractors Association (OLICA). Mr. Arnold observed that it is the policy and recommendation of OFBF and OLICA that the machine to be used for trenching in installing and repairing field tile should be a wheel

or cable machine, and not a plow. The wheel or cable machine actually creates a trench where, as you cut a tile, it is readily seen and can be easily identified and easily repaired. Also, using a wheel or cable machine, there is less stress, less compaction, and less problem with regard to the ground. (Tr. at 295.) The OFBF similarly supports Condition 20 of the Stipulation which will require adoption of a plan to address erosion, sediment control, and disturbed soil issues. Finally, Condition 21 will adopt the watercourse protection program steps advocated by the OFBF and OLICA. (Applicant Ex. 14 at 4.) Mr. Arnold testified that the OFBF is comfortable with the standard setback requirements being applied in this matter, noting that they are established by statute and the Board's administrative rules (Tr. at 4-5).

When asked what advice the OFBF gives to nonparticipating residents who are concerned about whether the project will affect their wells, Mr. Arnold stated that they should establish a baseline now before construction of the project begins. In doing so, they should work with their local water, soil, and conservation district, and have the performance of their wells with regard to gallons per minute measured by a certified hydrologist. Having a baseline will enable them to use processes already established in law pertaining to repair, and through complaint, compensation and remediation. (Tr. at 329-330.)

Barry Yurtis, Vice President of Domestic Operations with Williams Aviation Consultants, Inc., testifying on behalf of Black Fork, was asked about whether the existence of wind turbines would result in the cessation of crop dusting and he indicated that aircraft used in crop dusting is no different than any other aircraft operating under visual flight rules and that all of these aircraft are required to separate themselves from any other aircraft or obstructions including terrain, weather, and other things. He also indicated that pilots who engage in crop dusting have experience operating aircraft around structures, including low hanging wires, when dropping their chemicals, and they are required to operate under the see-and-avoid principal. (Tr. at 251-253.)

(2) Board Analysis and Conclusion

The Board appreciates that questions were posed regarding the impact of the facility on the community. Based upon the evidence of record, it is evident that there are numerous benefits associated with the project that will advantage both the community and the local farmers. Therefore, we find that the conditions set forth in the Stipulation, and the supporting testimony by the stipulating parties, adequately address any concerns raised with regard to the alleged negative impact on the farm families.

I. Effects on Human Health, If Any, Associated With Living Near Wind Turbines.

(1) Hearing Testimony

Several of the nonstipulating intervenors, in their direct testimony, sought to explore whether living wind turbines can have a negative impact on human health. Karel Davis claimed that living next to turbines is distracting, annoying, and causes nausea. She also claimed that the sleep deprivation caused by wind turbines was used by law-enforcement and the military to "push someone to the brink or crack." (Davis Ex. 1 at 3-4.)

Dr. Diane J. Mundt, an epidemiologist and Senior Manager at ENVIRON International Corporation, testified as a witness on behalf of the applicant. Dr. Mundt indicated that she comprehensively searched, evaluated, and summarized the published, peer-reviewed, epidemiological literature on the human health effects, if any, associated with living in proximity to industrial wind turbines. In addition to searching relevant databases, she searched the World Wide Web to identify any credible, well conducted reports of harm to human health associated with industrial wind turbines. (Applicant Ex. 20 at 2.) Dr. Mundt explained that, in her opinion, a credible report is a properly conducted epidemiological study that generally meets certain key study conditions, including having an appropriate study population of sufficient and appropriate size, having a control population, and a methodology that reduces bias to the extent possible (Tr. at 462-463). Dr. Mundt claimed that her testimony is based on a critical review and synthesis of the available epidemiological literature, as well as her professional training and experience in applying epidemiological concepts and methods to diverse human health issues (Applicant Ex. 20 at 2-3).

With regard to whether the operation of utility-scale wind turbines causes adverse health effects, Dr. Mundt indicated that there have been six peer-reviewed cross-sectional studies of populations residing near utility-scale turbines and that the outcome of interest in these studies was primarily annoyance. The key point of Dr. Mundt's testimony was her statement that, based on her review of the relevant published peer-reviewed scientific literature, she found no consistent or well-substantiated causal connection between residential proximity to industrial wind turbines and health effects. She observed that some degree of noise is consistently perceived by residents living near wind turbines depending on the number of turbines, time of day, season, and level of background noise. She noted that, to a lesser degree, some level of shadow flicker is also perceived by such residents, again, depending on time of day, season, and position of the turbine blades. However, exposure to turbine noise or shadows, while potentially annoying or distracting to some people, are not known to harm human health. (Applicant Ex. 20 at 6-7; Tr. at 492.)

(2) Board Analysis and Conclusion

Upon review of the evidence submitted on the record, the Board finds that there is no credible support for a determination that there are negative health consequences associated with living near wind turbines. Accordingly, we concluded that no issue has been raised in this regard that would lead us to conclude that approval of the Stipulation and the conditions set forth therein, is not in the public interest.

J. Emergency Responder Training and Equipment

(1) Hearing Testimony

Several intervenors who were not parties to the Stipulation questioned whether local emergency responders would be called upon, and if so, would they be prepared, to respond to any incidents that might occur at the proposed wind farm. In his prefiled testimony, Mr. Heffner expressed concern that the Staff Report does not provide enough detail regarding the subject of equipment and training of emergency responders (Heffner Ex. 2 at 3).

Condition 41 in the Stipulation provides that, before the first turbine is operational, the applicant must submit to Staff, for review, a fire protection and medical emergency plan to be used during operation of the facility and that addresses training of emergency responders, which shall be developed in consultation with the first responders having jurisdiction over the area (Tr. at 165, 198). Black Fork witness Scott Hawken testified that, in developing the emergency plan, it was the applicant's understanding that the applicant would provide any special emergency equipment that is not otherwise locally available (Tr. at 201).

In addition, some of the nonstipulating intervenors expressed concern in their direct testimony and during cross-examination of the company's witnesses, that turbines might impact the operation of helicopters that participate in Life Flight operations (Heffner Ex. 2 at 2). Black Fork witness Yurtis testified that there would be no impact. He indicated that helicopters operate every day of the year around obstructions and wires, and a turbine of the size that will be erected in this project will be obviously visible. He also noted that helicopter pilots are well versed in operating around such objects. (Tr. 256.)

(2) Board Analysis and Conclusion

Upon review, we find no evidence of record to support a finding that the applicant should now be directed to act in anyway differently than it already has in identifying and taking sufficient and adequate steps, including those called for in the Stipulation, to address issues relating to the manner in which local emergency responders will be

provided with training and equipment needed to respond to any incidents that may occur at the proposed wind farm. In addition, based on the evidence, we are satisfied that the operation of the project will not negatively impact helicopter, Life Flight operations if they occur in the vicinity of the project. Accordingly, we find that no additional conditions are necessary to address the issue raised by the intervenors who were not parties to the Stipulation.

K. Collection Line System

(1) Hearing Testimony

Black Fork witness Hawken responded to concerns raised on cross-examination about the applicant's proposed collection line system, which is addressed in Condition 12 of the Stipulation. According to the witness, in routing the system, the applicant intends to avoid crossing county or township roads and will use predominantly private easements. However, there may be some cross-over and some short sections that involve the public right-of-way. Where this occurs, Mr. Hawken stated the applicant is committed to obtaining all necessary approvals from the county and complying with all applicable safety standards. (Tr. at 122-126.) He further noted that there is no standard currently in place that controls how close to the edge of a nonparticipating property the collection line may run (Tr. at 160). According to Mr. Hawken, the applicant is proposing to place all collection lines underground, which will necessitate burying conduit cable or lines, and will require field tile repair crews (Tr. at 82). Mr. Hawken indicated that the Stipulation sets forth minimum depth standards for laying the cable and for repairing any resulting damage to field tile. Mr. Hawken clarified that, if an affected landowner has a separate agreement with the applicant, calling for an even greater depth, then the language of that separate agreement controls. (Tr. at 178, 194.)

(2) Board Analysis and Conclusion

The Board finds that the provisions set forth in the Stipulation call for the cooperation and coordination with all necessary and applicable rules and regulations, both state and local, regarding the applicant's proposed collection line system. No evidence has been presented that would lead us to conclude that the conditions set forth in the Stipulation are not reasonable or sufficient in this regard.

L. Transportation Concerns and Road Use Agreement

(1) Hearing Testimony

Several nonstipulating parties expressed concerns regarding the impact of the project on county and township roads. Catherine Price noted that the very roads she

traveled daily will be impacted and she wondered why the applicant is not required to build up the roads before the start of the project (Price Ex. 2 at 1-2). Brett Heffner claimed that the applicant was seeking to bypass general road agreements despite Staff recommendations (Heffner Ex. 2 at 3). Karel Davis questioned whether bridge problems, curve deficiencies and profile deficiencies, would be worked out satisfactorily (Davis Ex. 1 at 2).

James Mawhorr, a registered professional engineer and registered professional surveyor in Ohio, and Vice President of K.E. McCartney & Associated, Inc., testified as a witness on behalf of the applicant. Mr. Mawhorr described the transportation studies that were performed on the applicant's behalf and testified on what road improvements the applicant may have to undertake prior to construction. Finally, he expressed support for each the conditions of the Stipulation pertaining to transportation, routing, road usage and all related issues. (Applicant Exs. 11 and 12.)

Thomas E. Beck, P.E, P.S., the Richland County Engineer, testified on behalf of the Board of Richland County Commissioners; the Richland County Engineer; and the Board of Township Trustees of the Plymouth, Sandusky, and Sharon Townships (hereinafter the Richland County Intervenors) (Tr. at 520). Also testifying on behalf of the Richland County Intervenors were Richland County Commissioners Edward W. Olson and Timothy A. Wert (Tr. at 546, 574). The essential purpose of the testimony of the Richland County Intervenors was to indicate the reasons why the Richland County Intervenors chose not to become parties to the Stipulation. All three witnesses testified that the Stipulation does not fully address their concerns relating to the potential impact of the Black Fork Wind Project on transportation infrastructure within Richland County, traffic control, and financial assurance issues. (Richland County Ex. 2 at 1; Richland County Ex. 1 at 2; Richland County Ex. 4 at 1, Richland County Ex. 3 at 2; Richland County Ex. 6 at 1, Richland County Ex. 5 at 2). According to Mr. Beck, the Stipulation does not fully address mandatory statutory requirements which provide that any new roadway engineering, construction, or repair work necessitated by the wind project must be subject to the authority and control of the board of county commissioners and the county engineer, and is subject to competitive bidding and prevailing wage requirements. Mr. Beck emphasized that the county needs to retain control and responsibility over public transportation facilities to ensure that they are properly designed, engineered, constructed, and maintained to protect the public safety. An additional concern is financial assurance to ensure that any work required by the project is paid for by the applicant and does not become a liability for the county or its taxpayers. (Richland County Ex. 2 at 3-4.)

All three witnesses for the Richland County Intervenors observed that, to date, the applicant has submitted neither a final route plan, nor a road use agreement that is acceptable to the Richland County Intervenors. The Richland County Intervenors recommended that the Board attach nine specific conditions to Black Fork's certificate.

Described generally, these include that the applicant must: (1) comply with Richland County's rules regarding overweight or oversized vehicle permits; (2) enter a road use agreement approved by the appropriate county officials and supported by adequate financial assurances; (3) comply with all statutory requirements for engineering, design, construction, repair, and improvement of roads and bridges necessary to the project prior to and during the construction, maintenance, and decommissioning phases; (4) complete all work at applicant's cost; (5) provide the county engineer with the final delivery route plan and other information 30 days before bidding begins; (6) repair, at its cost, or reimburse the county or township for any damage to public roadways, bridges, or other transportation improvements, and restore them to, at least, original condition; (7) obtain all necessary approvals from local authorities for road restorations or improvements; (8) post a bond, escrow, irrevocable letter of credit, or other financial assurance acceptable to the county sufficient to provide adequate assurance for any damage to the public roadways and to cover all costs during construction, maintenance, and decommissioning phases; (9) avoid and minimize damage to field tiles and repair such where damage occurs; and (10) comply with all safety and statutory requirements, and obtain County authorization to the extent the public right-of-way is used to design and maintain the collection system. (Richland County Ex. 2 at 4-6; Richland County Ex. 4 at 4-6; Richland County Ex. 6 at 4-6.)

(2) Board Analysis and Conclusion

Initially, the Board notes that Conditions 47, 48, and 49 of the Stipulation provide, among other things, that the applicant shall: (1) repair damage to government-maintained roads and bridges caused by construction activity or by decommissioning activity, to their preconstruction or predecommissioning state; (2) remove any temporary improvements made during construction, unless the applicable board of county commissioners request that they remain; (3) provide financial assurances to the counties that it will restore the public roads it uses during construction to their preconstruction condition; (4) provide financial assurances to the counties that, as part of decommissioning, it will restore the public roads it uses during to their predecommissioning condition; (5) obtain all required county and township transportation permits and all necessary permits from ODOT and coordinate any temporary or permanent road closures necessary for construction and operation of the proposed facility with the appropriate entities including the Richland County Engineer; and, (6) prior to construction, enter into a road use agreement with the applicable boards of county commissioners.

The Board understands that the nonstipulating parties have concerns pertaining to the process that will be followed in carrying out the provisions of the Stipulation concerning transportation and road use in the county. However, we are confident that, with the conditions established in the Stipulation, including the fact that the applicant must work with the county in arriving at a road use agreement prior to construction, and

the monitoring provided by our Staff, the required process will be followed and the applicant will appropriately discharge its responsibilities as outlined in the Stipulation. Therefore, we conclude that no additional conditions are required, at this time, regarding transportation and road use.

M. Tests in the Event of Significant Changes (Noise, Shadow Flicker, Etc.)

(1) Hearing Testimony

Karel Davis noted that the studies that were performed for the project were based on a 3 MW turbine depending on the final turbine model selected. She questioned whether the studies that were performed for the selected turbines would have to be performed again if another turbine type was selected. (Davis Ex. 1 at 1-2.)

Some of the applicant's witnesses agreed that, if a significant change were to be made with regard to the location of a turbine or the type of turbine used, beyond the three types under current consideration, then it might be necessary to redo testing with regard to, for example, noise or shadow flicker impact (Tr. at 45, 49, 148, 361-362, 426). However, Black Fork witness Stoner pointed out that Staff would need to be consulted with regard to anything amounting to more than making small micro-siting adjustments (Tr. at 60).

(2) Board Analysis and Conclusion

The Board notes that the statute and our rules provide for the eventuality of material and significant changes which may occur during the course of the construction or operation of the facility. Thus, any such changes would need to be presented to Staff and, ultimately, approved by the board, before they could proceed. These provisions coupled with the provisions set forth in the Stipulation, which provide for the involvement of Staff throughout the course of the project, gives that Board assurance that changes will be process properly. Accordingly, the Board concludes that no additional conditions are required, at this time.

N. Process for Complaints on the Project after Certification and Operation

1. Hearing Testimony

At hearing, several nonstipulating intervenors questioned the applicant regarding the potential for problems with the operation of the project after certification. Applicant witness Stoner testified that the Stipulation provides that a resolution procedure must be in place in order to address potential operational concerns experienced by the public. He also indicated that the applicant would abide by all applicable statutory requirements. (Tr. at 79-80.) Staff witness Pawley also indicated that, if someone had a complaint, the

Staff must be contacted and the Stipulation requires a complaint resolution process be established (Tr. at 638-639).

2. Board Analysis and Conclusion

Upon review, we find that the Stipulation satisfies the concerns related to a complaint resolution procedure. Stipulation Condition 13 provides that, at least 30 days prior to the preconstruction conference and subject to Staff review and approval, the applicant shall have in place a complaint resolution procedure in order to address potential operational concerns experienced by the public and that any complaint submitted must be immediately forwarded to Staff. Further the Stipulation provides that the applicant shall, to the satisfaction of Staff, investigate and resolve any issues complained of. Further, the Board notes that, if informal resolution of a complaint is not attained, then, pursuant to Section 4906.97, Revised Code, a formal complaint may be filed with the Board. Accordingly, we find that no additional conditions regarding complaint resolution are necessary, at this time.

VIII. CONCLUSION

According to the Stipulation and the testimony of Black Fork witness Hawken, all of the parties to the Stipulation agree that the Stipulation is a product of serious bargaining among capable, knowledgeable parties within an open process in which the parties were represented by able counsel and technical consultants (Applicant Ex. 10 at 3). The intervenors who were not parties to the Stipulation have not presented evidence sufficient to persuade the Board to find otherwise.

In addition, as attested to in Black Fork witness Hawken's testimony, the parties to the Stipulation agree that the settlement, as a package, promotes the public interest as it will benefit the local economy through additional jobs and payroll and tax revenue (Applicant Ex. 10 at 3-4). As detailed above, the Board has thoroughly reviewed and considered all of the assertions raised by the intervenors who were not parties to the Stipulation and we find that the conditions set forth in the Stipulation sufficiently address the issues of concern. Thus, the Board concludes that the evidence of record supports our conclusion that the Stipulation promotes the public interest and necessity.

The stipulating parties further agree that the Stipulation does not violate any important regulatory principle or practice and, therefore, recommend that, based upon the record and the information and data contained therein, the Board should issue a certificate for construction, operation, and maintenance of the facility, as described in the application filed with the Board on August 25, 2010, as supplemented on August 26 and 27, 2010, February 10, 2011, and March 24, 2011, subject to the provisions of the Stipulation (Applicant Ex. 10 at 3-4). Upon review of the record, as a whole, we find that intervenors

who were not parties to the Stipulation have not presented evidence sufficient to persuade the Board to reach a contrary finding. Any allegation presented in opposition to the Stipulation is hereby considered denied.

Although not binding upon the Board, stipulations are given careful scrutiny and consideration. The Board finds that the Stipulation is the product of serious bargaining among knowledgeable parties, will promote the public interest, benefit the local economy, and create new, in-state renewable energy supply, and also does not violate any important regulatory principle or practice. In addition, we believe that the provisions in the Stipulation related to the road use agreement between Black Fork and both Crawford and Richland Counties will alleviate the concerns raised at the local hearing regarding the facility's impact on the roads and bridges impacted by the project area. Based upon the record in this proceeding, the Board finds that all of the criteria established in accordance with Chapter 4906, Revised Code, are satisfied for the construction, operation, and maintenance of the facility as described in the application filed with the Board on August 25, 2010, as supplemented on August 26 and 27, 2010, February 10, 2011, and March 24, 2011, subject to the provisions of the Stipulation. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation, as amended, and hereby approves the issuance of a certificate to Black Fork pursuant to Chapter 4906, Revised Code.

Lastly, we would note that, during the hearing, concerns were raised regarding who the applicant is and what is the applicant's relationship to other corporate entities. We further note that, most often, the conditions of the Stipulation apply, on their face, to "the applicant." However, several conditions of the Stipulation, e.g., Conditions 48 and 66, make reference to and, on their face, appear to impose certain obligations on, in some instances, "the facility owner and/or operator" and on, in other instances, "the applicant, the facility owner and/or facility operator." We clarify that all conditions of the Stipulation that we are approving in this order apply to any entity that, at the time of each of these phases in the life of the project, is the entity ultimately responsible for the construction, operation, maintenance, or decommissioning of the project.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Black Fork is a corporation and a person under Section 4906.01(A), Revised Code.
- (2) The proposed Black Fork wind-powered electric generation facility is a major utility facility under Section 4906.01(B)(1), Revised Code.
- (3) On December 1, 2010, Black Fork filed its preapplication notice of its application.

- (4) On January 11, 2011, Black Fork filed proof that legal notice was published for the informational public meeting held on December 16, 2010, at Shelby High School, in Shelby, Ohio.
- (5) On March 9, 2011, Black Fork filed a motion for waivers under Rule 4906-7-07, O.A.C.
- (6) On March 10, 2011, Black Fork filed an application with the Board for a certificate to site a wind-powered electric generation facility in Crawford and Richland counties.
- (7) On March 10, 2011, Black Fork filed a motion for a protective order for certain documents as part of its application.
- (8) On April 28, 2011, Black Fork and Staff filed a joint motion to extend the time of the completeness review period pursuant to Rule 4906-7-12, O.A.C.
- (9) By entry of May 3, 2011, the OFBF's motion to intervene was granted; the applicant's requests for waiver of Section 4906.06(A)(6), Revised Code, and for waiver of Rules 4906-17-05(A)(4), 4906-17-05(B)(2)(h), and 4906-17-08(C)(2)(c), O.A.C., were granted; the applicant's request for a waiver of Rule 4906-17-04, O.A.C., was denied; the motion for protective order was granted; and the parties' joint motion for an extension of time was granted.
- (10) On June 10, 2011, the Board notified Black Fork that, pursuant to Rule 4906-1-14, O.A.C., the application had been found to be complete.
- (11) By entry of June 22, 2011, a local public hearing was scheduled on September 15, 2011, at the Shelby Senior High School, in Shelby, Ohio and an adjudicatory hearing was scheduled for September 19, 2011, in Columbus, Ohio.
- (12) In accordance with Rule 4906-5-08, O.A.C., public notice of the hearings was published in the Mansfield News-Journal and in the Bucyrus Telegraph Forum on June 30, 2011. Proof of publication was filed with the Board on July 19, 2011, and September 12, 2011.
- (13) By entry of August 30, 2011, the following jurisdictions and individuals were granted intervention in this case: Crawford

County, Richland County, the Richland County Engineer, the Plymouth Township Trustees, the Sharon Township Trustees, the Sandusky Township Trustees, John Warrington, Loren Gledhill, Carol Gledhill, Mary Studer, Alan Price, Catherine Price, Nick Rietschlin, Margaret Rietschlin, Bradley Bauer, Debra Bauer, Grover Reynolds, Brett A. Heffner, Gary Biglin, and Karel Davis. Thomas Karbula was granted intervention as a party, but on October 21, 2011, withdrew as a party to the case. The motion to intervene filed by William Alt was denied.

- (14) The Staff Report was filed on August 31, 2011.
- (15) The local public hearing was held on September 15, 2011 in Shelby, Ohio. At the hearing, 25 witnesses gave public testimony.
- (16) The adjudicatory hearing commenced in Columbus, Ohio, on September 19, 2011, and was recessed in order to allow the parties to conduct settlement negotiations.
- (17) On September 28, 2011, the applicant, Staff, and the OFBF filed a Stipulation.
- (18) On October 5, 2011, an amendment of the Stipulation was filed by the parties to the Stipulation and Crawford County.
- (19) The evidentiary hearing reconvened and was held on October 11, 12, and 13, 2011.
- (20) Adequate data on the Black Fork wind-powered electric generation facility has been provided to make the applicable determinations required by Chapter 4906, Revised Code, and the record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.
- (21) Black Fork's application, as supplemented, complies with the requirements of Chapter 4906-17, O.A.C.
- (22) The record establishes that the basis of need, under Section 4906.10(A)(1), Revised Code, is not applicable.
- (23) The record establishes that the nature of the probable environmental impact of the facility has been determined and it

complies with the requirements in Section 4906.10(A)(2), Revised Code, subject to the conditions set forth in the Stipulation.

- (24) The record establishes that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under Section 4906.10(A)(3), Revised Code, subject to the conditions set forth in the Stipulation.
- (25) The record establishes that the facility is consistent with regional plans for expansion of the electric power grid and will serve the interests of electric system economy and reliability, under Section 4906.10(A)(4), Revised Code, subject to the conditions set forth in the Stipulation.
- (26) The record establishes, as required by Section 4906.10(A)(5), Revised Code, that the facility will comply with Chapters 3704, 3734, and 6111, Revised Code, and Sections 1501.33 and 1501.34, Revised Code, and all rules and standards adopted under these chapters and under Section 4561.32, Revised Code.
- (27) The record establishes that the facility will serve the public interest, convenience, and necessity, as required under Section 4906.10(A)(6), Revised Code, subject to the conditions of the Stipulation.
- (28) The record establishes that the facility will not impact the viability of any land in an existing agricultural district, under Section 4906.10(A)(7), Revised Code.
- (29) The record establishes that the facility will comply with water conservation practice under Section 4906.10(A)(8), Revised Code.
- (30) Based on the record, the Board shall issue a certificate pursuant to Chapter 4906, Revised Code, for construction, operation, and maintenance of the Black Fork wind-powered electric generation facility, subject to the conditions set forth in the Stipulation, as amended.

ORDER:

It is, therefore,

ORDERED, That the Stipulation, as amended, be approved and adopted. It is, further,

ORDERED, That a certificate be issued to Black Fork pursuant to Chapter 4906, Revised Code, for the construction, operation, and maintenance of the wind-powered electric generation facility, subject to the conditions set forth in the Stipulation, as amended. It is, further,

ORDERED, That the certificate contain the conditions set forth in the Stipulation, as amended. It is, further,

ORDERED, That Black Fork take all necessary steps to carry out the terms of the Stipulation, as amended and this Order. It is, further,

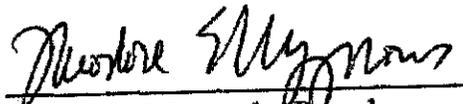
ORDERED, That a copy of this Opinion, Order, and Certificate be served upon each party of record and any other interested person.

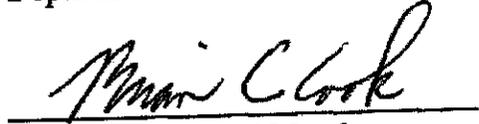
THE OHIO POWER SITING BOARD

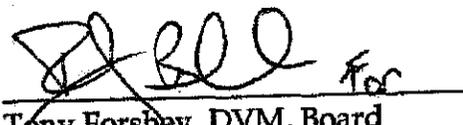

Todd A. Snitchler, Chairman
Public Utilities Commission of Ohio


Christiane Schmenk, Board Member and Director of the Ohio Department of Development


James Zehringer, Board Member and Director of the Ohio Department of Natural Resources


Theodore Wymyslo, Board Member and Director of the Ohio Department of Health

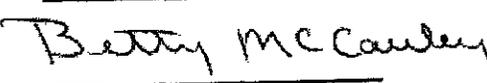

Scott Nally, Board Member and Director of the Ohio Environmental Protection Agency


Tony Forshey, DVM, Board Member and Interim Director of the Ohio Department of Agriculture

Board Member and Public Member

SEF/sc

Entered in the Journal
JAN 23 2012


Betty McCauley
Secretary

FILE

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BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Black Fork Wind Energy, LLC)
For a Certificate to Site)
Wind Turbines for an)
Industrial Wind-Powered)
Generating Facility In)
Crawford and Richland Counties, Ohio)

Case No. 10-2865-EL-BGN

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APPLICATION FOR REHEARING OF INTERVENOR
GARY J. BIGLIN

Pursuant to Ohio Revised Code (ORC) 4903.10 and Ohio Administrative Code (OAC) 4906-7-17 (D), Intervenor Gary J. Biglin does respectfully apply for rehearing in this matter. The grounds being that Board's Opinion, Order, and Certificate issued January 23, 2012 is unlawful and erroneous for the following reasons:

- I. The Ohio Power Siting Board's failure to require Black Fork Wind Energy to maintain an adequate setback distance between the Project's wind turbines from non-participating property lines and public roadways, thus violating ORC. 4906.10 (A) (2) (3) and (6).
- II. The Ohio Power Siting Board's minimum safety setbacks established for wind turbines , in the Certificate for the Black Fork Wing Energy Project, are inadequate

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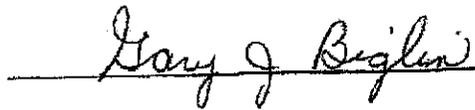
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to ensure the Rights of health, safety, and well-being of non-participating property owners and persons using the public roadways, thus violating their Rights under article# 1 in the Bill of Rights of the Ohio Constitution and ORC. 4939.02 (A) (1).

- III. The Ohio Power Siting Board improperly delegated too much authority to the Administrative Law Judges to issue a Certificate under ORC. 4906.10 .
- IV. The Administrative Law Judges procedural process, in the Black Fork Wind Energy case, toward the citizen intervenors was misleading and prejudicial.

The basis for this petition including additional information about the errors in the Board's opinion and procedural misgivings is set forth in more detail in the attached Memorandum in Support.

Respectfully Submitted,



Gary J. Biglin
5331 State Route 61 South
Shelby, Ohio 44875
(419) 347 7573

BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Black Fork Wind Energy, LLC)
For a Certificate to Site)
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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING
INTERVENOR GARY J. BIGLIN

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- I. The Ohio Power Siting Board's failure to require Black Fork Wind Energy to maintain an adequate setback distance between the Project's wind turbines from non-participating property lines and public roadways, thus violating ORC. 4906.10 (A) (2) (3) and (6).
.....1
- II. The Ohio Power Siting Board's minimum safety setbacks established for wind turbines, in the Certificate for the Black Fork Wind Energy Project, are inadequate to ensure the Rights of health, safety, and well-being of non-participating property owners and persons using the public roadways, thus violating their Rights under article#1 in the Bill of Rights of the Ohio Constitution and ORC. 4939.02 (A) (1).
.....2
- III. The Ohio Power Siting Board improperly delegated too much authority to the Administrative Law Judges to issue a Certificate under ORC. 4906.10.
.....4

IV. The Administrative Law Judges procedural process, in the Black Fork Wind Energy case, toward the citizen intervenors was misleading and prejudicial.5

I. The Ohio Power Siting Board's failure to require Black Fork Wind Energy to maintain an adequate setback distance between the Project's wind turbines from non-participating property lines and public roadways, thus violating ORC. 4906.10 (A) (2) (3) and (6).

- a) The safe setback provisions set forth by the OPSB relative to non-participating property owners of the Black Fork Wind Energy project shows disregard for the citizens of these rural areas. These safe setback distances are based from inhabited residences of adjacent properties, but should be based only from property lines and the public roadways. Ohio property owners use all of their property for their activities, they do not always stay indoors. They should be able to enjoy every inch of it without concern for the happiness and safety of themselves and their family. People should be able to farm, hunt, fish, cut-wood, hike, play, etc. anywhere on their property and feel safe. They also need to be able to develop their property now or in the future (like building a new home) how they wish without being close to neighboring wind turbines. The safety concerns regarding ice throw, blade shear, shadow flicker, noise, etc. are real. The happiness and safety rights of property owners should be foremost to that of wind farm developers. Wind turbine manufacturers safety manuals used by wind company employees and workmen should apply no less for the safety of non-participating property owners and persons using the public roadways. These property owners have not given their consent for the OPSB to use any part of their property in calculating wind turbine setbacks. When will these property owners and citizens be considered as part of the "public" referred to in ORC. 4906.10 (A) (2) (3) and (6), or their "property rights" be considered in the impact this industrial wind-powered electric generating facility will have on them? These property owners are not being respected with regard to their public interest, and many consider this project neither a convenience or a necessity.

ii. **The Ohio Power Siting Board's minimum safety setbacks established for wind turbines, in the Certificate for the Black Fork Wind Energy Project, are inadequate to ensure the Rights Of health, safety, and well-being of non-participating property owners and persons using the public roadways, thus violating their Rights under article#1 in the Bill of Rights of the Ohio Constitution and ORC. 4939.02 (A) (1).**

- a) OPSB shows disregard for the health and safety concerns of non-participating property owners and persons using the public roadways by allowing wind turbines to be sited within 500 feet from property lines and public roadways.

Example: Project wind turbine #58 is to be located 500 feet east of Crawford county road Baker #47, and 500 feet north of State Highway Route 96.

- b) In the Opinion, Order, and Certificate on page 23, (h) Blade Shear and Ice Throw, mid paragraph one, states: " The turbines have the following safety features to address blade shear: two independent braking systems, a pitch control system, a lightning protection system, and turbine shut down at excessive wind speeds and at excess blade vibration or stress, and the use of setbacks. The Applicant has incorporated a wind turbine layout with a minimum residential setback distance of 1250 feet, and a property setback of 563 feet. Staff believes that installing these safety control mechanisms minimizes the potential for blade shear and associated impacts. (Staff Ex. 2 at 37). "

The " and the use of setbacks " as mentioned in the list of safety features would be the only error proof way to ensure the safety of persons on adjacent property or public roadways in a wind project area. As stated above the other safety control features only minimize the potential of unsafe associated impacts. OPSB should error on the side of 100% safety for the non-participating property owners and persons on public roadways in the project area.

- c) As referred to in the Opinion, Order, and Certificate pages 23-24, from the Staff Report pages 37-38 under "Ice Throw" paragraph 2 and 3.

" GE Energy is a manufacturer of one of the turbine models under consideration by the Applicant. This manufacturer has developed specific safety standards for ice throw and blade shear for all of their turbine models and has recommended the use of an ice detector and other measures if people or objects (e.g., occupied structures, roads) are within a distance of 150 percent of the sum of the hub height and rotor diameter. This recommendation is derived from an independent study performed by Seifert et al (25) and supported by the German Wind Energy Institute. Based on inputs into a formula used in this study, it has been determined that turbines of the similar dimensions as the GE models would need to be located a distance of approximately 301.5 meters (989 feet) from any structure or roads. Staff's evaluation of the turbine locations utilizing this study, determined that turbines 44 and 51 would need to be relocated or resized to meet this minimum setback distance. Staff recommends that public access be restricted with appropriately placed warning signs, that the Applicant would instruct workers of potential hazards of ice conditions, and that the Applicant would install ice detection software for the site and an ice detector/sensor alarm that triggers an automatic shutdown. Staff also recommends that the Applicant relocate and/or resize proposed turbines 44 and 51 to conform to a setback distance of 150 percent of the sum of the hub height and rotor diameter from roads and structures. Adhering to these safety measures would sufficiently address the issue of ice throw. "

Again the only 100% error proof safety measure for siting wind turbines from adjacent non-participating properties and public roadways is (at the very least) that of using the suggested formula of 150 percent of the sum of the hub height and rotor diameter as referred to in the Staff Report. These property owners and roadway users should be afforded the highest measure of safety. Are participating landowners, the wind developer, and OPSB willing to assume the liability for potential unsafe associated impacts.

In the safety manuals used by Vestas, a manufacturer of one of the models in the application and Certificate, the wind facility employees and workmen are instructed to STOP at a distance of 1000 feet from a operating turbine if ice hazard conditions exist, and

to use binoculars if necessary to look for ice on the turbine. If ice is indeed on the moving turbine the workmen are to shut the turbine down by way of a remote before proceeding any closer. While the industrial wind-powered generation facility workers are being instructed about these ice hazard precautions and safe operating procedures, the adjacent property owners and persons using the public roadways are totally unaware of unsafe conditions that may exist. Is this being done for the benefit of siting more wind turbines at the expense of the rights and safety of citizens in these rural project areas? This shows disregard for the rights of these citizens under Our Ohio Constitutions, Bill of Rights article#1, Inalienable Rights:

“All men are, by nature, free, independent, and have certain inalienable Rights, among which are those of enjoying and defending life and liberty, Acquiring, possessing, and protecting property, and seeking and obtaining Happiness and Safety. ”

The Opinion, Order, and Certificate also deprives affected property owners of their Constitutional Rights to the protection of private property (U.S. Const. XIV Amend; Ohio Const. Sec 19 Art.I) and to procedural due process (U.S. Const. XIV Amend; Ohio Const. Sec. 16, Art.I).

III. The Ohio Power Siting Board improperly delegated too much authority to the Administrative Law Judges to issue a Certificate under ORC 4906.10.

- a) Instead of rendering an independent decision the Board adopted, without due consideration, an Opinion, Order, and Certificate that was pre-drafted by the ALJ's. The Opinion, Order, and Certificate (which was apparently prepared before the Board ever met on this matter)⁶ states: “ Upon review of the record, as a whole, we find that intervenors who were not parties to the Stipulation have not presented evidence sufficient to persuade the Board to reach a contrary finding. Any allegation presented in opposition to the Stipulation is hereby considered denied.” It appears that the Board relied upon the ALJ's to reach a final decision which was merely rubber-stamped by the Board.

This project will affect the lives and property rights of the citizens living in this project area. Therefore, the Board must meet its statutory obligation to carefully weigh the issues and evidence and to reach an independent determination whether the Project should be constructed as proposed.

IV. The Administrative Law Judges procedural process, in the Black Fork Wind Energy case, toward the citizen intervenors was misleading and prejudicial.

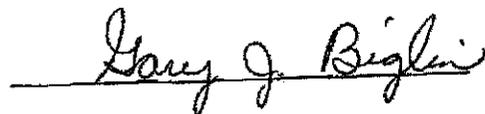
- a) The compressed schedule from the time the citizen intervenors were acknowledged (August 30, 2011) and the dates set for the public hearing (Sept. 15, 2011) and the adjudicatory hearing (Sept. 19, 2011). Other projects cases have had a window of about two weeks between the hearings.
- b) Citizen intervenors did not receive a copy of the Project's application in a timely manner under ORC. 4906.08 (A) (2). Myself Gary J. Biglin requested intervention in case# 10-2865-EL-BGN on (July 27, 2011), but did not receive a copy until (Oct. 11, 2011).
- c) In a teleconference (Sept. 9, 2011) the citizen intervenors were directed to move to a Settlement conference on (Sept. 19, 2011) even though the ruling was objected to by some parties, thus violating OAC. 4906-7-12 (C). Throughout the teleconference the ALJ's referred to the meeting as a settlement meeting and other times as a stipulation meeting this was very confusing.
- d) Fourteen (pro se.) citizen intervenors were not parties to the Stipulation. As of discussions in the (Sept. 9, 2011) teleconference non-stipulating parties were to be able to address all issues at the evidentiary hearing, but at the hearing OPSB staff witnesses that represented different areas of the Staff Report were removed from testifying, thus not affording the intervenors the right to cross-examine them. These non-stipulating parties were unjustly denied opportunity to cross-examine staff witnesses. After pulling all the previous staff witnesses the ALJ's allowed OPSB staff to appoint a Mr. Jon Pawley as the only available staff representative witness for cross-examination. He repeatedly

could not answer the questions asked of him by intervenors about specific areas of the Staff Report, thus the intervenors were not given adequate answers to questions by only this witness, All staff witnesses who filed testimony in this case should have available for cross-examination be intervenors not party to the Stipulation.

6 (note reference for III page 4)

If the Board met in private, without notice, such a meeting would have violated the Ohio Open Meeting Act (ORC. 122.22).

Respectfully Submitted,

A handwritten signature in cursive script that reads "Gary J. Biglin". The signature is written over a horizontal line.

Gary J. Biglin

5331 State Route 61 South

Shelby, Ohio 44875

(419) 347 7573

FILE

Before
The Ohio Power Siting Board

In the matter of the Application of
Black Fork Wind Energy, LLC
For a Certificate to site an
Industrial wind-powered electric
Generating facility in Crawford
And Richland Counties, Ohio

Case # 10-2865-EL-BGN

Application for rehearing
Intervener Catherine A. Price

1. Wind Turbine size
Size of turbines changing
2. Historic Properties
Study incomplete
3. Road use agreement
Road agreement not completed
4. Well Study
Study not complete
5. Television and Cell Phone reception
Study not done - mitigation process incomplete
6. Decommissioning
Funding
7. Noise
Study inaccurate
8. Turbine maintenance
Funding
9. Dr. Diane Mundt
Wind turbine not her field of study
10. Public Notice
Application to Crestline Public Library
11. Applicant, Owner, Operator
Not clearly defined
12. Ohio Power Siting Board

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PUCO

Catherine A. Price 2-17-10
Catherine A. Price
7956 Remlinger Rd.
Crestline, Ohio
44827

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Technician SM Date Processed FEB 17 2012

Before
The Ohio Power Siting Board

In the matter of the Application of
Black Fork Wind Energy, LLC
For a Certificate to site an
Industrial wind-powered electric
Generating facility in Crawford
And Richland Counties, Ohio

Case # 10-2865-EL-BGN

Memorandum in support of application for rehearing
Intervener Catherine A. Price

1. Wind Turbine size

Application used Vestas V100 rated 1.8MW, General Electric 1.6MW, Siemens 2.3MW. Yet 3.0MW is mentioned in testimony of applicant and in letters from applicant's legal counsel.

2. Historic Properties

This Study is incomplete. My residence is not included and was built in 1836.

3. Road use agreement

A. Road agreement not completed. No agreement has been reached with Richland County and when questioned in court, Richland County representative said that without a final route, this would not happen.

B. Mawhorr testified curve in road at the end of my drive (curve deficiency study) would have to be changed but had no idea how.

C. Mr. Beck testified that the roads should be built up before construction, so they are safe

D. I feel it is a violation of my rights not to have safe roads. These are the same roads my tax dollars have been used for.

4. Well Study

This study is not complete. Multiple wells not included, including the three on my property.

5. Television and Cell Phone reception

Study not done - mitigation process incomplete. No baseline television and signal strength study was done. Applicant has not stated what compensation will be offered for loss of signal.

6. Decommissioning

A. Applicant does not want to insure the funding for this. Funds must be in place from the time the turbines are built. What happens if a tornado comes through and damages the turbines beyond repair? What funds will be available to repair, replace or remove turbines and fix roads, once again.

B. Do not know if Applicant, Owner or Operator is responsible for these funds. But, What happens if they file bankruptcy before providing decommissioning funds.

7. Noise

A. Mr. Kalinski testified that the noise study was done for effects on residence but not property line. I bought 5 acres to live on, not just a residence to live in.

B. Mr. Kalinski testified that noise in the court room was 40 - 50 decibels. When fans in court room come on I was not able to hear him clearly.

C. Noise study shows that a 43 decibel at night and 53 decibel average during day for project area.

PUCO

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D. Mr. Kalinski was asked what the difference in noise level would be when turbines are 5, 10, 15, 20 years old. He said that with issues such as wear on blades and gearbox deterioration noise level might be different.

E. Mr. Kalinski testified there is software on the turbines that can be programmed for noise reduced operations. At which point Mr. Setteneri objected and said Mr. Kalinski was speaking for the applicant.

F. Mr. Kalinski testified that a 3.0MW turbine was not used in the study, but noise level could be different.

G. Mr. Kalinski testified that a turbine moved 1000 ft. from where sited in study, sound level changes 6 decibels. He says a 3 decibel change you would notice.

H. Applicants sound study included 8 monitors (A through H). There is 4 state routes going through the project area of 24,000 acres.

Monitor A on Stevens Rd - farm land not in project area.

Monitor B 5674 St. Rt. 98 - high traffic road

Monitor C 6845 Kuhn Rd. - farm house

Monitor D along St. Rt. 39 - high traffic road

Monitor E 7967 Miller Rd. - farm land

Monitor F 4013 St. Rt. 598 - near St Rt 96 - both high traffic roads

Monitor G 6669 Remlinger Rd. 1/3 mile from St. Rt. 598 - high traffic road

Monitor H 5224 Settlement East - this site is a mile outside the project boundary. This address is Jim Finnigan Construction with heavy equipment on site. Study says that the road was closed at time of monitoring because of bridge outage. There is no bridge. The road was closed at that exact time because of road construction at the railroad crossing being done by Rietschlin Construction, Inc. During the dates, June 3-11 of the monitoring, this construction company was using two to four pieces of machinery that registers 50 - 100 decibels each with back up alarms. On June 3rd they worked 7 hours, June 4th - 11 hours, June 5th - 10 hours, June 6th - 8 hours, June 7th - 8 hours, June 8th - 8 hours, June 9th - 10 ½ hours, June 10th - 10 hours, June 11th - 10 hours. However, Mr. Kalinski, testified that he never saw or heard construction equipment in this area.

I. Mr. Kalinski testified that roadway noise was the biggest contributor to background sound in the area. How could you expect any other result, when the monitors are placed on high traffic roads?

J. Mr. Kalinski testified that after application is approved, then his report will go to the staff to be approved. Why is this report not reviewed by staff prior to application approval?

8. Turbine maintenance

Courtney Dohoney testified that the manufacturer of the turbines will maintain the turbines. Who does the turbine manufacturer answer to if large parts must be trucked in for repairs?

9. Dr. Diane Mundt

A. Wind turbine not her field of study. Dr. Diane Mundt testified that her field of study is Epidemiology. Her literature studies and reviews are no more valid than the testimonials I read and should be considered hearsay, and without the original studies and the authors testimonies it seems worthless.

B. Dr. Mundt in testimony was asked if there was a reason she was not asked to do a study instead of reviewing literature written by other people? She said that is not what was asked of her. "But they just asked you to review somebody else's reports?" Mr. Setteneri objects to the extent that is attorney-client privilege.

C. Dr. Mundt testified to limited literature on shadow flicker and health outcomes, so she relied on literature of items with blades and variable speeds.

D. Dr. Mundt has never seen or treated patients.

E. I feel Dr. Mundt was brought in to testify only to add more confusion, not answers to the wind turbine case. The applicant could have at least brought in one of the authors of the literature Dr. Mundt was referring to.

F. I feel that the literature Dr. Mundt refers to should have been entered in its entirety for evidence.

10. Public Notice

- A. On September 6, 2011 in my letter to OPSB, I questioned why the Application was not at the Crestline Public Library.
- B. In my written testimony, I again questioned why it was not there. When element Power Sent out 1,086 letters, over 350 went to Crestline addresses.
- C. October 11, 2011 during questioning, I asked Mr. Hawkins why the Application was not Sent to Crestline Public Library. He testified that "We have since provided Crestline Library with the Application." Examiner Farkas asked when the copy was provided? Mr. Hawkins replied "probably 2-3 weeks ago." I have a letter from the Crestline Public Library that states that the Application was not received until December, 2011. To me this is proof that Mr. Hawkins lies under oath.

11. APPLICANT, OWNER, OPERATOR

- A. The use of these three terms were never clearly defined and their responsibilities were not explained. Even though it has been requested several times. During the court hearing, Judge Farkas and Judge Fullen questioned the use of these three terms and asked Mr. Petricoff to present before the close of record.

12. OHIO POWER SITING BOARD

- A. My closing statement in Court said it all. I came to the Court hearing in Columbus for answers. I came out of this court hearing with more questions than original. I heard a lot of questions asked by the Judges, Staff, Richland County and Intervenors that no one could answer, or said they would get the answer. But, no answer. So if not you, then what body of Government is really looking out for my rights.

Catherine A. Price 2-17-12
7956 Remling Rd.
Crestline, Ohio 44827
APPX000133



BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Applicant of

Black Fork Wind Energy, LLC

For a Certificate to Site an

Case # 10-2865-EL-BGN

Industrial Wind-Powered Electric

Generating Facility In

Crawford and Richland Counties, Ohio

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PUCO

APPLICATION FOR REHEARING

INTERVENOR ALAN K. PRICE

1. Wind Farm Lease Agreement
 - A. Elected individuals that have signed lease agreements

2. Road Use Agreement
 - A. Richland County has not signed

3. Decommissioning
 - A. Funding

4. Noise
 - A. Study

5. Dr. Diane Mundt
 - A. No answers

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6. Public Notice
 - A. Application not available

7. Applicant, Owner, Operator
 - A. No clear definition

8. Ohio Power Siting Board
 - A. No clear set answers

Alan K Price 2-17-12
ALAN K. PRICE
7956 Remlinger Rd
Crestline, Ohio
44827

BEFORE

THE OHIO POWER SITING BOARD

In the matter of the Application of

Black Fork Wind Energy, LLC

For a Certificate to site an

Case # 10-2865-EL-BGN

Industrial wind-powered electric

Generating facility in

Crawford and Richland Counties, Ohio

RECEIVED-DOCKETING DIV
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PUCO

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

INTERVENOR ALAN K. PRICE

1. Wind Farm lease Agreement

- A. The law states that a person while in an elected position cannot profit from a Company that is asking for their office to sign an agreement. So, I believe that the Township and County employees that have signed leases with Black Fork Wind Energy or Element power, should have been replaced before their offices were asked to work on a road agreement.
- B. I do not think it was ethical for this company to tell lease signers with questions about lease, to go to Attorney Jim Prye, and he admitted that the company sometimes paid him for this. That the company was already paying Mr. and Mrs. Prye for using their Title company for work.

2. ROAD USE AGREEMENT

A. Our county people are elected to stand up for that communities rights. I feel that between the Applicant, PUCO and Ohio Power Siting Board are doing their best to bully these people into signing agreements that they do not have enough time or resources to fully investigate.

3. DECOMMISSIONING

A. Everyone legally has to have insurance the minute they purchase a car, land or home. Why would an Applicant be allowed to ask for everything possible to build a Wind Farm, but not have to post any kind of Bond the day construction starts?

4. NOISE

A. The noise study seems to be flawed. Out of 8 monitors used 4 were located at state routed with heavy traffic, 2 were not in the project area. Monitor H was not in the project areas and set up at a construction companies address, and at the exact time of monitoring there was a construction company rebuilding the road within a 1/3 mile. So how could these sites been averaged for our noise levels?

5. Dr. Diane Mundt

A. I thought this lady was to testify about living in a wind farm. But during the court proceedings she made it clear that this was not her field of study. That she has read others literature (which was never admitted as evidence) written about other types of blades with various speeds. It only left me with more questions.

6. PUBLIC NOTICE

A. This Application was never available to me until the first day of court. Mr. Hawkins testified in court October 11, 2011 that 2-3 weeks prior he sent it to Crestline Public Library. But in truth the library never received it until December 2011.

7. APPLICANT, OWNER, OPERATOR

A. Why could the Court or Applicant not explain the difference between the three, and exactly who would be responsible for everything in this project. What happens if any or all three would file bankruptcy during this project?

8. OHIO POWER SITING BOARD

A. The Board and Staff were still asking their fair share of questions during the hearing. During testimony the Staff, experts and Applicants left a lot of questions unanswered or answered that they would get back to us with the answer. But yet this application was approved.

Alan K Price 2-17-12
ALAN K. PRICE
7956 Remlinger Rd
Crestline, Ohio
44827

FILE

7

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BEFORE THE OHIO POWER SITING BOARD

2012 FEB 21 PM 4:06

In the Matter of the Application)
of Black Fork Wind Energy, LLC for)
a Certificate to Install Numerous)
Electricity Generating Wind Turbines in)
Crawford and Richland Counties, Ohio)

PUCO

Case No. 10-2865-EL-BGN

APPLICATION FOR REHEARING AND RECONSIDERATION OF INTERVENOR JOHN WARRINGTON

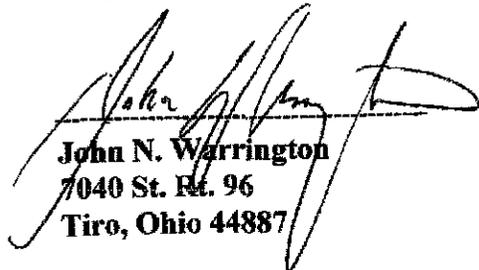
I. The Board lacks the ability to render an objective and non-bias decision in order to protect the public interest, well being and property of Ohio citizens. The OPSB acts only as enablers of industrial wind installation in Ohio with complete disregard for testimony or criteria which disagrees with their industrial wind agenda.

II. By the approval of The Blackfork Wind Energy Project, Case Number 10-2865-EL-BGN, the Ohio Power Siting Board forces a regulatory taking of property without compensation in violation of the U.S. and Ohio Constitutions, upon hundreds of Crawford and Richland county residents.

III. The Board creates an evidentiary double standard that is a violation of due process. The Board has the ability to receive and review the voluminous credible data documenting the immense negative impact that an industrial wind installation will have upon a community, but refuses to do so. The Board receives all wind industry opinion as fact while rejecting the credibility of virtually all opposing data.

The basis for this petition, including additional information about errors in the Board's opinion, is set forth in more detail in the attached Memorandum in Support.

Respectfully submitted,


John N. Warrington
7040 St. Rt. 96
Tiro, Ohio 44887

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APPX000139

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application)
of Black Fork Wind Energy, LLC for)
a Certificate to Install Numerous)
Electricity Generating Wind Turbines in)
Crawford and Richland Counties, Ohio)

Case No. 10-2865-EL-BGN

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING OF INTERVENOR
JOHN WARRINGTON

TABLE OF CONTENTS

- I. The Board lacks the ability to render an objective and non-bias decision in order to protect the public interest, well being and property of Ohio citizens. The OPSB acts only as enablers of industrial wind installation in Ohio with complete disregard for testimony or criteria which disagrees with their industrial wind agenda.
- II. By the approval of The Blackfork Wind Energy Project, Case Number 10-2865-EL-BGN, the Ohio Power Siting Board forces a regulatory taking of property without compensation in violation of the U.S. and Ohio Constitutions, upon hundreds of Crawford and Richland county residents.
- III. The Board creates an evidentiary double standard that is a violation of due process. The Board has the ability to receive and review the voluminous credible data documenting the immense negative impact that an industrial wind installation will have upon a community, but refuses to do so. The Board receives all wind industry opinion as fact while rejecting the credibility of virtually all opposing data.

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

I. The Board lacks the ability to render an objective and non-bias decision in order to protect the public interest, well being and property of Ohio citizens. The OPSB acts only as enablers of industrial wind installation in Ohio with complete disregard for testimony or criteria which disagrees with their industrial wind agenda.

Found on page 70 of the 75 page OPINION, ORDER AND CERTIFICATE we find “**Any allegation presented in opposition to the Stipulation is hereby considered denied.**” This typifies the attitude and demeanor of the entire OPSB approach. OPSB made only a pretense of allowing the citizen interveners to participate as a means to make complete the miscarriage of justice. My intervention document were used by permission of Mike McCann Real Estate and should have been considered. But ALJ’s Fullin and Farkas ruled with great speed to strike the property value information provided. (found on the online docket 08/30/2011) Fullin and Farkas allowed the BlackFork Wind Energy LLC representatives David Stoner and Scott Hawken to seal the record by stating that NO evidence exists that can sustanstiate an opinion that an industrial wind installation can have any negative impact upon real estate values. The exact wording can be found on the transcript by Jennifer Duffer. The approval of this sentiment and the unanimous approval vote of the BlackFork Wind Project by OPSB is tantamount to the most nefarious example of blind and deaf “justice” perhaps in Ohio history.

Even the installation of a single cell phone tower has a negative impact on real estate value, yet OPSB evidently rest upon the opinion that 91 industrial wind turbines, each of which would dwarf the presence of a cell phone tower, have a neutral effect on real estate, in fact benign.

Also my request to have a real estate expert testify by a SKPE teleconference was denied by the ALJ’s with the justification that my witness could be being prompted by another off screen expert.

The citizen interveners are aware that even if we divested ourselves of our life savings bringing experts to the hearings our opinions and testimony would be met with the same contempt.

The OPSB have acted in everyway as if they are the “Wind Industry”. Furthermore, it appears evident the OPSB has not seen an application it doesn’t like, as all Ohio projects are coupled with the streamline approval process. Lastly to show the utter bias of OPSB I point to their own web home page with displaying several cartoonish images of wind turbines and links to speed up a wind project approval.

II. By the approval of The Blackfork Wind Energy Project, Case Number 10-2865-EL-BGN, the Ohio Power Siting Board forces a regulatory taking of property without compensation in violation of the U.S. and Ohio Constitutions, upon hundreds of Crawford and Richland county residents.

My intervention documents while procedurally stricken present the opinion of non wind industry real estate studies that display the **inevitable loss of residential value ranging from 25% to 40% of pre wind farm value**. And much worse than this the very real possibility of the total loss of marketability of a home. But this matters not one whit to the OPSB. Here is what matter in Columbus in the early 21st century.

<http://www.opsb.ohio.gov/opsb/?LinkServID=895FE98C-C363-FCF9-6BFDC7DF3A3F7AA2>

The OPSB Wind Stats Map gives displays a goal of 937 industrial turbines planted across Ohio and both you know and I know that you the OPSB have no intention of "mitigating" anything to protect the citizens of Ohio from any negative aspects.

Tens of millions of dollars of property devaluation will most certainly be realized. Conservatively 40 to 50 million dollars of loss will be suffered by the 1000 plus non participating receptors of BlackFork Wind's noise, shadow, strobe lights and visual offense. No totals are considered by OPSB. Perhaps approaching a half a billion dollar loss depending on population. These losses negate all job revenue and all tax benefit to counties. While simultaneously sending monies to China for turbines and electricity revenue to European energy companies. And thus creating a dependence of foreign electricity.

A Regulatory Taking of Private Property without Compensation. A reverse condemnation of real estate. Solely for to fervent fulfillment of SB221 and Renewable Portfolio Standards.

Thus violating R.C. 4906.10(A)(2),(3), and (6) and the U.S and Ohio Constitutions.

III. The Board creates an evidentiary double standard that is a violation of due process. The Board has the ability to receive and review the voluminous credible data documenting the immense negative impact that an industrial wind installation will have upon a community, but refuses to do so. The Board receives all wind industry opinion as fact while rejecting the credibility of virtually all opposing data.

From the inception of the BlackFork Wind project hosted by the original applicant Gary Energitics the Board has permitted and facilitated a severe marginalization of non-participating residents within the project area. Numerous letters of opposition containing

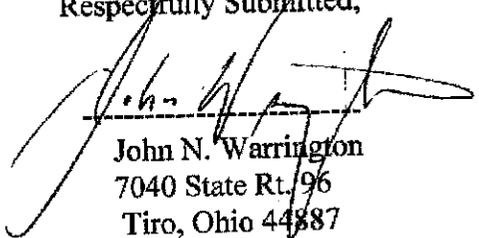
pointed and serious questions to the Board were habitually met with form letter obfuscation. Residents were told to await a Public Meeting where all answers were forthcoming. In fact the original BlackFork meeting was a very controlled event that wasted time and sidestepped all difficult questions. Offers to answer questions by Gary Energetics web site web never fulfilled. The OPSB were silent and tolerated this problem. When the project was sold to Blackfork Wind Energy Project LLC./ Element Power LLC again all questions were pointed to a public meeting. Public meeting number one hosted a science fair atmosphere where the applicant could huddle with participants and avoid direct statements. All difficult questions to the applicant were avoided and dodged. OPSB allowed this. Continuing the questions to the docketing division at PUCO all questions were again directed to the 2nd Public Meeting. At this meeting no questions were accepted by staff or developer. Moving ahead continued appeals to the Board docketing division including document questions, and data, all opposition residents were told to anticipate the Adjudicatory hearing. During the hearing my attempt to ask one question of Scott Pauley was objected to by BlackFork council and sustained by Judge Farkas. In effect ending a three year quest to receive an answer to any question about the project. OPSB staff permitted by habit this type of sidelining of interveners as the proceeding went through the motions.

The applicant BlackFork presented a collection of opinions for hire who systematically recited the opinion that minimal to no impact would be realized to effect wild life, health, residents, aviation, shadow flicker, and noise. All Board members validated this counterfactual testimony by voting unanimous approval of the project.

The Board presented NO evidence of research of preparation. In my opinion and by my first hand experience with the hearing The Board and ALJ's Farkas and Fullin accepted all pro wind opinion at face value as fact, while heavily scrutinizing all opposition questioning and testimony. In violation of R.C. 4906.10 the Board improperly delegated its authority to the Administrative Law Judges.

MOTION FOR REHEARING AND RECONSIDERION

Respectfully Submitted,



John N. Warrington
7040 State Rt. 96
Tiro, Ohio 44887
419-683-3112
February 18th 2012

CERTIFICATE OF SERVICE

I certify that a copy of the forgoing document was served upon the following persons via U.S. Mail this 18th day of February 2012 :

Michael J. Settineri
Chief Legal Counsel
Element Power LLC
Black Fork Wind LLC
52 East Gay St.
PO Box 1008
Columbus, OH 43216-1008

John J. Jones and appearances at
30 East Broad St, 25th Floor
Columbus, Ohio 43215

Chad A. Ensley
Chief Legal Counsel
Ohio Farm Bureau Federation
280 North High Street
P.O. Box 182383
Columbus, OH 43218-2383

The Ohio Power Siting Board
Attn: Docketing Division Case No. 10-2865-EL-BGN
180 E. Broad Street, 6th Floor
Columbus, OH 43215

Orla Collier III
Benesch, Friedlander, Coplan & Arnoff LLP
41 South High St, 26th Floor
Columbus, Ohio 43218

I certify that a copy of this document was served upon the following persons by hand delivery this day February 18th 2012.

Debra Bauer and Bradley Bauer
7298 Remlinger Road
Crestline, Ohio 44827-9775

Margaret and Nick Rietschlin
4240 Baker Road
Crestline, Ohio 44827-9775

Gary Biglin
5331 State Route 61 South
Shelby, Ohio 44875

Karel A. Davis
6675 Champion Road
Shelby, Ohio 44875

Carol and Loren Gledhill
7256 Reminger Road

Crestline, Ohio 44827-9775

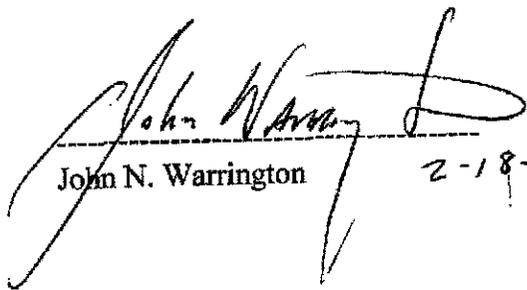
Brett Heffner
3429 Stein Road
Shelby, Ohio 44827

Grover Reynolds
7179 Remlinger Road
Crestline, Ohio 44827-9775

Mary Studer
6716 Reminger Road
Crestline, Ohio 44827

Thomas Karbula
3026 Solinger Road
Crestline, Ohio 44827-9775

Alan and Catherine Price
7956 Remlinger Road
Crestline, Ohio 44827-9775


John N. Warrington 2-18-12

- ② IT IS UNREASONABLE AND UNLAWFUL TO CONDUCT A PROCEDURE CALLED A HEARING, PRESIDE OVER IT WITH PERSONS CALLED JUDGES, AND PRACTICE BEFORE THEM WITH ENTITIES CALLED ATTORNEYS AND PARTIES, AND UNDER THE RULES OF PROCEDURE INCLUDE AS A GENERAL PROVISION THE ABILITY FOR THE PRESIDING OFFICERS TO "WAIVE ANY REQUIREMENT, STANDARD, OR RULE SET FORTH IN THIS CHAPTER OR PRESCRIBE DIFFERENT PRACTICES OR PROCEDURES TO FOLLOW IN THIS CASE."
OAC 4906-7-19(B)
- ③ THE OPINION ORDER AND CERTIFICATE IS UNLAWFUL AS THE STAFF REPORT AND STAFF OPINION ARE USED EXTENSIVELY IN THE FORMATION OF FINDING OF FACT AND CONCLUSION OF LAW, BUT THE STAFF REPORT WAS NOT TREATED AS EVIDENCE IN THE ADJUDICATORY HEARING, AND CITIZEN INTERVENORS WERE NOT PERMITTED TO CROSS EXAMINE THE AUTHORS OF THE STAFF REPORT, NOR WERE INTERVENORS PERMITTED TO CROSS EXAMINE OTHER SIGNATORIES TO THE STIPULATION.
- ④ OPINION ORDER AND CERTIFICATE IS UNREASONABLE AND UNLAWFUL AS THE BOARD DID NOT REVIEW EVIDENCE AND TESTIMONY.
- ⑤ ADMINISTRATIVE LAW JUDGE UNREASONABLY AND UNLAWFULLY MADE A MOTION AND SUBSEQUENT EXPEDITED RULING WITHOUT SHOWING GOOD CAUSE.
- ⑥ ALLEGED MOTION DURING PREHEARING TELECONFERENCE BY JOHN JONES TO CALL AND CONTINUE IS INVALID, AND SUBSEQUENT RULING ON MOTION BY ADMINISTRATIVE LAW JUDGE IS THEREFORE INVALID.

CONT'D →

FEBRUARY 20, 2012

- ⑦ EXPEDITED RULING ON ALLEGED CALL AND CONTINUE MOTION WAS UNREASONABLE AND UNLAWFUL AS NO PARTY CALLED FOR AN EXPEDITED RULING, AND ALL PARTIES WERE NOT CONTACTED. 4906-7-12(c)
- ⑧ ALLEGED MOTION BY JOHN JONES, ATTORNEY FOR THE STAFF, IS INVALID AS THE STAFF IS NOT A PARTY TO THE PREHEARING TELECONFERENCE - 4906-7-03(c)
- ⑨ THE HEARING OF THE STIPULATION WAS UNREASONABLE AND UNLAWFUL AS WE HAD LESS THAN 3 DAYS TO REACT TO A COMPLETELY NOVEL AGREEMENT WITHOUT TIME TO SECURE WITNESSES TO TESTIFY CONCERNING SUCH AGREEMENT. ALL OUR PREFILED TESTIMONY BECAME INACTIVE, AND WE HAD TO START FROM FRESH SCRATCH ON TESTIMONY REGARDING THE STIPULATION.
- ⑩ BOARD STAFF AND COUNSEL FOR BOARD STAFF UNREASONABLY AND UNLAWFULLY CONDUCTED NUMEROUS EX-PARTE DISCUSSIONS WITH THE COMPANY.
- ⑪ THE APPLICATION WAS UNREASONABLY AND UNLAWFULLY DEEMED COMPLETE, AND BOTH WAS AND WAS NOT PART OF THE ADJUDICATORY HEARING.
- ⑫ RULING BY ALI FARKAS TO CALL AND CONTINUE AND CONVERT THE ADJUDICATORY HEARING TO A SETTLEMENT AND STIPULATION CONFERENCE WAS UNLAWFUL AS IT WAS DONE IN AN UNTRANSCRIBED PREHEARING TELECONFERENCE (9-9-11) OVER THE OBJECTION OF VARIOUS PARTIES, WITHOUT GOOD CAUSE SHOWN.
- ⑬ THE OPINION ORDER AND CERTIFICATE OF JANUARY 23 WAS UNREASONABLE AND UNLAWFUL AS IT IMPROPERLY ALLOWED NON-EXPERT TESTIMONY AND OPINION, THE ENTRANCE OF HEARSAY AND STUDIES ON THE PART

CONT'D →

FEBRUARY 20, 2011

OF PROPONENTS OF THE STIPULATION, BUT RULED TO STRIKE OPINIONS, STUDIES, AND HEARSAY OF CITIZEN INTERVENORS.

- (14) THE ORDER OPINION AND CERTIFICATE (AS BASED UPON THE HEARING AND STIPULATION) IS UNREASONABLE AND UNLAWFUL AS IT DOES NOT ADEQUATELY ADDRESS THE BASIS OF NEED. ORC 4906.10(A)(1)
- (15) IT IS UNLAWFUL AND UNREASONABLE FOR THE LEGISLATURE TO CREATE A JURIDICAL BODY WITH POLICE POWERS IN WHICH THE SUBJECT PERSON'S ONLY RECOURSE IN THE EVENT OF MALEFACTION BY SAID BODY IS TO THE BODY ITSELF; AND FOR THAT BODY TO GRANT A CERTIFICATE THAT ALLOWS SUBSTANTIAL AND MATERIAL CHANGES TO THE PARTICULARS OF THE CERTIFICATE WITHOUT THE OPPORTUNITY OF A PUBLIC HEARING. (OPSB)
- (16) ORDER IS UNLAWFUL AS IT VIOLATES THE VALENTINE ANTI-TRUST ACT OF 1898, AS CODIFIED IN OHIO REVISED CODE 1331.

BEST REGARDS,

BRETT ~~W~~

BA Jeffrey 2/20/11

FEBRUARY 20, 2012

PURSUANT TO ORC 4906.02(B) I BRETT A HEFFNER
IN THE MATTER OF CASE # 10-2865-EL-BGN WOULD
LIKE TO ENTER RECORDING OF 9-9-11 PREHEARING
TELECONFERENCE AS PART OF MEMORANDUM IN SUPPORT,
OR SEPERATELY IF NECESSARY, SUCH RECORDING
HEREINAFTER REFERRED TO AS "AUDIO"

THE TELECONFERENCE WAS:

- A A "FORMAL PROCEEDING OF OPSB"
(AUDIO 5:01, ALJ FARKAS)
- B TO "FOLLOW BOARD'S ADMINISTRATIVE RULES
AND PROTOCOL" (AUDIO 5:26, ALJ FARKAS)
- C "FOR THE RECORD" (AUDIO 58:55 ALJ FARKAS)
- D DID NOT GO OFF RECORD (AUDIO 0:00 - 101:50)
- E A TRANSCRIPTION WAS REQUESTED (AUDIO 18:16 B.
HEFFNER, AUDIO 50:36 B. HEFFNER, AUDIO 55:50
M. RIETSCHLIN)
- F NO TRANSCRIPT WAS ISSUED (AUDIO 18:22 ALJ
FARKAS, AUDIO 56:13 ALJ FARKAS)
- G RECORDED IN ITS ENTIRETY FROM OPEN TO
CLOSE, WITHOUT EDIT, AND IS A PART OF
PUBLIC RECORDS IN RICHLAND COUNTY, OHIO

RESPECTFULLY SUBMITTED,

Brett A. Heffner

TO: TODD A SNITCHLER, CHAIRMAN
OHIO POWER SITING BOARD
180 EAST BROAD STREET
COLUMBUS OHIO 43215
RE: CASE # 10-2865-EL-BGN

FEBRUARY 20, 2012
B.A. HEFFNER
3429 STEIN ROAD
SHELBY OH 44875
419 632 3845

GREETINGS,

PLEASE ACCEPT THE FOLLOWING MEMORANDUM IN SUPPORT OF THE FOREGOING AND ATTACHED REQUEST AND APPLICATION FOR REHEARING. NUMBERED ARGUMENTS IN SUPPORT CORRESPOND TO NUMBERED GROUNDS FOR REQUEST FOR REHEARING.

① "STIPULATION, OR SETTLEMENT AGREEMENT WILL NOT AFFECT ANY OTHER PARTY'S RIGHTS IN THIS CASE"

(AUDIO 12:30 ALJ FARKAS) ALSO TRANSCRIBED PORTION OF PRE HEARING TELECONFERENCE

AUDIO 47:29 B. HEFFNER "CAN I ASK A PROCEDURAL QUESTION?"

- ALJ FARKAS: "YES"
- B. HEFFNER: I ASSUME THAT ANY ISSUES NOT RESOLVED ON THE 19TH 20TH WILL REMAIN ON THE TESTIMONY AND WILL BE TAKEN UP AT THE ADJUDICATORY HEARING "
- ALJ FARKAS: "WHAT WILL HAPPEN IS THAT IF THERE IS NOT A COMPLETE STIPULATION OF THE CASE OR A SETTLEMENT OF THE CASE, THEN THE PARTIES THAT HAVE ENTERED INTO THE SETTLEMENT, PRESUMEABLY THE COMPANY AND WHOEVER ELSE ENTERS INTO A SETTLEMENT THE FOCUS OF THE CASE BECOMES THE STIPULATION OR SETTLEMENT. THERE WILL BE A HEARING AND WITNESSES WILL HAVE TO BE PRESENTED ON THE STIPULATION "
- B. HEFFNER 48:16: "WHAT RIGHT DO I HAVE AS FAR AS BEING A PARTY TO THAT STIPULATION. AM I

CONT'D →

MEMORANDUM

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APPX000151

DIMINISHED SOMEHOW BECAUSE I AM A SINGLE PRIVATE CITIZEN OR WILL THEY HAVE TO MAKE A STIPULATION BY WORKING OUT OUR DIFFERENCES?"

- ALJ FULLIN 54:38: "IF YOU ONLY HAVE AGREEMENT OF SOME AMONG THE PARTIES, BUT NOT ALL OF THEM ON A PARTICULAR ISSUE, IT DOESN'T MAKE THAT ISSUE GO AWAY, THERE STILL NEEDS TO BE A MEANS TO ADDRESS THAT ISSUE, BECAUSE THERE ARE CERTAIN PARTIES THAT HAVEN'T AGREED TO IT"

THE PUBLIC WAS NOT MADE AWARE OF THE SETTLEMENT CONFERENCE BEFORE THE PUBLIC MEETING. SIGNIFICANT AND MATERIAL CHANGES WERE MADE WITHOUT THE OPPORTUNITY OF PUBLIC INQUIRY.

THEIR WAS WIDESPREAD MISINFORMATION ABOUT THE TERMS "SETTLEMENT", "PARTIAL STIPULATION", "STIPULATION". THE PORTION OF THE OAC THAT DEALS WITH HEARINGS MENTIONS ONLY "STIPULATION".

- ② IT IS UNREASONABLE AND UNLAWFUL TO HAVE AN UNTRANSCRIBED OR OFF THE RECORD CONVERSATION WITH THE ALJ'S WHEREIN RULES AND PROCEDURES ARE CLEARLY LAID DOWN IN FRONT OF ALL PARTIES, BUT IGNORED AND COUNTERMANDED IN SUBSEQUENT PROCESS.

IF THE BOARD PERSISTS WITH JURIDICAL WINDOW DRESSING, IT IS REASONABLE FOR THE CITIZEN TO EXPECT DUE PROCESS, THE RULE OF LAW, AND A COURT OF APPEAL, WITHOUT TYING UP THE SUPREME COURT.

③ OPINION ORDER AND CERTIFICATE OF 1-23-12, PAGES 5-52 ARE THE PRODUCT OF THE STAFF. THE STAFF WAS NOT MADE AVAILABLE FOR CROSS-EXAMINATION AS IS USUAL AND CUSTOMARY, AND ALSO PROMISED IN THE PRE HEARING TELECONFERENCE OF 9-9-11.

• AUDIO 54:58 MR. PETRICOFF: " I WOULD ASSUME THAT THERE MAYBE WOULD HAVE TO BE SUPPLEMENTAL TESTIMONY THAT WOULD SUPPORT THE STIPULATION, I GUESS NOW THAT WE'VE DISCUSSED IT, TOO, IT MAY MAKE MORE SENSE TO SEE WHAT WE GET ON THE 19TH AND BASICALLY ADDRESS IT AT THAT TIME, BUT I WOULD THINK THAT TO AGREE THAT NOTHING HAS CHANGED (55:29), AND THE ISSUES IN THE STIPULATION, IF WE DON'T COME TO A TO AN AGREEMENT ON THE STIPULATION THAT THE TESTIMONY THAT IS FILED AND WE WOULD GO WITH THE APPLICATION AND THE TESTIMONY WHICH HAS BEEN FILED WITH THE APPLICATION WOULD STAY IN PLACE AND WE WOULD START THE HEARINGS ON THOSE ISSUES AND MAYBE WRAP UP WITH ANYTHING THAT HAS CHANGED (55:54) THAT REQUIRED ADDITIONAL TESTIMONY "

• ALJ FARKAS " YES, THAT'S CORRECT "

MR PAWLEY, THE LONE STAFF MEMBER MADE AVAILABLE, WHO SPONSORED THE STAFF REPORT AND WAS STAFF PROJECT LEAD (PREFILED TESTIMONY OF JON C PAWLEY PAGE 3 LINES 1-3) AND WAS RESPONSIBLE FOR ANY ISSUES NOT COVERED BY OTHER STAFF WITNESSES IN THEIR TESTIMONY (PREFILED TESTIMONY OF JON C. PAWLEY PAGE 3 LINES 5-9) WAS NOT ABLE TO ANSWER MEANINGFUL AND GERMAIN/QUESTIONS IN CROSS EXAMINATION (PROCEEDINGS PAGE 652 LINE 24 AND 25 PAGE 653 LINES 1-3; PROCEEDINGS PAGE 653 LINES 4-25 PAGE 654 LINES 1-12;

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PAGE 655 LINES 17-25 PAGE 656 LINES 1-14; PAGE 657 LINES 12-20; PAGE 658 LINES 15-17; PAGE 658 LINES 18-25 PAGE 659 LINES 1-6) AND THE WRITERS OF THE PORTION OF THE STAFF REPORT IN QUESTION WERE NOT MADE AVAILABLE, THOUGH ASKED FOR IN INQUIRIES TO THE ALJ THAT WERE TAKEN OFF THE RECORD (PROCEEDINGS PAGE 652 LINES 10-16, WHICH REFER TO EARLIER OFF THE RECORD PROCEDURAL QUESTIONS CONCERNING ABSENCE OF STAFF, PAGE 652 LINES 19-23 WHERE THE ALJ TAKES US OFF THE RECORD WHILE I OBJECT TO THE NON-AVAILABILITY OF STAFF)

CRAWFORD COUNTY COMMISSIONERS AND ENGINEER, THOUGH HAVING FILED TESTIMONY, WERE NOT MADE AVAILABLE FOR CROSS-EXAMINATION.

④ 4906-1-01 (F) "BOARD" MEANS THE OHIO POWER SITING BOARD, AS ESTABLISHED BY DIVISION (A) OF SECTION 4906.02 OF THE REVISED CODE "

OPINION ORDER AND CERTIFICATE 10-2865-EL-BGN PAGE 1 " THE OHIO POWER SITING BOARD (BOARD) COMING NOW TO CONSIDER THE ABOVE ENTITLED MATTER, HAVING APPOINTED ADMINISTRATIVE LAW JUDGES TO CONDUCT THE HEARINGS, HAVING REVIEWED THE EXHIBITS AND TESTIMONY INTRODUCED INTO EVIDENCE IN THIS MATTER, AND BEING OTHERWISE FULLY ADVISED, HEREBY ISSUE ITS OPINION, ORDER, AND CERTIFICATE IN THIS CASE AS REQUIRED BY CHAPTER 4906, REVISED CODE.

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AFTER NUMEROUS OFF THE RECORD ASSURANCES BY THE ALJ THAT INDEPENDANT PARTIES' EVIDENCE AND TESTIMONY WOULD BE CONSIDERED BY THE BOARD PROPER, NO EVIDENCE EXISTS THAT THERE IS ANY DIRECT OR INDIRECT FLOW OF INFORMATION BETWEEN THE CITIZEN INTERVENOR AND THE BOARD AS ABOVE DEFINED.

4906-1-01 (F) DEFINES THE BOARD

4906.02 (C) "THE CHAIRMAN OF THE PUBLIC UTILITIES COMMISSION MAY ASSIGN OR TRANSFER DUTIES AMONG THE COMMISSION'S STAFF. HOWEVER, THE BOARD'S AUTHORITY TO GRANT CERTIFICATES UNDER SECTION 4906.10 OF THE REVISED CODE SHALL NOT BE EXERCISED BY ANY OFFICER, EMPLOYEE, OR BODY OTHER THAN THE BOARD ITSELF"

4906.02(A) SPECIFIES MEMBERS OF THE BOARD, AND WHAT DUTIES THEY MAY DELEGATE.

- ⑤ AUDIO 18:54 • B. HEFFNER: "ARE YOU GOING TO MAKE A RULING ON THAT - DO ALL PARTIES HAVE TO BE IN AGREEMENT, HOW DO WE RESOLVE THAT?"
- 19:04 ALJ FARKAS: "THAT IS WHAT THIS WOULD BE TODAY."

"ALSO, IN THE SEPTEMBER 9 PREHEARING TELECONFERENCE, THE MOTION - MEMORANDUM IN SUPPORT - MEMORANDUM CONTRA - FINDING PROCESS WAS IMPROPERLY SUSPENDED CONCERNING RECOMMENDATION OF MR. PETRICOFF THAT SEPTEMBER 19 ADJUDICATORY HEARING BE CONVERTED TO A SETTLEMENT HEARING - A RULING WAS MADE IN ADVANCE OF NOTIFYING ALL PARTIES" (PREFILED DIRECT TESTIMONY OF B. HEFFNER PAGES 7-8 ITEM 24)

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AUDIO 40:24 • ALI FARKAS: " I BELIEVE THAT MR. JONES HAD ASKED THAT WE CONTINUE THE HEARING A COUPLE DAYS. WHAT WE'D LIKE TO DO IS EITHER HAVE THE HEARING, TURN THE HEARING, I MEAN WE AGREE WE HAD LISTENED TO THE PEOPLE THAT RAISED SOME CONCERN ABOUT INSUFFICIENT TIME TO DISCUSS THIS ISSUE, BUT WE ARE GOING TO ALLOW THE HEARING TO BE CONVERTED TO A SETTLEMENT CONFERENCE ON THE 19TH BUT WHAT WE WANT TO DO TODAY IS EITHER HAVE THE HEARING BEGIN, HE HAD INDICATED TWO DAYS, SO EITHER ON THE 21ST OR KICK IT OFF A WEEK TO THE 26" (41:24)

AUDIO 44:40 • ALI FARKAS: " ON THE 19TH WE'LL OPEN THE HEARING BUT WE'LL CONVERT THE HEARING TO A SETTLEMENT CONFERENCE AND THEN THE ALI WILL LEAVE THE ROOM AND THEN THE PARTIES THAT ARE PRESENT WILL DISCUSS SETTLEMENT."

⑥ 4906-7-12 (A) "ALL MOTIONS, UNLESS MADE AT A PUBLIC HEARING OR TRANSCRIBED PREHEARING CONFERENCE, OR UNLESS OTHERWISE ORDERED FOR GOOD CAUSE SHOWN, SHALL BE IN WRITING AND SHALL BE ACCOMPANIED BY A MEMORANDUM IN SUPPORT."

⑦ 4906-7-12 (C) "ANY MOTION MAY INCLUDE A SPECIFIC REQUEST FOR AN EXPEDITED RULING. THE GROUNDS FOR SUCH REQUEST SHALL BE SET FORTH IN THE MEMORANDUM IN SUPPORT ... IN ALL OTHER CASES, THE PARTY REQUESTING THE EXPEDITED RULING MUST FIRST CONTACT ALL OTHER PARTIES TO

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DETERMINING WHETHER ANY PARTY OBJECTS"

B. HEFFNER "IN THE SEPTEMBER 9 PREHEARING TELECONFERENCE, THE MOTION - MEMORANDUM IN SUPPORT - MEMORANDUM CONTRA - FINDING PROCESS WAS IMPROPERLY SUSPENDED ... A RULING WAS MADE IN ADVANCE OF NOTIFYING ALL PARTIES" (PREFILED DIRECT TESTIMONY OF B. HEFFNER, PAGES 7-8, ITEM 24 PARAGRAPH 2)

- ⑧ OAC 4906-7-03 PARTIES(C) " EXCEPT FOR PURPOSES OF RULES 4906-7-05, 4906-7-06, PARAGRAPH(C) OF RULE 4906-7-07, PARAGRAPH (I) OF RULE 4906-7-07, AND RULES 4906-7-09, 4906-7-11, 4906-7-12, 4906-7-14, 4906-7-15, AND 4906-7-16 OF THE ADMINISTRATIVE CODE, THE BOARD STAFF SHALL NOT BE CONSIDERED A PARTY TO ANY HEARING "

RULES FOR PRE HEARING CONFERENCES ARE CONTAINED IN OAC 4906-7-10. THE MOTION ATTRIBUTED TO MR JONES ~~BY~~ BY ALJ FARKAS OCCURED DURING THE PREHEARING TELECONFERENCE, AND WAS THE BASIS FOR THE ALJ RULING TO CONVERT ADJUDICATORY HEARING TO STIPULATION CONFERENCE. MR JONES IS COUNSEL FOR STAFF, AND WAS NOT A PARTY TO THAT HEARING.

MEMORANDUM

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CONT'D APPX000157

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AUDIO 16:43 • ALJ FARKAS: " JOHN JONES PROPOSED MOVING HEARING DATE... CONTINUE A COUPLE OF DAYS... HAVE A SETTLEMENT CONFERENCE "

AUDIO 18:54 • ALJ FARKAS: " MR JONES WILL ARGUE FOR A MOTION CALLING FOR A CONTINUANCE "

AUDIO 40:24 • ALJ FARKAS: " I BELIEVE THAT MR JONES HAD ASKED THAT WE CONTINUE THE HEARING "

THE RULING BY ALJ FARKAS IMMEDIATELY FOLLOWS

⑨ AUDIO 48:00 • ALJ FARKAS " THERE WILL BE A HEARING, AND WITNESSES WILL HAVE TO BE PRESENTED ON THE STIPULATION "

AUDIO 49:34 • ALJ FARKAS: " WHAT WOULD HAPPEN THEN IS THEN THE FOCUS BECOMES THE STIPULATION AND NOT THE APPLICATION... THE COMPANY WOULD HAVE WITNESSES IN SUPPORT OF THE STIPULATION, AND YOU WOULD BE ALLOWED TO CROSS EXAMINE THE WITNESSES IN TERMS OF THE STIPULATION THEY'VE ENTERED INTO. AND YOU WOULD GO ON TO TESTIFY WITH RESPECT TO THE STIPULATION

• B. HEFFNER: " SO THE PREPARED TESTIMONY THAT WAS DUE ON THE 15TH, IN THE EVENT THERE IS A PARTIAL OR A STIPULATION THE FOLLOWING WEEK BECOMES, UH, INACTIVE "

• ALJ FARKAS: " THAT'S CORRECT AND IF THERE'S A STIPULATION WE WILL PROBABLY HAVE TO RESCHEDULE AND RETHINK THE HEARING DATE BECAUSE WE WOULD HAVE TO HAVE TIME TO PREPARE TESTIMONY. "

MEMORANDUM

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CONT'D →

APPX000158

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⑩ NO JOURNALIZED EVIDENCE IN SUPPORT, BUT JUST ASK ANY OF THE CITIZEN INTERVENORS WHAT THEY OBSERVED AT THE HEARING.

⑪ NO SPECIFIC TURBINE WAS CHOSEN IN CONTRAVENTION OF 4906-17(03) OAC

SITES ARE MOVEABLE AFTER THE CERTIFICATION, NO FINAL VERSION OF LAYOUT OR CONSTRUCTION IS AVAILABLE IN CONTRAVENTION TO 4906-17(03) OAC

APPLICATION DID NOT CONTAIN DESCRIPTION OF APPLICANTS PUBLIC INTERACTION PROGRAMS AS REQUIRED [STAFF REPORT PAGE 47 FOOTNOTED THERE- IN OAC 4906-17-08(E)(1)]

APPLICATION WAS NOT PART OF ADJUDICATORY HEARING:
AUDIO 47:50 • ALJ FARKAS "THE FOCUS OF THE CASE BE- COMES THE STIPULATION OR SETTLEMENT"

AUDIO 49:34 • ALJ FARKAS: "WHAT WOULD HAPPEN IS THEN THE FOCUS BECOMES THE STIPULATION AND NOT THE APPLICATION"

APPLICATION WAS PART OF THE ADJUDICATORY HEARING:
AUDIO 54:38 • ALJ FULLIN: "IF YOU HAVE ANY PARTICULAR ISSUE, THE AGREEMENT OF ALL OF THE PARTIES, THEN IN THAT SITUATION, THE ISSUE MAY

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CONT'D

APPX000159

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GO AWAY AND NOT BE ACTIVE, BUT IF YOU ONLY HAVE AGREEMENT OF SOME AMONG THE PARTIES BUT NOT ALL OF THEM ON A PARTICULAR ISSUE, IT DOESN'T MAKE THAT ISSUE GO AWAY, THERE STILL NEEDS TO BE A MEANS TO ADDRESS THAT ISSUE, BECAUSE THERE ARE CERTAIN PARTIES THAT HAVEN'T AGREED TO IT."

DOCKETED LETTER TO OPSB 3-31-11 FROM B. HEFFNER PAGES 1 AND 2. SEE LETTER IN ITS ENTIRETY ATTACHED AS APPENDIX 1.

⑫ AUDIO 55:56 • M RIETSCHLIN: "MR FARKAS, WOULD IT BE POSSIBLE FOR YOU TO PUT A SUMMARY IN THE E-MAIL REGARDING THE STIPULATION, THE PARTIAL STIPULATION BACK AND FORTH WE JUST LISTENED TO?"

AUDIO 57:12 • ALJ FARKAS: "TO THE EXTENT THAT IT WOULD BE HARD FOR ME TO INDICATE WHAT WE'VE JUST BEEN DISCUSSING (57:27) BECAUSE ITS NOT REALLY ANYTHING IN PARTICULAR."

UNTRANSCRIBED

OBJECTION 5:

AUDIO 29:44 • B. HEFFNER "PROPER TO ASK... MEMORANDUM IN SUPPORT ... SERVE IT ON ALL PARTIES, GIVE US A CHANCE FOR A MEMORANDUM CONTRA ?"

• ALJ FARKAS: "WELL WE REALLY DONT HAVE TIME FOR THAT ... IF YOU HAVE AN OBJECTION... STATE YOUR OBJECTIONS TO IT RIGHT NOW."

CONT'D →

MEMORANDUM

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APPX000160

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- B. HEFFNER: " I FEEL I JUST DID, I THINK THAT THAT WOULD BE SUFFICIENT."
- ALJ FARKAS: " THAT WHAT WOULD BE SUFFICIENT? "
- B. HEFFNER: " WHAT I JUST FINISHED WITH ... THERE OUGHTTA BE TIME ... SCHEDULE HAS BEEN COMPRESSED ... THIS IS AN IMPORTANT DECISION ... I'M NOT PREPARED TO MAKE IT TODAY ... I'M JUST RESPECTFULLY ASKING THAT PERHAPS I HAVE, YOU KNOW, TIME TO LET ALL THE PARTIES KNOW WHAT THE REQUEST IS, TO MAKE A DETERMINATION IN THE NORMAL COURSE OF DUE PROCESS. IF THEY HAVE OBJECTIONS, PERHAPS THEY COULD SEND THEM IN. AS FAR AS YOUR SCHEDULE GOES, WHY, WE DIDN'T SET THAT SCHEDULE ... I DO THINK THIS IS A FAIR REPRESENTATION OF MY OBJECTION ... I AM WILLING TO GO WITH THE GENERAL ATTITUDE ABOUT THIS. IF THIS IS WHAT WE HAVE TO DO I SUPPOSE UH, THIS IS WHAT WE HAVE TO DO. YES, I GUESS I DO OBJECT ON THOSE GROUNDS, WE'VE BEEN COMPRESSED, WE'VE BEEN ASKED TO ABSORB DOCUMENTS IN REALLY SHORT TIMES ... I THINK WE SHOULD DO THIS IN A CAREFUL AND DUE PROCESS MANNER "
- AUDIO 31:30 • ALJ FARKAS: " DO THE PRICES HAVE ANY OBJECTION? "
- C. PRICE: " YES WE DO. "
- ALJ FARKAS: " WHAT IS YOUR OBJECTION? "
- C. PRICE: " ... AGREE WITH MR HEFFNER THAT EVERYTHING HAS BEEN PUSHED AND SHORTENED TO WHERE WE HAVE TO SCRAMBLE TO GET

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OUR INFORMATION TOGETHER, AND AT THE BEGINNING OF THIS CONVERSATION YOU STATED THAT A SETTLEMENT PHASE IS NORMAL FOR HEARINGS LIKE THIS, SO IF IT WAS NORMAL IT SHOULD HAVE BEEN BROUGHT UP BEFORE NOW."

OAC 4906-7-01 (D) " FORMAL EXCEPTIONS TO RULINGS OR ORDERS OF THE ADMINISTRATIVE LAW JUDGE ARE UNNECESSARY IF, AT THE TIME OF ANY RULING OR ORDER IS MADE, THE PARTY MAKES KNOWN THE ACTION WHICH HE OR SHE DESIRES THE PRESIDING HEARING OFFICER TO TAKE, OR HIS OR HER OBJECTION TO ACTION WHICH HAS BEEN TAKEN AND THE BASIS FOR THAT OBJECTION "

→
THE PRE HEARING TELECONFERENCE OF 9-9-11 SHOULD HAVE BEEN TRANSCRIBED (ORC 4906-02(B) "THE CHAIRMAN SHALL KEEP A COMPLETE RECORD OF ALL PROCEEDINGS OF THE BOARD")

AUDIO 5:01 - ALI FARKAS: " FORMAL PROCEEDING OF OPSB ... ALL PARTIES ARE REQUIRED TO FOLLOW BOARDS ADMINISTRATIVE RULES AND THE BOARDS PROTOCOL "

(13) PROCEEDINGS, PAGE 68 B HEFFNER: " I WANT TO GO ON TO QUESTION 16. I'D LIKE TO MAKE AN OBJECTION BECAUSE MR. STONER IS NOT AN EXPERT IN THE EVALUATION OF THESE

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CONT'D →

APPX000162

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STUDIES" EXAMINER FARKAS: "YOU'RE OBJECTING TO WHAT?"
B. HEFFNER: "TO THE ANSWER TO QUESTION 16. HE IS MAKING AN ASSESSMENT OF A STUDY HE DOESN'T SHOW A UNIQUE QUALIFICATION TO ADDRESS"

EXAMINER FARKAS: "DO YOU WANT TO ADDRESS THIS?"

MR. PETRICOFF: YOUR HONOR, WE WILL TREAT THIS AS A MOTION TO STRIKE, AND WE OBJECT TO THAT, NOTING THAT MR. STONER IS AN EXPERT. HE HAS 25 YEARS IN THE INDUSTRY. HE HAS BUILT NUMEROUS PROJECTS, AND THE ANSWER TO QUESTION 3 BASICALLY LISTS ALL OF HIS EXPERIENCE AND HIS ENGINEERING BACKGROUND. FOR THOSE REASONS, I THINK HE QUALIFIES AS AN EXPERT WITNESS, AND AS AN EXPERT WITNESS HE MAY GIVE OPINION TESTIMONY."

EXAMINER FARKAS: AND IS THIS -- DO YOU WANT TO RESPOND TO THAT?"

B. HEFFNER: "YES I DO. HE IS MAKING AN "EXPERT" OPINION FROM THE POINT OF VIEW OR PERSPECTIVE OF A PROJECT DEVELOPER BUT NOT AN EXPERT IN REAL ESTATE."

EXAMINER FARKAS: "ARE YOU OBJECTING TO THE STUDY ITSELF?"

B. HEFFNER: "I'M NOT OBJECTING TO THE STUDY, I'M OBJECTING TO HIS ENTRANCE AND EVALUATION OF THE STUDY."

EXAMINER FARKAS: "WITH RESPECT TO YOUR OBJECTION, I'M GOING TO OVERRULE YOUR OBJECTION, THAT MEANS I'M ALLOWING HIS TESTIMONY WITH RESPECT TO

OPINION ORDER AND CERTIFICATE PAGE 53 LINE 4

"MR. STONER IS A SENIOR VICE PRESIDENT FOR ELEMENT POWER LLC AND AS SUCH IS RESPONSIBLE FOR THE DEVELOPMENT OF THE COMPANY'S RENEWABLE ENERGY PROJECTS... HE HAS 25 YEARS EXPERIENCE IN THE ELECTRIC UTILITY AND INDEPENDANT POWER BUSINESS, PRIMARILY IN PROJECT DEVELOPMENT, INCLUDING SPECIFICALLY OVERSEEING THE DEVELOPMENT OF WIND ENERGY PROJECTS FOR THE LAST 8 YEARS."

NOTE THAT NO MENTION IS MADE OF REAL ESTATE EXPERIENCE, ALSO, A PERSON ALWAYS IN CHARGE OF DEVELOPMENT IS NEVER AROUND FOR THE POST-OPERATION CHANGE IN PROPERTY VALUES. BA

OPINION, ORDER AND CERTIFICATE PAGE 52 VII A (1)

"SEVERAL OF THE INTERVENORS RAISED CONCERNS ABOUT THE POTENTIAL FOR THE PROJECT TO NEGATIVELY IMPACT THE PROPERTY VALUES OF THE COMMUNITY (RIETSCHLIN EX 1, AT 2; WARRINGTON EX 1 AT 1-2, 5)

SEVERAL ALSO HAD THEIR TESTIMONY AND SUBMITTED STUDIES STRICKEN FROM THE RECORD (STRUCK?)

THE ALTS DID NO RESEARCH INTO THE ACTUAL WORK HISTORIES OF THE WIND INDUSTRY EMPLOYEES,

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HOW CAN ONE BE A SENIOR ANYTHING IN A COMPANY THAT HAS EXISTED FOR LESS THAN TWO YEARS AT THE TIME OF THE APPLICATION?

- ⑭ SECTIONS 4906 OF THE ORC AND OAC ARE NOT SOMEHOW A LESSER LAW THAN THE RENEWABLE PORTFOLIO STANDARD.

NO DEMONSTRATION HAS BEEN MADE BY THE COMPANY OR THE STAFF THAT THE POWER GENERATED BY THE PROPOSED FACILITY MAY OR MUST BE SOLD TO OHIO UTILITIES IN SATISFACTION OF THE MANDATES.

BASIS OF NEED CAN ONLY BE DETERMINED AFTER A POWER PURCHASE AGREEMENT HAS BEEN CONSUMMATED. THERE IS NO REQUIREMENT IN THE CERTIFICATE THAT POWER FROM THE PROJECT BE SOLD TO ENTITIES STATUTORILY REQUIRED TO PURCHASE SUCH POWER.

THE RENEWABLE PORTFOLIO STANDARD SQUARELY POSITS THE BASIS FOR NEED FOR RENEWABLE ENERGY ON THE WHOLESALE PURCHASER AND RETAIL DISTRIBUTOR OF ELECTRICITY, AND GIVES THEM MANY AND DIVERSE OPTIONS IN THE FULFILLMENT OF THAT MANDATE OF WHICH OPTIONS WIND IS ONLY ONE. THE BASIS FOR DETERMINATION OF NEED DOES NOT REST UPON AN LLC THAT IS NOT A PUBLIC UTILITY.

- ⑮ OAC 4906-7-09 (C) THE BOARD IS NOT BOUND BY THE STIPULATION, MAKING MANY SUBSTANTIAL

MEMORANDUM

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CONT'D →

APPX000165

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AND MATERIAL CHANGES TO THE CERTIFICATE POSSIBLE
WITHOUT THE OPPORTUNITY FOR PUBLIC REVIEW AND
INVOLVEMENT.

SUBSTANTIAL AND MATERIAL CHANGES WERE CREATED
BY THE STIPULATION SUBSEQUENT TO THE PUBLIC HEARING,
WITH OUT REVIEW OF THE PUBLIC OR THE OPPORTUNITY
TO ADDRESS SUCH CHANGES AT PUBLIC HEARING.

NO LEGAL GOVERNING AUTHORITY EXISTS TO WHICH
AFFECTED NON-PARTICIPATING LANDOWNERS MAY SEEK
MITIGATION OF INJURY. THE COMPANY AND BOARD
STAFF ARE THEIR ONLY RECOURSE. IMPRECISE LANGUAGE
WILL RESULT IN FREQUENT LITIGATION. (PREFILED
TESTIMONY OF B. HEFFNER 9-15-11 PAGE 3 ITEM 5, PAGE
7 ITEM 20, PAGE 6 ITEM 17)

- (16) PREFILED TESTIMONY OF B. HEFFNER 9-15-11 PAGE
8 ITEM 26 " VALENTINE ANTITRUST ACT OF 1898
CODIFIED IN ORC 1331 WILL INVALIDATE MANY CONTRACTS,
MAKING THE PROJECT AS PROPOSED UNWORKABLE.
LANDOWNERS SHOULD HAVE HAD ACCESS TO CONTRACTS
FROM COMPETING COMPANIES BEFORE THE PROJECT
BOUNDARIES WERE DRAWN. THERE IS NO EVIDENCE
THAT ANY OR ALL LANDOWNERS WERE OFFERED
A CONTRACT BY MORE THAN ONE COMPANY FOR
ANY PARCEL. THE UNIQUE QUALITY OF A PUBLIC
UTILITY CANNOT BE USED AS JUSTIFICATION, AS THE
APPLICANT MAINTAINS THAT IT IS NOT A PUBLIC
UTILITY. "

ORC 1331.01 (B) (1)(5)(6)

(B) "TRUST" IS A COMBINATION OF CAPITAL, SKILL, OR ACTS BY TWO OR MORE PERSONS FOR ANY OF THE FOLLOWING PURPOSES:

- (1) TO CREATE OR CARRY OUT RESTRICTIONS IN TRADE OR COMMERCE
- (5) TO MAKE, ENTER INTO, EXECUTE, OR CARRY OUT CONTRACTS, OBLIGATIONS, OR AGREEMENTS OF ANY KIND BY WHICH THEY BIND OR HAVE BOUND THEMSELVES NOT TO SELL, DISPOSE OF, OR TRANSPORT AN ARTICLE OR COMMODITY, OR AN ARTICLE OF TRADE, USE, MERCHANDISE, COMMERCE, OR CONSUMPTION BELOW A COMMON STANDARD FIGURE OR FIXED VALUE, OR BY WHICH THEY AGREE IN ANY MANNER TO KEEP THE PRICE OF SUCH ARTICLE, COMMODITY, OR TRANSPORTATION AT A FIXED OR GRADUATED FIGURE, OR BY WHICH THEY SHALL IN ANY MANNER ESTABLISH OR SETTLE THE PRICE OF AN ARTICLE, COMMODITY, OR TRANSPORTATION BETWEEN THEM OR THEMSELVES AND OTHERS, SO AS DIRECTLY OR INDIRECTLY TO PRECLUDE A FREE AND UNRESTRICTED COMPETITION AMONG THEMSELVES, PURCHASERS, OR CONSUMERS IN THE SALE OR TRANSPORTATION OF SUCH ARTICLE OR COMMODITY, OR BY WHICH THEY AGREE TO POOL, COMBINE, OR DIRECTLY OR INDIRECTLY UNITE ANY INTERESTS WHICH THEY HAVE CONNECTED WITH THE SALE OR TRANSPORTATION OF SUCH ARTICLE OR COMMODITY, THAT ITS PRICE MIGHT IN ANY MANNER BE AFFECTED;

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FEBRUARY 20, 2012

(6) TO REFUSE TO BUY FROM, SELL TO, OR TRADE WITH ANY PERSON BECAUSE SUCH PERSON APPEARS ON A BLACKLIST ISSUED BY, OR IS BEING BOYCOTTED BY, ANY FOREIGN CORPORATE OR GOVERNMENTAL ENTITY.

A TRUST AS DEFINED IN DIVISION (B) OF THIS SECTION IS UNLAWFUL AND VOID.

1331.04 CONSPIRACY AGAINST TRADE PROHIBITED

A VIOLATION OF SECTIONS 1331.01 TO 1331.14 INCLUSIVE OF THE REVISED CODE, IS A CONSPIRACY AGAINST TRADE. NO PERSON SHALL ENGAGE IN SUCH CONSPIRACY OR TAKE PART THEREIN. . .

1331.06 ILLEGAL CONTRACT

A CONTRACT, OR AGREEMENT IN VIOLATION OF SECTIONS 1331.01 TO 1331.14, INCLUSIVE, OF THE REVISED CODE, IS VOID.

1331.10 EVIDENCE

IN PROSECUTIONS UNDER SECTIONS 1331.01 TO 1331.04 OF THE REVISED CODE, IT IS SUFFICIENT TO PROVE THAT A TRUST OR COMBINATION EXISTS, AND THAT THE DEFENDANT BELONGED TO IT, ~~AND~~ OR ACTED FOR OR IN CONNECTION WITH IT, WITHOUT PROVING ALL THE MEMBERS BELONGING TO IT, OR PROVING OR PRODUCING AN ARTICLE OF AGREEMENT, OR A WRITTEN INSTRUMENT ON WHICH IT MAY HAVE BEEN BASED; OR THAT IT WAS EVIDENCED BY A WRITTEN INSTRUMENT.

THIS CONCLUDES MY MEMORANDUM IN SUPPORT, TO BE FOLLOWED BY CLOSING THOUGHTS AND APPENDIX I.

MEMORANDUM

BA Jeffrey 2/20/12
(18)

APPX000168

TO THE EXTENT THAT EXPERT TESTIMONY HAS ANY VALUE SUPERIOR TO CITIZEN TESTIMONY IN THE PRESENTATION OF A STUDY, IT CAN BE EVALUATED ONLY ON DISPUTABLE, TECHNICAL VALIDITY WHICH ADMINISTRATIVE LAW JUDGES, AS JUDGES, CAN BRING NO SPECIAL INTERPRETING SKILLS. BUT THE ALLOWANCE OF EXPERT TESTIMONY ONLY IN FAVOR OF WIND INSTALLATIONS AND THE EXCLUSION OF ALL EVIDENCE AVAILABLE CONTRARY CAUSES SERIOUS PREJUDICE TO THE PARTIES ARGUING AGAINST INDUSTRIAL WIND INSTALLATIONS. BY GILDING THE TURD OF STATISTICAL, ACTUARIAL, AND MODELED DATA WITH AN "EXPERT" OPINION, THE EXPERT'S TESTIMONY IS LIKELY TO RECEIVE UNDOE WEIGHT. IT CREATES A FALSE SENSE OF CERTAINTY ON THE PART OF THE JUDGES, WHO ACT AS THE ONLY MEDIATOR BETWEEN BOARD AND CITIZEN. NONE OF THE CREDIBLE, DOCUMENTED, AND THOROUGHLY RESEARCHED DATA PRESENTED BY THE CITIZEN INTERVENORS SURVIVED THE CHASM BETWEEN LEGITIMATE CITIZEN INTERVENOR AND BOARD. ON THREE OCCASIONS, OFF THE RECORD BUT OBSERVED BY ALL PARTIES (AS MUCH OF THE MEANINGFUL DISCUSSIONS WERE) WE WERE ASSURED BY THE ADJUDICATORY LAW JUDGES THAT OUR VIEWS WOULD TRANSCEND THE VOID, THOUGH THERE IS NO PROCESS, RULE, OR PROMISE THAT ANY OF OUR HARD WORK WOULD EVEN BE VIEWED BY THE BOARD.

THE JUDGES VIEWED CITIZEN INPUT AS UNIMPORTANT, THE BOARD CONSEQUENTLY VIEWED IT NOT AT ALL. THE DECISION WAS IN FACT MADE BY THE ALTS, BY THE CONSCIOUS AND UNCONSCIOUS WITHHOLDING OF CITIZEN INPUT EVIDENT IN THE FINDING HEREIN CONTESTED. WE WERE GIVEN UNRELIABLE

CONT'D →

DESCRIPTIONS OF PROCESS AND PROTOCOL BY PERFIDIOUS DESIGN, OR NOVITIATE NON-CONVERSANCE WITH A FLEDGELING PROCESS; IT MATTERS NOT WHICH; THE RESULT WAS THE SAME, BEWILDERED CITIZENS AIMING AT A MOVING TARGET WHILE STANDING ON A SHIFTING LANDSCAPE WITH WHATEVER NEW OR RECYCLED ARTIFICE WAS HANDED TO OR TAKEN FROM US BASED ON A FLIP OF A COIN. STILL, A COIN HAS BUT TWO SIDES, AND WE RECOGNIZE BOTH, A COIN TOSS IS MORE COMFORTABLE. BETTER TO COMPARE IT TO THE WHIM OF AN UNKNOWABLE MASTER.

LET'S HAVE STABLE, KNOWABLE RULES; DUE PROCESS WITH PROPER TIME FOR STUDY AND RESPONSE, A PROPER RESPECT FOR THE TRUE STAKEHOLDERS, THOSE THAT WILL PAY THE BILL FOR AND LIVE BETWEEN THIS INDUSTRIAL INTRUSION; LESS DEFERENCE TO THE EXPERT FROM AFAR.

MARCH 31, 2011

BRETT A HEFFNER

3429 STEIN ROAD

SHELBY OHIO 44875

419-632-3845

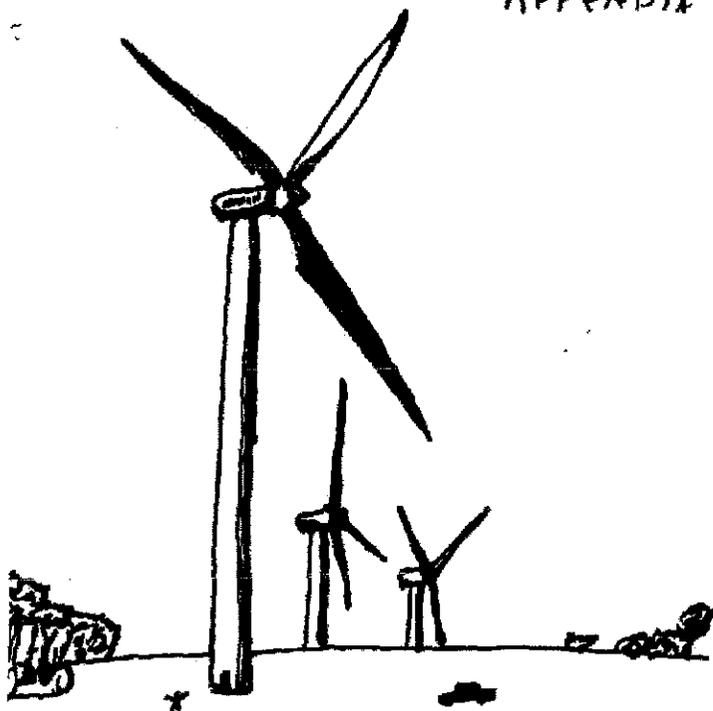
TO: DOCKETING DIVISION

PUCO-DPSB

180 EAST BROAD STREET

COLUMBUS, OHIO 43215

RE: CASE # 10-2865-EL-8614



GREETINGS,

I WOULD EXPECT THAT A COMPANY THAT TOUTS ITS' EXPERIENCE IN THE WIND INDUSTRY WOULD BY NOW HAVE DEVELOPED A LOYAL RELATIONSHIP WITH A REGULAR SUPPLIER OF WIND TURBINES. ALSO, IN OUR AREA WITH OUR WIND CONDITIONS, YOU WOULD PROPERLY ASSUME THAT A SPECIFIC MODEL WOULD PROVE MORE SUITABLE THAN OTHERS.

IT IS REASONABLE THAT THE POWER SITING BOARD WOULD REQUIRE THAT THE COMPANY USE BEST AVAILABLE TECHNOLOGY BOTH FOR THE BENEFIT OF THOSE LIVING IN THE WIND DEVELOPMENT AND FOR THOSE THAT ULTIMATELY PAY FOR IT,

IT SEEMS THAT THE TURBINE MODEL IS A NECESSARY STARTING POINT FOR THE DETERMINATION OF PROJECT LAYOUT, ENVIRONMENTAL IMPACT,

①

CONT'D

APPX000171

GEOLOGY RELATED CONSTRUCTION ENGINEERING, COST PROJECTIONS, TAX BENEFIT, LABOR AGREEMENTS, TRANSPORTATION ROUTES, AND DARN NEAR EVERYTHING ELSE IN THE APPLICATION.

AND YET, RATHER THAN USING BEST AVAILABLE TECHNOLOGY, OR WORKING WITH MANUFACTURERS THAT SHARE A LONG-STANDING WORKING PARTNERSHIP WITH THE DEVELOPER, THE COMPANY'S STATED PLAN IS TO PURCHASE WHATEVER HAPPENS TO BE AVAILABLE ON THE SPOT MARKET AT THE TIME OF APPLICATION APPROVAL, AND AVAILABLE WITHIN THE ARBITRARY AND, IF PAST EXPERIENCE IS TRUSTWORTHY, EXTENDABLE DEADLINES OF FEDERAL GRANTS AND STATE MANDATES.

I DON'T SEE HOW AN APPLICATION CAN BE SUBMITTED OR ACCEPTED WITHOUT A SINGLE FIRM COMMITMENT ON THE MOST BASIC COMPONENT, THE TURBINE.

AS TRADESMEN, WE DO NOT CONSTRUCT A BUILDING FROM THE ROOF AND WORK OUR WAY DOWN. WE START WITH A FOUNDATION, AND A CORNERSTONE.

WE NEED SOME SOLID GROUND SOMEWHERE SO THE COMPANY CAN PLAN, ORGANIZE, AND MANAGE THE PROJECT, WITHOUT THIS, WE WILL HAVE REACTION, MITIGATION, AND LITIGATION.

PLEASE SPECIFY A TURBINE, PREFERABLY OF U.S. MANUFACTURE, WITH COMPONENTS OF U.S. ORIGIN. IF UNITED STATES TAXPAYERS MUST FOOT THE BILL, U.S. COMPANIES AND WORKERS SHOULD GET THE JOBS.

BEST REGARDS,
BRETT 

Brett Jeffers 3/31/11

(2)

SERVED UPON THE FOLLOWING PARTIES VIA HAND DELIVERY:

- VORYS, SATER, SEYMOUR, AND PENSELLP, M HOWARD PETRICOFF, STEPHEN M. HOWARD, MICHAEL J. SETTINGER 52 EAST GAY STREET COLUMBUS OHIO 43216 ON BEHALF OF APPLICANT
- MIKE DEWINE, OHIO ATTORNEY GENERAL, JOHN J JONES, ASSISTANT SECTION CHIEF, STEPHEN A REILLY, DEVIN D PARRAM, ASSISTANT ATTORNEYS GENERAL, PUBLIC UTILITIES SECTION 180 EAST BROAD STREET COLUMBUS OHIO 43215
- CHRISTINA E GRASS ESCHI, SUMMER J KOLADIN PLANTZ, ASSISTANT ATTORNEYS GENERAL, ENVIRONMENTAL ENFORCEMENT SECTION, 30 EAST BROAD STREET, 25TH FLOOR COLUMBUS OHIO 43215
- CHAD A ENDSLEY, OHIO FARM BUREAU FEDERATION, 280 NORTH HIGH STREET, PO BOX 18238 COLUMBUS, OHIO 43218
- CHAIRMAN TODD A SNITCHLER, PUBLIC UTILITIES COMMISSIONER OF OHIO, OHIO POWER SITING BOARD 180 EAST BROAD STREET COLUMBUS OHIO 43215
- BENESCH FRIEDLANDER COPLAN AND ARONOFF LLP ORLA COLLIER III 41 SOUTH HIGH STREET 26TH FLOOR COLUMBUS OHIO 43215

SERVED UPON THE FOLLOWING PARTIES VIA HAND DELIVERY OR US. MAIL

- JOHN WARRINGTON 7040 SR 96 TIRO OH 44887
- CAROL AND LOREN GLEDHILL 7256 REMLINGER RD CRESTLINE OH 44827
- MARY STUDER 6716 REMLINGER RD CRESTLINE OH 44827
- ALAN AND CATHARINE PRICE 7956 REMLINGER RD CRESTLINE OH 44827
- NICK AND MARGARET RIETSCHLIN 4240 BAKER RD CRESTLINE OH 44827
- BRADLEY AND DEBRA BAUER 7298 REMLINGER RD CRESTLINE OH 44827
- GROVER REYNOLDS 7179 REMLINGER ROAD CRESTLINE OH 44827
- GARY BIGLIN 5331 SR 61 SOUTH SHELBY OH 44875
- KAREL DAVIS 6675 CHAMPION RD SHELBY OH 44875

VIA HAND DELIVERY ON THIS DAY TO ALL LISTED ABOVE
OR HAND DELIVERY OR US MAIL TO ALL LISTED BELOW
FEBRUARY 21, 2012

419 632 3845

B. A. Neff

APPX000173

I HEARD A SPIDER AND A FLY ARGUING WAIT SAID THE FLY
DO NOT EAT ME I SERVE A GREAT PURPOSE IN THE WORLD

YOU WILL HAVE TO SHOW ME SAID THE SPIDER

I SCURRY AROUND GUTTERS AND SEWERS AND GARBAGE CANS
SAID THE FLY AND GATHER UP THE GERMS OF TYPHOID INFLUENZA
AND PNEUMONIA ON MY FEET AND WINGS THEN I CARRY
THESE GERMS INTO THE HOUSEHOLDS OF MEN AND GIVE THEM
DISEASES ALL THE PEOPLE THAT HAVE LIVED THE RIGHT SORT
OF LIFE RECOVER FROM THE DISEASES AND THE OLD SOAKS
WHO HAVE WEAKENED THEIR SYSTEMS WITH LIQUOR AND
INIQUITY SUCCOMB IT IS MY MISSION TO HELP RID THE
WORLD OF THESE WICKED PERSONS I AM A VESSEL OF
RIGHTEDOUSNESS SCATTERING SEEDS OF JUSTICE AND
SERVING THE NOBLEST USES

IT IS TRUE SAID THE SPIDER THAT YOU ARE MORE USEFUL
IN A PLODDING MATERIAL SORT OF WAY THAN I AM BUT
I DO NOT SERVE THE 'UTILITARIAN DEITIES I SERVE THE
GODS OF BEAUTY LOOK AT THE GOSSAMER WEBS I WEAVE
THEY FLOAT IN THE SUN LIKE FILAMENTS OF SONG IF YOU
GET WHAT I MEAN I DO NOT WORK AT ANYTHING I PLAY
ALL THE TIME I AM BUSY WITH THE STUFF OF ENCHANTMENT
AND THE MATERIALS OF FAIRYLAND MY WORKS TRANSCEND
UTILITY I AM THE ARTIST THE CREATOR AND A DEMI GOD
IT IS RIDICULOUS TO SUPPOSE THAT I SHOULD BE
DENIED THE FOOD I NEED IN ORDER TO CONTINUE TO
CREATE BEAUTY I TELL YOU PLAINLY MR FLY IT IS ALL
DAMNED NONSENSE FOR THAT FOOD TO REAR UP ON
ITS HIND LEGS AND SAY IT SHOULD NOT BE EATEN

CONT'D →

YOU HAVE CONVINCED ME SAID THE FLY SAY NO MORE
AND SHUTTING ALL HIS EYES HE PREPARED HIMSELF FOR
DINNER AND YET HE SAID I COULD HAVE MADE OUT A CASE
FOR MYSELF TOO IF I HAD HAD A BETTER LINE OF TALK

OF COURSE YOU COULD SAID THE SPIDER CLUTCHING A
SIRLOIN FROM HIM BUT THE END WOULD HAVE BEEN
JUST THE SAME IF NEITHER OF US HAD SPOKEN
AT ALL

DON MARQUIS

MINUTES

REGULAR MEETING OF THE OHIO POWER SITING BOARD

March 26, 2012

Members Present:

Todd A. Snitchler, Chairman, Public Utilities Commission of Ohio
Martin Tremmel for Dr. Theodore Wymyslo, Director, Ohio Department of Health
David Daniels, Director, Ohio Department of Agriculture
Fred Shimp for Jim Zehringer, Director, Ohio Department of Natural Resources
Senator Seitz, Alternate
Representative Jay Goyal
Representative Louis W. Blessing

Members Absent:

Scott Nally, Director, Ohio Environmental Protection Agency
Christiane Schmenk, Director, Ohio Department of Public Safety
Public Member (Vacant)
Senator Tom Sawyer

*MINUTES
3/26/2012*

Resolution 430-12 -- Minutes

Chairman Snitchler moved to adjourn.
Tremmel seconded the motion. The

16, 2012.
ing. M.

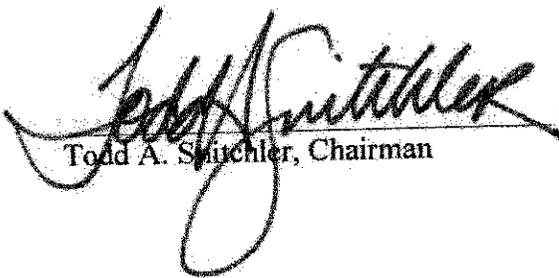
Resolution 431-12 -- Case No. 00-0513-EL-BGN and 04-1011-EL-BGA. In the Matter of the Application of Lima Energy Company for a Certificate of Environmental Compatibility and Public Need to Construct a Base Load Power Plant in Allen County, Ohio. Chairman Snitchler moved that prior to considering an extension of certificate the Applicant should be directed to file various items with the Board. Those items included: detailed grid analysis, site preparation activities, listing of necessary permits and status, list of electric and gas facilities that would interconnect, erosion and sedimentation activities, discussion of hazardous soils and water or debris encountered, coordination with emergency personnel, arrangements for backup pressure to local natural gas system and a thorough discussion describing the facility's proposed reconfiguration. M. Tremmel seconded the motion. The resolution passed.

Resolution 432-12 -- Case No. 10-2865-EL-BGN. In the Matter of the Application of Black Fork Wind Energy, LLC, for a Certificate to Site a Wind-Powered Electric Generating Facility in Richland and Crawford Counties, Ohio. Chairman Snitchler moved to deny the request for rehearing. F. Shimp seconded the motion. The resolution passed.

Resolution 433-12 -- Case No. 11-1313-EL-BSB. In the Matter of the Application of AEP Ohio Transmission Company, Inc., for a Certificate of Environmental Compatibility and Public Need for the 765/345/138 kV Vassell Substation Project. Chairman Snitchler moved to approve the application. M. Tremmel seconded the motion. The resolution passed.

Resolution 434-12 -- Case No. 11-3534-GA-BTX. In the Matter of the Application of Columbia Gas of Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for the Construction of the Ackerman Road Natural Gas Pipeline Project. Chairman Snitchler moved to approve the application. D. Daniels seconded the motion. The resolution passed.

Resolution 435-12 -- Case Nos. 11-5855-EL-BSB and 11-5856-EL-BTX. In the Matter of the Application of American Transmission Systems, Incorporated for a Certificate of Environmental Compatibility and Public Need for the Construction of the Black River Substation and Transmission Line. Chairman Snitchler moved to approve the applications. F. Shimp seconded the motion. The resolution passed.



(July 30, 2012)

Todd A. Snitchler, Chairman

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Black)
 Fork Wind Energy, L.L.C. for a Certificate)
 to Site a Wind-Powered Electric Generating) Case No. 10-2865-EL-BGN
 Facility in Crawford and Richland)
 Counties, Ohio.)

ENTRY ON REHEARING

The Ohio Power Siting Board finds:

- (1) On March 10, 2012, the Applicant filed a compatibility and siting plan for a wind-powered electric generating facility in Crawford and Richland counties, Ohio. Fork or
mental
wind-
land
- (2) On January 23, 2012, the Board issued its opinion, order, and decision. Pursuant to the Stipulation, as amended, the Board's Staff, the Ohio Farm Bureau, and the Crawford County Commission should be issued, subject to the Board's Stipulation. d its
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- (3) Section 4906.12, Revised Code, states, in relevant part, that Sections 4903.02 to 4903.16 and 4903.20 to 4903.23, Revised Code, apply to a proceeding or order of the Board as if the Board were the Public Utilities Commission of Ohio (Commission).
- (4) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.
- (5) Rule 4906-7-17(D), Ohio Administrative Code (O.A.C.), states, in relevant part, that any party or affected person may file an application for rehearing within 30 days after the issuance of a Board order in the manner and form and circumstances set forth in Section 4903.10, Revised Code.

*ENTRY ON
REHEARING
3/26/2012*

- (6) On February 17, 2012, intervenors Alan Price, Catherine Price, and Gary Biglin filed applications for rehearing of the order. On February 21, 2012, intervenors Brett Heffner and John Warrington filed applications for rehearing of the order. Mr. Heffner's rehearing application included a request that an audio recording he alleges was made of the teleconference which occurred on September 9, 2011, be entered into the evidentiary record in this case. On February 22, 2012, intervenors Carol Gledhill and Loren Gledhill separately filed applications for rehearing of the order that, in terms of all the arguments they raise, mirror each other, as well as the rehearing application of Gary Biglin.
- (7) On February 27, 2012, Black Fork filed memoranda contra the rehearing applications of Alan Price, Catherine Price, and Gary Biglin. On March 2, 2012, Black Fork filed memoranda contra the rehearing applications of Brett Heffner and John Warrington. Also on March 2, 2012, Black Fork filed a motion to strike portions of Mr. Heffner's rehearing application, accompanied by a memorandum contra Mr. Heffner's request to have the audio recording admitted into the evidentiary record. On March 5, 2012, Black Fork filed memoranda contra the rehearing applications of Carol Gledhill and Loren Gledhill. On March 9, 2012, Mr. Heffner filed a pleading which, in essence, served both as a reply to the memorandum contra that Black Fork filed in response to Mr. Heffner's request to have the audio recording admitted into evidence, and also as a memorandum contra Black Fork's motion to strike portions of Mr. Heffner's rehearing application. On March 12, 2012, Black Fork filed a reply to Mr. Heffner's memorandum contra Black Fork's motion to strike portions of Mr. Heffner's rehearing application.¹
- (8) On February 28, 2012, the administrative law judge (ALJ) issued, pursuant to Rule 4906-7-17(I), O.A.C., an entry ordering that the applications for rehearing filed by Alan Price, Catherine Price, Gary Biglin, Brett Heffner, John Warrington, Carol Gledhill, and Loren Gledhill should be granted for the purpose of affording the Board more time to consider the issues raised in those rehearing applications.

¹ On March 9, 2012, Mr. Biglin filed a reply to Black Fork's memorandum contra, entitled "In Reference to the Memorandum Contra of Black Fork Wind Energy, LLC to The Application for Rehearing by Gary J. Biglin." Because there is no provision in either the statute or the Board's rules to file replies to memoranda contra applications for rehearing, Mr. Biglin's March 9, 2012, filing cannot be considered.

Rehearing Arguments Raised By Alan Price

- (9) Mr. Price raises seven grounds for rehearing. As the first of his grounds for rehearing, Mr. Price alleges that, before their offices were asked to work on a road agreement, those township and county employees who signed leases with Black Fork or Element Power should have been replaced. Additionally, Mr. Price alleges that it was unethical for the Applicant to tell lease signers who had questions about their lease to go to attorney Jim Prye because Mr. Price claims that Black Fork both paid Mr. Prye for such work and also paid Mr. and Mrs. Prye for using their title company for work.

In its memorandum contra, Black Fork asserts that Mr. Price has not provided a legal basis for concluding that any of the conduct he alleges to have occurred is illegal or unethical and that the Board has no jurisdiction over the allegations of unethical behavior cited to by Mr. Price.

- (10) Upon review, we find that no basis exists of record to substantiate either that the factual allegations made on rehearing by Mr. Price actually occurred in the manner alleged, or that the conduct alleged, even if it did occur, was illegal. Most importantly, there has been no showing made of record that any illegal or unethical behavior by anyone factored, or should have factored, into the Board's decision, or that the Board is the appropriate tribunal to address purported unethical behavior of township and county employees. Accordingly, Mr. Price's first assignment of error should be denied.
- (11) In his second rehearing argument, Mr. Price alleges that the Applicant, the Commission, and the Board are "doing their best to bully" elected county officials "into signing agreements that they do not have enough time or resources to fully investigate."

In its memorandum contra, Black Fork asserts that there is no basis in law or in fact to support Mr. Price's claims that county officials are being "bullied" in this way.

- (12) Upon review, we find this second argument of Mr. Price is without merit. No basis exists in the record evidence to substantiate the allegations of "bullying" made on rehearing by Mr. Price, nor did Mr. Price present evidence of any such conduct at the hearing. In addition, both Crawford County and Richland County were parties to this case and there was no evidence that anyone employed by

these counties was in any way unduly influenced by any party or the Board or that any such conduct occurred. Accordingly, Mr. Price's second assignment of error should be denied.

- (13) Mr. Price's third assignment of error on rehearing posits that the Applicant is being allowed to build a wind farm without having to post any kind of bond before starting construction.

In its memorandum contra, Black Fork states that this assertion is simply incorrect.

- (14) Upon review, we note that Condition 66(h) of the Stipulation, summarized at pages 48-49 of the order, clearly imposes an obligation on the Applicant to provide, prior to construction, a financial assurance instrument such as a surety bond, for purposes of demonstrating that adequate funds have been posted for the scheduled construction. Because this condition of the Stipulation imposes a bonding obligation on the Applicant prior to construction, Mr. Price's rehearing argument to the contrary is without merit, does not justify rehearing of the order, and should be denied.

- (15) In his fourth assignment of error, Mr. Price claims that the Applicant's study of background noise for the wind farm project was flawed. Mr. Price claims that four of the eight monitors used in the background noise study were located near heavy traffic and that two monitors were not within the project area.

In its memorandum contra, Black Fork notes that Mr. Price did not cite to any evidence that the monitors were placed in high traffic areas or that the monitoring sites were not adequate to provide a valid sampling of background noise levels. Additionally, Black Fork points out that its witness, Kenneth Kaliski, testified at length regarding the location of the monitors used for his background noise study and explained that the results of one monitor that recorded at a very high equivalent continuous noise level (LEQ) were not considered when determining the average nighttime sound level for the project.

- (16) The Board finds that Mr. Price's rehearing claim that the project's background noise study was flawed is simply not supported by the record and, as such, is without merit. Black Fork witness Kaliski provided expert testimony which supports a finding that the monitoring sites used in his noise study were satisfactory to

provide a valid sampling of noise levels in the project area. Mr. Price failed to cite to any evidence of record that would negate or even challenge Mr. Kaliski's expert opinion on this topic. Accordingly, Mr. Price's fourth assignment of error should be denied.

- (17) In his fifth assignment of error, Mr. Price claims that the application was not made available to him until the first day of the evidentiary hearing. Mr. Price also disputes the hearing testimony of the Applicant witness Hawkins, who indicated that a copy of the application was sent to the Crestline Public Library in September 2011. Mr. Price further asserts, without including any supporting documentation, that the Crestline Library "never received it until December 2011."

In its memorandum contra, Black Fork claims that it followed the Board's rules on whether and how libraries are to be furnished with the copies of the application, and that those rules do not require, under the facts of this case, that a copy of the application be furnished to the Crestline Public Library.

- (18) Upon review, we find no merit to Mr. Price's fifth assignment of error. We note that Rule 4906-5-06, O.A.C., governs service of an application for a wind-powered electric generating facility. This rule requires that the Applicant place either a copy of the application or notice of its availability "in the main public library of each political subdivision as referenced in Section 4906.06(B), Revised Code." That statutory provision, as applicable, also requires service of the application on the chief executive officer of each municipal corporation and county "in the area in which any portion of the proposed facility is to be located." We agree that, as pointed out by Black Fork in its memorandum contra, no part of the facility involved in this case is proposed to be located within the village of Crestline. The Board's rules, thus, do not require service of the application, or notice of its availability, on the Crestline Public Library. Moreover, in that copies of the application were served on the libraries serving the county seats of both Crawford and Richland counties where the project is to be located, as well as on three other libraries located within those two counties, the record reflects Black Fork's compliance with the Board's rules regarding service to libraries in the project area (Black Fork Ex. 2, June 17, 2011, Certificate of Service). Moreover, from the time the application was filed with the Board and throughout

the duration of this case, the application was available on the Board's website. Moreover, there is no requirement that the Applicant serve persons who intervene in the case subsequent to the filing of the application with a copy of the application. Accordingly, Mr. Price's fifth assignment of error should be denied.

- (19) In his sixth ground for rehearing, Mr. Price accuses the Board of failing to explain the difference between the terms "the applicant, the facility owner, and the facility operator" as those terms are used in the Board's decision.

Black Fork disagrees with Mr. Price's assertion.

- (20) This claim is without merit. A thorough explanation of the Board's interpretation of the manner in which these terms are used in the Stipulation and in the order is provided by the Board at page 70 of the order. Accordingly, Mr. Price's sixth assignment of error should be denied.
- (21) As his seventh ground for rehearing, Mr. Price questions how the Board could have approved the application when, in his view, many questions asked of witnesses during the evidentiary hearing were left either unanswered or not answered completely.
- (22) We find Mr. Price's final rehearing argument is without merit. First, Mr. Price has not cited to a single instance where a question was left unanswered at the hearing. More importantly, Mr. Price neither identifies any way in which the Board's decision was not supported by the record, nor does he explain how the record is so incomplete as to provide an improper and insufficient basis for the Board, in making its decision as reflected in the order, to fulfill all of its jurisdictional obligations in this case. Further, the Board notes that all parties had the opportunity to question witnesses at the hearing, either by subpoenaing them to testify or by cross-examining other parties' witnesses. Accordingly, the Board finds that Mr. Price's seventh assignment of error should be denied.

Rehearing Arguments Raised By Catherine Price

- (23) In her rehearing application, Ms. Price raises 12 arguments that, broadly, appear to critique either the application, the terms of the Stipulation, and/or the testimony of various hearing witnesses. In her first assignment of error, Ms. Price disputes whether the

application properly identifies the generation capacity of the turbine models under consideration.

In response, Black Fork asserts that the application properly identifies the generation capacity of each of the turbine models under consideration.

- (24) Ms. Price has raised no issue in her first assignment of error that warrants reconsideration, in that the record clearly sets forth the capacity ratings of the turbine models. Accordingly, her request for rehearing should be denied.
- (25) In her second assignment of error, Ms. Price submits that the study of historic properties undertaken in this case is incomplete, based on her belief that it failed to include Ms. Price's own residence, allegedly built in 1836.

In response, Black Fork points out that Ms. Price presented no evidence at hearing showing either that her residence qualifies for registration in any of the registries that Rule 4906-17-08(D), O.A.C., requires the Applicant to consult, or whether or how the project would have any impact on the cultural or historical significance, if any, of her residence.

- (26) A review of the record indicates that Ms. Price's second assignment of error should be denied as there is no evidence of record to support her allegation that the Board's conclusions were in error.
- (27) In her third assignment of error, Ms. Price contends that, because road use agreements have yet to be finalized, the status of certain planned changes to affected roads remains in play, thereby jeopardizing her right to travel on safe roads.

Black Fork responds that the conditions of the Stipulation addressed transportation and road use agreements, and require the Applicant to develop route plans, make road improvements outlined in the route plans, repair damage to bridges and roads caused by construction activity, and obtain all required county and township transportation permits.

- (28) The Board finds Ms. Price's third assignment of error to be without merit, as the record supports the finding that the Stipulation clearly provides for the necessary and appropriate road use agreements. Accordingly, this request for rehearing should be denied.

- (29) Ms. Price, in her fourth assignment of error, contends that the Applicant's study of water wells is incomplete, based on her belief that multiple wells were not included in it, including three wells that allegedly exist on Ms. Price's property.

In response, Black Fork points out that Ms. Price has cited no record support for her allegations questioning the reliability of Black Fork's water well study based on an alleged failure to include Ms. Price's own wells. Also, the Applicant notes that she ignored the hearing testimony of Black Fork witness Dohoney, which supports the Board's decision even in the event that Ms. Price's wells were not included in the study.

- (30) Upon review, the Board finds no merit in Ms. Price's fourth assignment of error. The record supports the Board's finding in this regard; therefore, this request for rehearing should be denied.

- (31) In her fifth assignment of error, Ms. Price contends both that no baseline study on television and cell phone signal strength was done and, also, that the Applicant's mitigation process, to be applied in the event that such signal strength is lost, has not been fully explained.

In response, Black Fork states that testimony exists indicating that wind turbines do not cause telephone and cell phone degradation and, in any event, two conditions of the Stipulation address Ms. Price's television and cell phone reception concerns.

- (32) Contrary to Ms. Price's fifth assertion on rehearing, the Board finds that the record does address and alleviate concerns about telephone and cell phone degradation. Accordingly, this request for rehearing should be denied.

- (33) In her sixth assignment of error, Ms. Price accuses the Applicant of not wanting to insure the funding for decommissioning, she questions whether such funding exists, who, if anyone, would provide it, if, for example, weather would damage the turbines beyond repair and she asks what would happen if the party responsible goes bankrupt before the decommissioning funds are in place.

In response, the Applicant states that the issues regarding financial assurance/bonding, were addressed by the Board at pages 48-49 of the order, inasmuch as the Board has adopted condition 66(h) to

the Stipulation, which requires the posting of decommissioning funds, a surety bond or assurance before the scheduled construction of each turbine.

- (34) Upon consideration the Board finds no merit in Ms. Price's sixth assignment of error, in that the issue of decommissioning was fully addressed and resolved in the Stipulation and on the record in this case. Therefore, this assignment of error should be denied.
- (35) In her seventh assignment of error, Ms. Price, critiques various parts of the testimony of Black Fork witness Kaliski, who testified concerning background noise studies he conducted, as well as issues relating to turbine operational noise.

Black Fork responds that Ms. Price's critique of the evidence relating to noise issues fails to present any grounds for concluding that the Board's analysis and conclusions on that topic, in the order, are unreasonable, unlawful, or unsupported by the record.

- (36) With regard to Ms. Price's seventh assignment of error, the Board agrees that the record supports the finding that the noise level is appropriate in this case. No evidence was presented on the record to the contrary. Accordingly, this assignment of error should be denied.
- (37) Ms. Price, in her eighth assignment of error, questions whether the turbine manufacturer, who the record shows is the party who will maintain the turbines, will answer to anyone if large parts must be trucked in for repairs.

In response, Black Fork notes that all of the duties and obligations pertaining to turbine maintenance that are imposed on the Applicant through conditions of the Stipulation are adequately explained and addressed in the order.

- (38) Upon review of Ms. Price's eighth assignment of error, the Board notes that it appears that Ms. Price would have the Board now consider and answer the question of whether any of these same duties and obligations imposed on the Applicant (for example, the duty to comply with all local county or township permitting requirements) should apply to other entities besides the Applicant, such as the turbine manufacturers. On this issue, the Board notes that our jurisdiction extends to the Applicant and the Applicant is and will be held accountable for any necessary maintenance on the

facility, whether or not the Applicant chooses to contract with another entity to provide such maintenance. With this in mind, the Board finds that it is not necessary to further address this issue and that this assignment of error should be denied.

- (39) In her ninth assignment of error, Ms. Price lists several criticisms of the testimony of Black Fork witness Mundt, an epidemiologist whose purpose in testifying was to indicate, based on Dr. Mundt's review of the relevant, published, peer-reviewed scientific literature, as well as the professional training and experience in applying epidemiological concepts and methods to diverse human health issues, whether she had found any consistent or well-substantiated causal connection between residential proximity to industrial wind turbines and health effects.

In response, Black Fork states that none of the criticisms that Ms. Price has raised on rehearing with regard to Dr. Mundt's testimony, pertain to the actual purpose served by her testimony. Nor do any of her criticisms present valid reasons for the Board to depart from its reliance on that testimony, based on its own judgment that Dr. Mundt's testimony competently served its intended purpose.

- (40) The Board finds that Ms. Price's ninth assignment of error is without merit. There was sufficient expert testimony presented in this matter that supports the Board's reliance on Dr. Mundt's testimony in this regard. No evidence was presented on the record to the contrary. Accordingly, this assignment of error should be denied.
- (41) In her tenth through twelfth assignments of error, Ms. Price raises the same concerns as Mr. Price regarding: whether and when a copy of the application was placed at the Crestline Public Library; how the Board has interpreted the terms "applicant", "facility owner", and "facility operator"; and whether, at the close of the hearing, too many questions of record were left unanswered for the Board, in making its decision, to have carried out its proper statutory jurisdiction.
- (42) The Board has already fully addressed these issues in Findings (18), (20), and (22) above, and her tenth through twelfth assignments of error should, therefore, be denied.

Rehearing Arguments Raised by Gary Biglin

- (43) In the first of his four rehearing arguments, Mr. Biglin contends that the Board's decision is unreasonable and unlawful because it fails to require the Applicant to maintain an adequate turbine setback distance from nonparticipating property lines and public roadways, thus violating Section 4906.10(A)(2), (3), and (6), Revised Code.

In its memorandum contra Mr. Biglin's rehearing application, Black Fork asserts that in issuing its order, the Board acted lawfully and reasonably in approving the turbine setbacks proposed for the project.

- (44) We find no merit in Mr. Biglin's first assignment of error. Mr. Biglin believes that, because Ohio's existing setback standards are based on the distance from the turbine base to the exterior of the nearest habitable residential structure of an adjacent property, they "show disregard for" and fail to "respect" the interests of Ohio property owners in being able to "enjoy every inch" of their property "without concern for the happiness and safety of themselves and their family." Mr. Biglin contends that it was error for the Board to apply a setback standard other than one based only "on distance from property lines and the public roadways." In essence, Mr. Biglin's argument is that the Board erred in applying the actual setback standards that are supported in Ohio law. We disagree. Setback distances have been determined by the Ohio General Assembly and the Board has complied with the distances as established. In fact, it would have been contrary to the statutory formula on the part of the Board had it approved setback distance less than setback distances established by the Ohio General Assembly. In this case, the Board approved a stipulation that provides setback distances that exceed the statutory requirements. Accordingly, Mr. Biglin's first assignment of error should be denied.

- (45) In his second rehearing argument, Mr. Biglin continues, in another way, to question the setback requirements the Board applied in this case and sets forth three reasons to support his claim. First, he contends that the Board's decision is unreasonable and unlawful because it applies setback requirements that "are inadequate to

ensure the rights of health, safety, and well being" to persons who are nonparticipating property owners and to persons using the public roadway. According to Mr. Biglin, the setback requirements imposed through the order, in this regard, violate such persons' constitutional rights under both the United States and the Ohio Constitution, as well as their statutory rights under Section 4939.02(A)(1), Revised Code. Second, Mr. Biglin avers that "the only way" to ensure the complete safety of persons on property adjacent to a wind farm and on public roadways in a wind project area is to impose a setback formula known as "the GE setback formula," which was referenced in the staff report. Third, Mr. Biglin asserts that the order deprives property owners of their constitutional rights to the protection of private property and to procedural due process.

In its memorandum contra, Black Fork maintains that the setbacks imposed under the order adequately protect property owners and users of the public highway and do not violate any of their constitutional or statutory rights.

- (46) Initially, the Board finds that Mr. Biglin has provided no evidentiary support for his second assignment of error; therefore, we find it to be without merit. The Board's decision to reject use of the GE setback formula is supported by the record. Black Fork witness Haley testified concerning the GE setback formula, indicating that it originated from a 2003 published risk analysis study on ice throw from wind turbines, referred to as the Seifert study. Mr. Haley's expert opinion is that the risk of ice throw on the Black Fork project does not warrant the application of the GE setback formula. His testimony supports a finding that, even the authors of the Siefert study have admitted the formula they studied was intended only for use as "rough guide" in making initial siting determinations. Moreover, as Black Fork points out in its memorandum contra, even Mr. Biglin admitted that the GE setback formula has enjoyed limited application, agreeing on cross-examination that GE, itself, only recommended application of the setback if an ice detector is not used on the turbine. For this project, Condition 44 of the Stipulation provides that ice detection systems will be used on all turbines that cause the turbines to automatically shutdown. The Board's decision to reject use of the GE setback formula is also supported by the Board's finding that no evidence was presented of record that warranted additional measures beyond the setback distances prescribed under the Board's rules.

With regard to Mr. Biglin's overall contention regarding the setback issue, the Board notes that, contrary to his assertion, nothing prohibits adjoining landowners from developing their properties or constructing residences after a wind farm has been constructed. Our decision in this case is fully supported by Ohio case law, which holds that established setbacks do not constitute unconstitutional takings if enacted as a result of a proper exercise of the police power and are reasonably necessary for the "preservation of the public health, safety and morals." See *Andres v. City of Perrysburg*, 47 Ohio App. 3d 51, 54 (Wood County, 1988), citing *Pritz v. Messer*, 112 Ohio St. 628 (1925). The setbacks imposed under the order were established by the General Assembly to safeguard the public from potential harm, including, noise, shadow flicker, blade throw or ice throw, which may result from construction of the wind turbines. Such action is within the police power to protect the public health, safety, and morals, and, therefore, does not constitute an unconstitutional taking of private property. Thus, we find that Mr. Biglin's constitutional arguments have no merit and do not justify a grant of rehearing on the order. Accordingly, Mr. Biglin's second assignment of error should be denied in its entirety.

- (47) In his third assignment of error, Mr. Biglin contends that the Board improperly delegated too much authority to the ALJs. He contends that the Board relied upon the ALJs to reach a final decision that was merely rubber-stamped by the Board. In this regard, Mr. Biglin argues that the Board failed to meet its statutory obligation to carefully weigh the issues and evidence and failed to reach an independent determination whether the project should be constructed as proposed.
- (48) The Ohio Supreme Court has held² that "drafting an order and deciding an order are not the same, and nothing in the Revised Code prohibits the Board from delegating the drafting of an order to an ALJ." Moreover, in the same decision, the Ohio Supreme Court "relied on a long-standing presumption of regularity, wherein, in the absence of evidence to the contrary, a public board is presumed to have properly performed its duties" (*Id.*). We find that Mr. Biglin's third argument on rehearing is without merit and should be denied.

² *In re the Application of Am. Transm. Sys., Inc.* 125 Ohio St. 3d 333 (May 4, 2010).

- (49) In his fourth and final rehearing argument, Mr. Biglin offers four criticisms of the procedural process. First, he complains that there was a compressed schedule between the dates when intervention was granted and the initially scheduled dates for both the public hearing and the adjudicatory hearing. Mr. Biglin believes that, in other wind project cases, a window of about two weeks between the public and adjudicatory hearings is customary. Second, Mr. Biglin complains that he did not receive a copy of the application until October 11, 2011. Mr. Biglin's third criticism of the procedural process is that, during a September 9, 2011, prehearing procedural teleconference, the ALJs referred to a settlement conference as a settlement meeting and at other times as a stipulation meeting. Mr. Biglin claims this was very confusing. Mr. Biglin's fourth criticism is that John Pawley was the only Staff witness made available for cross-examination.
- (50) Upon consideration, the Board notes that, Rule 4906-7-07(A)(1)(8), O.A.C., provides that, for purposes of the Board's discovery rules, the term "party" includes any person who has filed a notice or petition to intervene which is pending at the time a discovery request or motion is to be served or filed. Rule 4906-7-07(B)(1) O.A.C., also provides that discovery may begin immediately after an application is filed or a proceeding is commenced. Thus, because Black Fork filed its application on March 10, 2011, and Mr. Biglin had filed a motion to intervene on August 1, 2011, nothing prohibited Mr. Biglin from seeking any and all discovery of Black Fork once he filed for intervention. With respect to Mr. Biglin's claims regarding the time period between the hearings, we find no merit. Although the two hearings were initially scheduled to occur more closely together, in this case, there was actually a window of about four weeks between the date of the public hearing on September 15, 2011, and the October 11, 2011, date on which commenced the presentation of live hearing testimony in the adjudicatory hearing. Mr. Biglin also has not provided any explanation regarding how he was prejudiced by the schedule that was actually followed.

As for his issue regarding the application, a review of Mr. Biglin's testimony filed on September 19, 2011, indicates that he had access to the application as he made specific references to it. (September 19, 2011, Testimony of Gary J. Biglin, at 2-4). Moreover, under Section 4906.06, Revised Code, the Applicant was required to serve a copy of the application on the chief executive officer of each

municipal corporation and county, and the head of each public agency charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located; however, the Applicant was under no legal obligation to serve Mr. Biglin with a copy of the application, as Mr. Biglin intervened well after the date that the Applicant filed and served copies of the complete application. Even if Mr. Biglin did not have access to the application, which he clearly did have, he has made no showing of prejudice. The application was also available on the Board's website from the time the application was filed.

The Board also notes that Mr. Biglin fails to explain whether any confusion on his part lingered after September 12, 2011, the date on which an entry was issued that summarized the scheduling decisions that were made during the September 9, 2011, procedural teleconference. In any event, he has not shown how any confusion he still had, by that point, affected his ability to participate in the evidentiary hearing. Indeed, the record shows that Mr. Biglin fully participated in the evidentiary hearing, by presenting testimony and cross-examining witnesses.

Finally, we note that there is nothing unreasonable or unlawful about any party having a single witness testify to support its position. Once the Stipulation was entered, it was Staff's decision as to who it presented at hearing to testify in support of the Stipulation and the staff report. Clearly the Board did not commit error because the Staff chose Mr. Pawley to testify. Further, Mr. Biglin was never denied the opportunity to cross-examine any witness appearing at hearing. Therefore, Mr. Biglin's final argument fails to present reasonable grounds for granting rehearing of the order and should be denied.

Rehearing Applications Filed By Carol Gledhill And Loren Gledhill

- (51) As previously noted, on February 22, 2012, Carol Gledhill and Loren Gledhill separately filed applications for rehearing that, in terms of all the arguments they raise, essentially mirror each other and also the rehearing application of Gary Biglin. We find that, since their rehearing applications are, in all essential aspects, merely duplicative of the rehearing application of Gary Biglin, the Gledhills' applications for rehearing should be denied for all the same reasons, and in exactly the same manner, as we have denied,

within this entry on rehearing, the rehearing application of Gary Biglin.

Rehearing Arguments Raised By John Warrington

- (52) Mr. Warrington raises three arguments on rehearing. In his first and third assignments of error, Mr. Warrington contends that the Board lacks the ability to render an objective and nonbiased decision that would protect the public interest, well-being, and property of Ohio citizens. In Mr. Warrington's view, the Board "acts only as enablers of industrial wind installation in Ohio with complete disregard for testimony or criteria which disagrees with their industrial wind agenda." Mr. Warrington complains that: information that was stricken from his prefiled testimony, purporting to show that industrial wind projects have a negative impact on property values, should have been considered by the Board; his request to have a real estate expert testify via Skype, rather than to appear live at the hearing, should not have been denied; and the Board's decision in this case rests upon the expert opinion testimony from Black Fork witnesses that the 91 wind turbines proposed will have a neutral or, in fact, benign impact on real estate values. Furthermore, Mr. Warrington contends that the Board creates an evidentiary double standard that is a violation of due process. He claims that the Board has the ability, but refuses, to receive and review the voluminous credible data documenting the immense negative impact that an industrial wind installation will have upon a community. He accuses the Board of receiving all wind industry opinion as fact, while rejecting the credibility of virtually all opposing data.

In its memorandum contra, Black Fork points out that the opinion testimony of its expert witness, Mr. Stoner, was admitted based on his qualifications as an expert witness, under criteria established in Ohio's rules of evidence, rather than on any alleged inability of the Board to render an objective and nonbiased decision. Black Fork also points out that Mr. Warrington admitted that he, himself, was not qualified as an expert (Tr. 694-697).

- (53) We find that Mr. Warrington's first and third arguments on rehearing are without merit. It is not error nor improper for the Board to have expected and required Mr. Warrington, if he wished to present expert opinion testimony on real estate values in his own community, to produce a qualified expert to appear live and in

person at the adjudicatory hearing, to provide expert opinion testimony to that effect. Rather than do that, Mr. Warrington improperly sought to include in his own testimony verbatim phrases and conclusions that appear in the body of a consultant report on real estate valuations and sought the admission of various attachments, including an article on a study performed by a consulting firm and various other articles on real estate. Such improper evidence was properly excluded by the ALJs as there was no foundation or authentication presented at the hearing for the information; moreover, the authors of the report and studies were not presented for examination at the hearing. The Commission has broad discretion in the conduct of its hearings under Section 4901.13, Revised Code. *Weiss v. Public Utilities Commission* (Ohio 2000). The Board did not err either in allowing into evidence the expert opinion testimony of Black Fork's qualified expert witnesses, or in considering that specific evidence as part of its consideration of the whole evidentiary record, as reflected in the order. Accordingly, Mr. Warrington's first and third assignments of error should be denied.

- (54) In his second assignment of error, Mr. Warrington contends that the Board's approval of the project in this case amounts to an unconstitutional taking without compensation of the property of hundreds of Crawford and Richland county residents.
- (55) We have already fully addressed, and rejected, this argument in Finding (46) above. Therefore, as we found previously, the request for rehearing is without merit and should be denied.

Brett Heffner's Request For Admission Of Audio Recording Into Evidence:
Consideration Of Rehearing Arguments That Reference That Audio Recording

- (56) Attached to Mr. Heffner's application for rehearing was a compact disc (CD) which he claims contains a recording that was made of a telephonic procedural conference held on September 9, 2011, conducted by the ALJs and participated in by several of the parties. Mr. Heffner requests that this CD be entered either as part of his memorandum in support of his application for rehearing, or, as necessary, separately into the evidence of record in this case. He further states that the conference was "recorded in its entirety from open to close, without edit and is a part of public records in Richland County, Ohio."

- (57) As to the admissibility of such recording, we find no merit. First, there is no basis on which to admit an exhibit outside of a hearing, after the close of the record of the case, and after the Board has issued an order. Mr. Heffner should have introduced, marked, and sought the admission of the recording as an exhibit at the hearing in the event he believed such a recording was relevant. Further, Mr. Heffner, or someone with knowledge of the recording, could have testified at hearing regarding the CD and its contents, where that person could have been cross-examined by all parties and the ALJs. Absent Mr. Heffner, or someone with knowledge about the recording, testifying at the hearing regarding the recording and chain of custody, there is no basis on which to make any finding regarding the contents of the CD or to demonstrate the veracity or efficacy of such a recording. We note that such recording was made without the knowledge of the ALJs, and it is unclear whether any other party had knowledge that such a recording was made. Notwithstanding any and all problems relating to verifying the CD's authenticity, and disregarding any concerns regarding whether there was a legal basis for making such a recording, Mr. Heffner's citations to voices on the CD do not demonstrate prejudice or show that the order was in any manner unlawful or unreasonable.
- (58) Accordingly, Mr. Heffner's request that the CD be admitted into the record is denied and all of the arguments in Mr. Heffner's application for rehearing that cite or reference the CD are denied. This decision renders moot three pleadings: (1) the March 2, 2012, pleading by which Black Fork sought to both oppose Mr. Heffner's request to have the audio recording admitted into the record and to strike those portions of Mr. Heffner's rehearing application which cite or reference that audio recording; (2) Mr. Heffner's March 9, 2012, pleading filed in response to Black Fork's March 2, 2012, pleading, and (3) Black Fork's reply filed March 12, 2012. We, therefore dismiss that pleading by Black Fork now, without need for further consideration.

Other Rehearing Arguments Raised By Brett Heffner

- (59) Mr. Heffner raises 18 assignments of error. The first argument made in Mr. Heffner's rehearing application is that "the focus of the adjudicatory hearing" was unreasonably and unlawfully shifted away from the application and the staff report, to the

Stipulation. Mr. Heffner claims that the Stipulation unreasonably and unlawfully affected the rights of parties that did not sign it.

Responding to this argument, Black Fork asserts that the focus of the evidentiary hearing was, appropriately, on both the application and the Stipulation. Black Fork notes that, since it had the burden of proof, it submitted into evidence the application, ten pieces of direct testimony and six pieces of additional testimony addressing all aspects of the application and the conditions proposed in the Stipulation. Moreover, according to Black Fork, the intervenors, including Mr. Heffner, submitted written testimony and engaged in robust cross-examination of the Applicant's witnesses, the OFBF's witness, and the Staff's witness.

- (60) Upon review, we find that Mr. Heffner has established no basis for his claim that the hearing was, in any way, unreasonably or unlawfully focused. Once a stipulation is submitted it is appropriate for the hearing to proceed allowing the stipulating parties to present the stipulation on the record and provide support for the stipulation. Those parties that do not support the stipulation are permitted to question witnesses on the stipulation and provide testimony in opposition to the stipulation. Such was the situation in this case wherein all parties were afforded due process and given an opportunity to address the proposed application and Stipulation. Consequently, we find that Mr. Heffner has established no basis for his claim that the Stipulation shifted the focus of the hearing, thus, unreasonably and unlawfully affecting the rights of parties that did not sign it. Accordingly, we find that the first assignment of error is without merit and should be denied.
- (61) In his second assignment of error, Mr. Heffner states that "the public was not made aware of the settlement conference before the public meeting" and that "significant and material changes were made without the opportunity of public inquiry."
- (62) In consideration of this claim, the Board notes Mr. Heffner fails to clearly state what set of facts he is referring to. The record demonstrates that, contrary to Mr. Heffner's assertion, several entries were issued in this docket setting forth the procedural schedule; these entries are public documents available through the Board's docketing system. In fact, the public generally was made

aware, by the September 12, 2011, entry, i.e., prior to the September 15, 2011, public hearing in Shelby, that the parties to the case, as opposed to members of the public who were not parties, would commence a settlement conference on September 19, 2011. In any event, there is no legal requirement that notice be given to the public that parties are engaged in private settlement discussions. Accordingly, we find that Mr. Heffner's second rehearing argument is without merit, presents no grounds for rehearing of the order, and should be denied.

- (63) In his third rehearing argument, Mr. Heffner alleges that it is "unreasonable and unlawful to conduct a procedure called a hearing, preside over it with persons called judges, and practice before them with entities called attorneys and parties, and under the rules of procedure include as a general provision the ability for the presiding officers to 'waive any requirement, standards, or rule set forth in this chapter or prescribe different practices or procedures to follow in this case.'" Mr. Heffner goes on to state that untranscribed or off-the-record conversations with the ALJs violated the rules and procedures which were laid down in front of all the parties with all having the opportunity to participate, but were then ignored and countermanded in subsequent process. Mr. Heffner provided no citations for these claims.

In its memorandum contra, Black Fork submits that the Board and the ALJs followed procedural rules and did not violate them.

- (64) To the extent there were off-the-record discussions, as there customarily are in most hearings, these discussions were held in front of all parties. In this case, there were off-the-record discussions in the form of prehearing conferences which are not transcribed, because all parties were notified of these conferences and Mr. Heffner was present during those conferences. Moreover, as the record reflects, Mr. Heffner fully participated in the evidentiary hearing by filing testimony, cross-examining witnesses, and giving closing statements. There is simply no basis for Mr. Heffner's third ground for rehearing and it should be denied.
- (65) In his fourth set of rehearing arguments, Mr. Heffner alleges that the order is unlawful on grounds that the staff report and "Staff Opinion" are used extensively in the Board's formation of findings of fact and conclusions of law, despite the fact that the staff report was not treated as evidence in the adjudicatory hearing; and

intervenors were not permitted to cross-examine the authors of the staff report, nor were intervenors permitted to cross-examine other signatories to the Stipulation.

- (66) We find no merit in Mr. Heffner's fourth set of rehearing arguments. The staff report became a part of the record in this case by operation of Section 4906.07(C), Revised Code. It was marked as an exhibit and it was treated accordingly. The record is clear that the intervenors were provided the opportunity to cross-examine all witnesses who testified at hearing on the staff report, the Stipulation, or both. The Staff provided the testimony of a witness, the team project leader, who was available for cross-examination on both the staff report and the Stipulation. The OFBF provided the testimony of a witness, as did Richland County. Likewise, the Applicant, as the party who has the burden of proof in this certificate application case, presented and made available for cross-examination, its witnesses who testified both as to the contents of the application and the conditions proposed in the Stipulation. Accordingly, rehearing on this issue should be denied.
- (67) In his fifth ground for rehearing, Mr. Heffner alleges that the certificate is unreasonable and unlawful as the Board did not review evidence and testimony.
- (68) The Board notes that Mr. Heffner provides no evidence that demonstrates that the Board did not review the evidence of record, when in fact, the Board thoroughly reviewed and considered the record in this case as evidenced by our comprehensive 75 page order. Mr. Heffner's argument is similar to the one raised by Mr. Biglin, who felt that the Board improperly delegated authority to the ALJs. We have already fully addressed this issue at Finding (48), and Mr. Heffner's argument should be denied on the same grounds as are set forth therein.
- (69) In his sixth ground for rehearing, Mr. Heffner challenges whether proper procedure was followed when, during the procedural teleconference that took place on September 9, 2011, the ALJ granted a request to convert the then-scheduled September 19, 2011, hearing into, instead, a settlement conference. Mr. Heffner believes that, in taking that course of action, the ALJ "unreasonably and unlawfully made a motion and subsequent expedited ruling without showing good cause." He further claims that this was

objectionable in that a ruling was made without notifying all parties.

In its memorandum contra, Black Fork, states that the ALJ did not make a motion or issue an expedited ruling pursuant to Rule 4906-7-12(C), O.A.C., but rather, simply ruled on a request for a procedural matter, as permitted under Rule 4906-7-10(A)(7), O.A.C., which governs prehearing conferences.

(70) Upon review of the sixth ground for rehearing, we find that the ALJ's ruling, during the September 9, 2011, procedural teleconference, to permit conversion of the September 19, 2011, hearing into a settlement conference was appropriate. All parties were served with a copy of the entry scheduling the September 9, 2011, procedural teleconference. We find that, in making that decision, the ALJ was simply ruling on a request for a procedural matter, as permitted under our rule governing prehearing conferences. Moreover, pursuant to that same rule, on September 12, 2011, the ALJ issued an entry memorializing the request and the grant to convert the September 19 hearing into a settlement conference. If Mr. Heffner objected to the ruling, he should have challenged the September 12, 2011, entry. He did not do so and, moreover, even now, has failed to show any prejudice resulting from the ALJ's decision, as memorialized in that entry. For all of these reasons, we find no merit in Mr. Heffner's sixth ground for rehearing.

(71) In his seventh ground for rehearing, Mr. Heffner alleges that Staff's counsel made a motion to have the September 19, 2011, hearing called and continued to a later date. Mr. Heffner submits that the motion made by Staff's counsel was invalid and, as a consequence, the subsequent ruling by the ALJ on that motion was also invalid. The motion was invalid, says Mr. Heffner, for its failure to comply with Rule 4906-7-12(A), O.A.C, which requires that all motions, unless made at a public hearing or transcribed prehearing conference, or otherwise ordered for good cause shown, shall be in writing and shall be accompanied by a memorandum in support.

In its memorandum contra, Black Fork contends that there is nothing unreasonable or unlawful about the ALJ's decision to call and continue the September 19, 2011, evidentiary hearing in order to allow the parties to hold a settlement conference. Further, the ALJ's ruling was made, not on a motion made under Rule 4906-7-

12, O.A.C., but rather on a request for a ruling on a procedural matter, under Rule 4906-7-10, O.A.C., and as such was not invalid.

(72) Upon review, we find that the ALJs did not err in making any of the rulings now being challenged by Mr. Heffner. Converting the scheduled adjudicatory hearing to a settlement conference is a procedural matter which the ALJ has the authority to rule on pursuant to Rules 4906-7-10 and 4906-7-14, O.A.C. In fact, the ALJ memorialized his decision by entry issued pursuant to Rule 4906-7-10(C), O.A.C., on September 12, 2011. Again, all parties were served a copy of the entry scheduling the conference and the conference was followed by a procedural entry that was also served on all parties. Parties have the responsibility to follow the rules and processes of the Board, all of which were appropriately documented in entries filed in the docket and served on the parties. Mr. Heffner did not challenge the entry. In addition, nowhere in his application for rehearing has he shown any prejudice resulted from the ruling. In point of fact, continuing the hearing gave the intervenors additional time to prepare for the hearing and there is no basis to find and no party has demonstrated that any party was disadvantaged by the ruling. We find no merit to Mr. Heffner's assignment of error and accordingly, this request for rehearing should be denied.

(73) In his eighth ground for rehearing, Mr. Heffner alleges that an "expedited ruling" was made with respect to this same request to convert the hearing into a settlement conference. He submits that granting such a ruling was unreasonable and unlawful, both because no party made a motion for an expedited ruling, pursuant to Rule 4906-7-12(C), O.A.C., and because all parties were not contacted.

In its memorandum contra, Black Fork contends that the ALJ did not make an expedited ruling, pursuant to Rule 4906-7-12(C), O.A.C., but did reasonably and lawfully resolve a procedural matter involving whether a scheduled hearing could be converted into a settlement conference.

(74) As explained above, the request made by Staff's counsel to convert the hearing to a settlement conference was a procedural matter which could be disposed of by way of a procedural ruling by the ALJ, pursuant to Rules 4906-7-10 and 4906-7-14, O.A.C. No motion was necessary in order for the ALJ to rule, in the manner he did,

upon such a procedural matter. Once more, Mr. Heffner has failed to show prejudice resulting from either the ruling in question, or from the manner in which the request was disposed of. We find no merit in Mr. Heffner's eighth rehearing argument; therefore, it should be denied.

- (75) In his ninth rehearing argument, Mr. Heffner alleges that the ALJ's ruling on Staff's counsel's request to convert the hearing into a settlement conference was not valid because, according to Mr. Heffner, Rule 4906-7-03(C), O.A.C., precludes the Staff from participating as a party to the prehearing teleconference.

In its memorandum contra, Black Fork explains its position that Mr. Heffner's ninth rehearing argument should be rejected because it hinges on his misinterpretation of Rule 4906-7-03(C), O.A.C.

- (76) We find no merit to this assignment of error. Rule 4906-7-03(C), O.A.C., provides that the Staff shall not be considered a party to any proceeding, except for purposes of certain named O.A.C. provisions including, as applicable here, Rule 4906-7-14, O.A.C. The fact that Rule 4906-7-14, O.A.C., is one of the listed exceptions means that the Staff is a party to a proceeding and can make a request for a procedural matter which the ALJ has the authority to address. Moreover, nothing in Rule 4906-7-10, O.A.C., precludes Staff's counsel from participating in a prehearing conference. The ALJ ruling which Mr. Heffner has challenged was appropriate. Again, Mr. Heffner has not cited any prejudice resulting from the ruling. Accordingly, Mr. Heffner's ninth assignment of error is denied.

- (77) In his tenth rehearing argument, Mr. Heffner complains that the hearing on October 11, 2011, gave the intervenors less than three days to react to a "completely novel agreement without time to secure witnesses to testify concerning such an agreement." He complains that all of the intervenors' prefiled testimony became inactive and they had to start from scratch on testimony regarding the Stipulation.

Black Fork, in its memorandum contra, points out that the intervenors knew as early as September 9, 2011, that there was a potential for a settlement agreement because that is when the September 19, 2011, hearing was converted to a settlement conference. Further, as noted by Black Fork, the Stipulation was

filed on September 28, 2011, and, according to Black Fork, was served via overnight, giving the intervenors seven calendar days to prepare any testimony concerning the Stipulation. Black Fork notes that, as evidenced by the ALJ's September 21, 2011, entry resetting the hearing date, it was the parties and not the ALJs that proposed the dates for the filing of any Stipulation and the dates for filing testimony. Further, says Black Fork, Mr. Heffner made no objection at the hearing to the introduction of the Stipulation, stating that "I have nothing to say about it."

- (78) Upon consideration of Mr. Heffner's tenth assignment of error, the Board finds that it is without merit. The Stipulation itself contains the proposed resolution of issues that were in contention since the filing of the application. As evidenced by the staff report and the Stipulation, these issues were the subject of this case. For Mr. Heffner to assert now that he was not aware of the issues contemplated for settlement and unable to prepare testimony on those issues is misleading. Accordingly, the Board finds that this request for rehearing should be denied.
- (79) As his eleventh rehearing argument, Mr. Heffner alleges that Staff and Staff's counsel unreasonably and unlawfully conducted numerous *ex parte* discussions with the Applicant.
- (80) The Board notes that Heffner's assertion of *ex parte* discussions is without merit in that Rule 4906-7-02, O.A.C., prohibits a Board member or ALJ assigned to a case from discussing the merits of the case with any party or intervenor to the proceeding; however, no prohibition is placed on the discussions that Staff or its counsel may have with parties. Accordingly, this ground for rehearing should be denied.
- (81) In his twelfth assignment of error, Mr. Heffner asserts that: the application was unreasonably and unlawfully deemed complete; the application must be considered incomplete and in contravention of Rule 4906-17-03, O.A.C., because no specific wind turbine model has yet been chosen; inasmuch as the project's wind turbine sites are moveable after certification, the application must be considered incomplete and in contravention of Rule 4906-17-03, O.A.C., because no final version of the project's layout or construction is available; it was error to deem the application complete because it did not contain, as required by Rule 4906-17-08(E)(1), O.A.C., a description of the Applicant's public interaction

program; and rehearing should be granted on grounds that the application both was and was not part of the adjudicatory hearing.

In its memorandum contra, Black Fork points out, among other things, that Mr. Heffner was present when the application was marked and introduced into evidence. It argues that, by failing to object to its admission at the hearing, Mr. Heffner waived any claim to raise the issue of completeness of the application. In addition, Black Fork contends that Rule 4906-17-03(A)(1), O.A.C., expressly contemplates that a specific model of turbine may not be chosen at the time the application is filed.

- (82) We find this claim by Mr. Heffner to be without merit. As approved, the Stipulation authorizes three possible turbine types. A situation in which the actual turbine model of the three authorized has not yet been selected is contemplated within Rule 4906-17-03, O.A.C., i.e., the rule that establishes what information must be included in the detailed description of the proposed facility included in an application before it may be deemed complete. Thus, notwithstanding Mr. Heffner's claim to the contrary, Rule 4906-17-03, O.A.C., is not violated, and an application is not considered incomplete, just because the specific turbine model has yet to be chosen, where the information called for in Rule 4906-17-03(1)(a), O.A.C., is included as part of the application at the time it is filed. In the case at hand, the case was appropriately deemed complete, in part because, in filing the application, Black Fork fulfilled the informational filing requirements of Rule 4906-17-03(1)(a), O.A.C. The fact that the Applicant is notified by the Board that the application is considered complete, does not mean the certificate is granted at that point. Rather, it means that sufficient information required by the rules has been provided to enable Staff to commence its formal investigation. Furthermore, Mr. Heffner's claim to the contrary notwithstanding, there are certain specific conditions of the Stipulation that, considered together, require that detailed engineering drawings of the final layout of the project be completed and submitted to Staff prior to construction.

Moreover, Rule 4906-17-08(E)(1), O.A.C., requires the Applicant to describe its program for public interaction for the siting, construction, and operation of the proposed facility, i.e. public information programs. Black Fork complied with this requirement by providing such information at pages 138-139 of its application.

The application was introduced and admitted into evidence as Company Exhibit 1 without objection from any party, including Mr. Heffner. In addition, we find that the record clearly reflects that the purpose of the adjudicatory hearing was to enable the Board to establish a full evidentiary record on which to base its decision in this matter on whether or not to grant the application submitted in this case contingent upon the conditions proposed in the Stipulation. In this sense, the application was, clearly and appropriately, the major focus and topic of the hearing. At the hearing, the Applicant, as the party having the burden of proof to prosecute the case that the application should be granted, introduced the application and testimony supporting it. Mr. Heffner was present but did not object to the admission into evidence of the application.

Furthermore, we note that the Ohio Supreme Court has recognized that the statutes governing these cases vest the Board with the authority to issue certificates upon such conditions as the Board considers appropriate; thus acknowledging that the construction of these projects necessitates a dynamic process that does not end with the issuance of a certificate. The Court concluded that the Board has the authority to allow Staff to monitor compliance with the conditions the Board has set. *In re Application of Buckeye Wind, L.L.C. for a Certificate to Construct Wind-Powered Electric Generation Facilities in Champaign County, Ohio, 2012-Ohio-878, ¶16-17, 30 (Buckeye)*. Such monitoring includes the convening of preconstruction conferences and the submission of follow-up studies and plans by the Applicant to, ensure compliance with Board-approved conditions. As recognized in *Buckeye*, any deviation from the certificate issued would require an Applicant to file an amendment. If an amendment is filed, in accordance with Section 4906.07, Revised Code, if such amendment involves any material increase in any environmental impact or substantial change in the location of all or a portion of the facility, the Board would be required to hold a hearing and to take further evidence. Accordingly, we find Mr. Heffner's twelfth assignment of error to be without merit and it should, therefore, be denied.

- (83) In his thirteenth argument on rehearing, Mr. Heffner claims that the order was unreasonable and unlawful because it reflects that the Board improperly relied, when it comes to its consideration of the potential impact of the project on property values, on the expert opinion testimony of Black Fork witness David Stoner. Mr. Heffner

claims that Mr. Stoner is not an expert in real estate and that the ALJs did not research into the actual work histories of the wind industry employees.

In its memorandum contra, Black Fork claims that it was not error for the Board to find Mr. Stoner qualified as an expert to provide the testimony he did and to rely on it in reaching the decision it made in the order. The Applicant notes the record evidence describing Mr. Stoner's background and professional experience, shows that he had the necessary qualifications to provide the expert testimony.

- (84) We find no merit in Mr. Heffner's thirteenth assignment of error. The evidence demonstrates that, given his professional experience and educational background, Black Fork witness Stoner was qualified to testify regarding his opinions on property values. The ALJ's ruling to allow him to testify as an expert, was, we find, correct. Mr. Stoner's testimony on the topic of wind energy projects related to matters beyond the knowledge or experience possessed by lay persons and also dispelled a misconception common among lay persons. Mr. Stoner was qualified as an expert by his specialized knowledge in the wind industry, his education, and his experience regarding the subject matter of his testimony. Mr. Stoner's testimony is based on specialized information that he possesses by reason of his experience with various wind industry projects. Thus, Mr. Stoner was qualified to offer an opinion as an expert on this topic. Accordingly, Mr. Heffner's thirteenth assignment of error is denied.
- (85) In his fourteenth argument on rehearing, Mr. Heffner claims that the order is unreasonable and unlawful as it does not adequately address, pursuant to Section 4906.10(A)(1), Revised Code, the basis of need.
- (86) Initially, the Board notes that Section 4906.10(A)(1), Revised Code, provides, in relevant part, that the Board shall not grant a certificate for the construction, operation, and maintenance of an electric transmission line or gas or natural gas transmission line, unless it finds and determines the basis of the need for the facility. In this case, the Applicant is proposing to construct and operate a wind-powered electric generation facility, not an electric transmission line, nor a gas or natural gas transmission line. In the order, we found that the basis of need, under Section 4906.10(A)(1), Revised

Code, is not applicable in this case (Order at 72). This finding is supported by the fact that the Applicant is proposing to construct and operate a wind-powered electric generation facility, not an electric transmission line, or a gas or natural gas transmission line. Accordingly, we find that Mr. Heffner's fourteenth rehearing argument is without merit and should be denied.

- (87) In his fifteenth rehearing argument, Mr. Heffner claims that it is unreasonable and unlawful for the Board to not be bound by the Stipulation, a circumstance which, Mr. Heffner complains, makes it possible for the Board to make "many substantial and material changes to the certificate without the opportunity for public review and involvement.

In response, Black Fork points out the Board's ability to impose terms and conditions is very important because the Board evaluates applications for proposed projects, not constructed projects.

- (88) Contrary to Mr. Heffner's assertions, the Applicant is bound by the conditions set forth in the Stipulation and approved by the Board in our order. However, as we mentioned above, the Ohio Supreme Court in *Buckeye* recognized that the construction of these projects necessitates a dynamic process that does not end with the issuance of a certificate. Once a certificate with conditions is granted, the Staff serves as the Board's eyes and ears in the field to ensure compliance with certificate condition approval. The Board has the authority to allow Staff to monitor compliance with the conditions the Board has set. As recognized in *Buckeye*, if the Applicant proposes a change to any of the conditions approved in the certificate, the Applicant is required to file an amendment. In accordance with Section 4906.07, Revised Code, the Board would be required to hold a hearing, in the same manner as on an application, where an amendment application involves any material increase in any environmental impact or substantial change in the location of all or a portion of the facility. Thus, the Board finds that Mr. Heffner's fifteenth assignment of error is without merit and should be denied.

- (89) In his sixteenth assignment of error, Mr. Heffner argues that the general public did not have an opportunity to comment on the Stipulation at the public hearing.

- (90) Upon consideration, the Board finds that this claim falls short of presenting reasonable grounds for granting rehearing of the order. There is no legal requirement that the Board hold a local public hearing on a stipulation, whether partial or full. Section 4906.07, Revised Code, controls when the public hearing is held, and provides that the Board must hold the public hearing on the application no later than 90 days after the filing of the complete application. In this case, the application was deemed filed on June 21, 2011, and the public hearing was set for Thursday, September 15, 2011. As a practical matter, the filing of stipulations after public hearings is not an unusual occurrence in proceedings before the Board. Moreover, the Board notes that, the general public did have the ability to provide testimony on the proposed project at the hearing held in Shelby, Ohio. Accordingly, the Board finds that Mr. Heffner's sixteenth assignment of error is without merit and should be denied.
- (91) In his seventeenth assignment of error, Mr. Heffner argues that nonparticipating landowners will have no way of mitigating injuries.
- (92) We find no merit in this argument. The General Assembly, in Section 4906.98, Revised Code, has vested the Board with oversight over the construction, operation and maintenance of major utility facilities as approved in a certificate of environmental compatibility and need. In addition to the statutory complaint process, the order provides nonparticipating landowners the ability to submit complaints and to engage in a complaint resolution process should compliance issues arise. Accordingly, the Board finds that this assignment of error is without merit and should be denied.
- (93) In his eighteenth rehearing argument, Mr. Heffner alleges that the order is unlawful, as it violates the Valentine Anti-Trust Act of 1898, as codified in Ohio Revised Code 1331.

In response, Black Fork notes that the Valentine Act, as codified in Chapter 1331 of the Revised Code, was patterned after the federal Sherman Anti-Trust Act. Although he has quoted various sections contained within Chapter 1331 of the Ohio Revised Code, Black Fork points out that Mr. Heffner has failed to cite Section 1331.11, Revised Code, which provides that the Courts of Common Pleas, not the Board, are vested with jurisdiction to determine if violations

of the Valentine Anti-Trust Act of 1898 have occurred. Nor has the General Assembly vested the Board with the task of regulating competition among power plant developers. Furthermore, the Applicant states that, in this case, the Board approved the project as proposed in the application and the Stipulation, applying the applicable statutory criteria set forth by the General Assembly; those criteria do not include ensuring that landowners have the opportunity to select their preferred developer.

- (94) Upon review of Mr. Heffner's eighteenth assignment of error and the Applicant's response we find that the assignment is without merit and should, therefore, be denied.
- (95) As a final matter, the Board finds that rehearing should be denied with respect to any of the arguments made by any of the parties seeking rehearing that are not specifically addressed in this entry on rehearing.

It is, therefore,

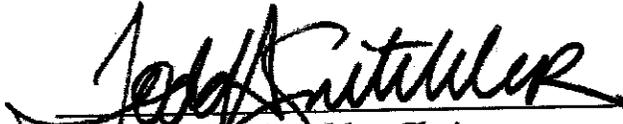
ORDERED, That Mr. Heffner's request to have the CD admitted into the record be denied and all arguments in Mr. Heffner's application for rehearing that cite or reference the CD be denied, and the Applicant's motion to strike be dismissed as moot. It is, further,

ORDERED, That, in accordance with the above findings, the rehearing applications filed by Alan Price, Catherine Price, Gary Biglin, Brett Heffner, John Warrington, Carol Gledhill, and Loren Gledhill are all denied in their entirety and dismissed of record. It is, further,

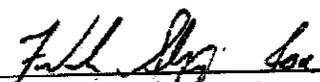
ORDERED, That rehearing is hereby denied with respect to any of the arguments made by any of the parties seeking rehearing that are not specifically addressed in this entry on rehearing. It is, further,

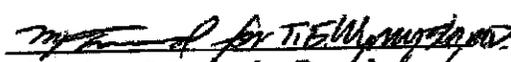
ORDERED, That a copy of this entry on rehearing be served upon each party of record and any other interested persons of record.

THE OHIO POWER SITING BOARD


Todd A. Snitchler, Chairman
Public Utilities Commission of Ohio

Christiane Schmenk, Board
Member and Director of the Ohio
Department of Development


James Zehringer, Board Member
and Director of the Ohio
Department of Natural Resources


Theodore Wymyslo, Board
Member and Director of the
Ohio Department of Health

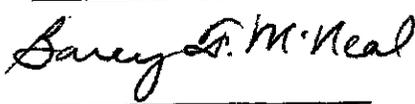
Scott Nally, Board Member
and Director of the Ohio
Environmental Protection Agency


David Daniels, Board Member
and Director of the Ohio
Department of Agriculture

Board Member
and Public Member

DEF/SEF/dah

Entered in the Journal
MAR 26 2012



Barcy F. McNeal
Secretary

4903.10 Application for rehearing.

After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding. Such application shall be filed within thirty days after the entry of the order upon the journal of the commission. Notwithstanding the preceding paragraph, in any uncontested proceeding or, by leave of the commission first had in any other proceeding, any affected person, firm, or corporation may make an application for a rehearing within thirty days after the entry of any final order upon the journal of the commission. Leave to file an application for rehearing shall not be granted to any person, firm, or corporation who did not enter an appearance in the proceeding unless the commission first finds:

(A) The applicant's failure to enter an appearance prior to the entry upon the journal of the commission of the order complained of was due to just cause; and,

(B) The interests of the applicant were not adequately considered in the proceeding. Every applicant for rehearing or for leave to file an application for rehearing shall give due notice of the filing of such application to all parties who have entered an appearance in the proceeding in the manner and form prescribed by the commission. Such application shall be in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful. No party shall in any court urge or rely on any ground for reversal, vacation, or modification not so set forth in the application. Where such application for rehearing has been filed before the effective date of the order as to which a rehearing is sought, the effective date of such order, unless otherwise ordered by the commission, shall be postponed or stayed pending disposition of the matter by the commission or by operation of law. In all other cases the making of such an application shall not excuse any person from complying with the order, or operate to stay or postpone the enforcement thereof, without a special order of the commission. Where such application for rehearing has been filed, the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear. Notice of such rehearing shall be given by regular mail to all parties who have entered an appearance in the proceeding. If the commission does not grant or deny such application for rehearing within thirty days from the date of filing thereof, it is denied by operation of law. If the commission grants such rehearing, it shall specify in the notice of such granting the purpose for which it is granted. The commission shall also specify the scope of the additional evidence, if any, that will be taken, but it shall not upon such rehearing take any evidence that, with reasonable diligence, could have been offered upon the original hearing. If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed. An order made after such rehearing, abrogating or modifying the original order, shall have the same effect as an original order, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order prior to the receipt of notice by the affected party of the filing of the application for rehearing. No cause of action arising out of any order of the commission, other than in support of the order, shall accrue in any court to any person, firm, or corporation unless such person, firm, or corporation has made a proper application to the commission for a rehearing.

Effective Date: 09-29-1997

APPX000210

4906.01 [Effective Until 9/10/2012] Power siting definitions.

As used in Chapter 4906. of the Revised Code:

(A) "Person" means an individual, corporation, business trust, association, estate, trust, or partnership or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity.

(B)(1) "Major utility facility" means:

(a) Electric generating plant and associated facilities designed for, or capable of, operation at a capacity of fifty megawatts or more;

(b) An electric transmission line and associated facilities of a design capacity of one hundred twenty-five kilovolts or more;

(c) A gas or natural gas transmission line and associated facilities designed for, or capable of, transporting gas or natural gas at pressures in excess of one hundred twenty-five pounds per square inch.

(2) "Major utility facility" does not include gas or natural gas transmission lines over which an agency of the United States has exclusive jurisdiction, any solid waste facilities as defined in section 6123.01 of the Revised Code, or either of the following as defined by the power siting board:

(a) Electric, gas, natural gas distributing lines and gas or natural gas gathering lines and associated facilities ;

(b) Any manufacturing facility that creates byproducts that may be used in the generation of electricity.

(C) "Commence to construct" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include surveying changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(D) "Certificate" means a certificate of environmental compatibility and public need issued by the power siting board under section 4906.10 of the Revised Code or a construction certificate issued by the board under rules adopted under division (E) of section 4906.03 of the Revised Code.

R.C. § 4906.01

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 04-05-1986

This section is set out twice. See also § 4906.01, as amended by 129th General Assembly File No. 125, SB 315, § 101.01, eff. 9/10/2012.

4906.01 [Effective 9/10/2012] Power siting definitions

As used in Chapter 4906. of the Revised Code:

APPX000211

(A) "Person" means an individual, corporation, business trust, association, estate, trust, or partnership or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity.

(B)(1) "Major utility facility" means:

(a) Electric generating plant and associated facilities designed for, or capable of, operation at a capacity of fifty megawatts or more;

(b) An electric transmission line and associated facilities of a design capacity of one hundred twenty-five kilovolts or more;

(c) A gas pipeline that is greater than five hundred feet in length, and its associated facilities, is more than nine inches in outside diameter and is designed for transporting gas at a maximum allowable operating pressure in excess of one hundred twenty-five pounds per square inch.

(2) "Major utility facility" does not include any of the following:

(a) Gas transmission lines over which an agency of the United States has exclusive jurisdiction;

(b) Any solid waste facilities as defined in section 6123.01 of the Revised Code;

(c) Electric distributing lines and associated facilities as defined by the power siting board;

(d) Any manufacturing facility that creates byproducts that may be used in the generation of electricity as defined by the power siting board;

(e) Gathering lines, gas gathering pipelines, and processing plant gas stub pipelines as those terms are defined in section 4905.90 of the Revised Code and associated facilities;

(f) Any gas processing plant as defined in section 4905.90 of the Revised Code;

(g) Natural gas liquids finished product pipelines;

(h) Pipelines from a gas processing plant as defined in section 4905.90 of the Revised Code to a natural gas liquids fractionation plant, including a raw natural gas liquids pipeline, or to an interstate or intrastate gas pipeline;

(i) Any natural gas liquids fractionation plant;

(j) A production operation as defined in section 1509.01 of the Revised Code, including all pipelines upstream of any gathering lines;

(k) Any compressor stations used by the following:

(i) A gathering line, a gas gathering pipeline, a processing plant gas stub pipeline, or a gas processing plant as those terms are defined in section 4905.90 of the Revised Code;

(ii) A natural gas liquids finished product pipeline, a natural gas liquids fractionation plant, or any pipeline upstream of a natural gas liquids fractionation plant; or

(iii) A production operation as defined in section 1509.01 of the Revised Code.

(C) "Commence to construct" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include surveying changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(D) "Certificate" means a certificate of environmental compatibility and public need issued by the power siting board under section 4906.10 of the Revised Code or a construction certificate issued by the board under rules adopted under division (E) or (F) of section 4906.03 of the Revised Code.

(E) "Gas" means natural gas, flammable gas, or gas that is toxic or corrosive.

(F) "Natural gas liquids finished product pipeline" means a pipeline that carries finished product natural gas liquids to the inlet of an interstate or intrastate finished product natural gas liquid transmission pipeline, rail loading facility, or other petrochemical or refinery facility.

(G) "Natural gas liquids fractionation plant" means a facility that takes a feed of raw natural gas liquids and produces finished product natural gas liquids.

(H) "Raw natural gas" means hydrocarbons that are produced in a gaseous state from gas wells and that generally include methane, ethane, propane, butanes, pentanes, hexanes, heptanes, octanes, nonanes, and decanes, plus other naturally occurring impurities like water, carbon dioxide, hydrogen sulfide, nitrogen, oxygen, and helium.

(I) "Raw natural gas liquids" means naturally occurring hydrocarbons contained in raw natural gas that are extracted in a gas processing plant and liquefied and generally include mixtures of ethane, propane, butanes, and natural gasoline.

(J) "Finished product natural gas liquids" means an individual finished product produced by a natural gas liquids fractionation plant as a liquid that meets the specifications for commercial products as defined by the gas processors association. Those products include ethane, propane, iso-butane, normal butane, and natural gasoline.

R.C. § 4906.01

Amended by 129th General Assembly File No. 125, SB 315, § 101.01, eff. 9/10/2012.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 04-05-1986

This section is set out twice. See also § 4906.01, effective until 9/10/2012.

APPX000213

4906.02 Power siting board organization.

(A) There is hereby created within the public utilities commission the power siting board, composed of the chairman of the public utilities commission, the director of environmental protection, the director of health, the director of development, the director of natural resources, the director of agriculture, and a representative of the public who shall be an engineer and shall be appointed by the governor, from a list of three nominees submitted to the governor by the office of the consumers' counsel, with the advice and consent of the senate and shall serve for a term of four years. The chairman of the public utilities commission shall be chairman of the board and its chief executive officer. The chairman shall designate one of the voting members of the board to act as vice-chairman who shall possess during the absence or disability of the chairman all of the powers of the chairman. All hearings, studies, and consideration of applications for certificates shall be conducted by the board or representatives of its members. In addition, the board shall include four legislative members who may participate fully in all the board's deliberations and activities except that they shall serve as nonvoting members. The speaker of the house of representatives shall appoint one legislative member, and the president of the senate and minority leader of each house shall each appoint one legislative member. Each such legislative leader shall designate an alternate to attend meetings of the board when the regular legislative member he appointed is unable to attend. Each legislative member and alternate shall serve for the duration of the elected term that he is serving at the time of his appointment. A quorum of the board is a majority of its voting members. The representative of the public and, notwithstanding section 101.26 of the Revised Code, legislative members of the board or their designated alternates, when engaged in their duties as members of the board, shall be paid at the per diem rate of step 1, pay range 32, under schedule B of section 124.15 of the Revised Code and shall be reimbursed for the actual and necessary expenses they incur in the discharge of their official duties.

(B) The chairman shall keep a complete record of all proceedings of the board, issue all necessary process, writs, warrants, and notices, keep all books, maps, documents, and papers ordered filed by the board, conduct investigations pursuant to section 4906.07 of the Revised Code, and perform such other duties as the board may prescribe.

(C) The chairman of the public utilities commission may assign or transfer duties among the commission's staff. However, the board's authority to grant certificates under section 4906.10 of the Revised Code shall not be exercised by any officer, employee, or body other than the board itself.

(D) The chairman may call to his assistance, temporarily, any employee of the environmental protection agency, the department of natural resources, the department of agriculture, the department of health, or the department of development, for the purpose of making studies, conducting hearings, investigating applications, or preparing any report required or authorized under this chapter. Such employees shall not receive any additional compensation over that which they receive from the agency by which they are employed, but they shall be reimbursed for their actual and necessary expenses incurred while working under the direction of the chairman. All contracts for special services are subject to the approval of the chairman.

(E) The board's offices shall be located in those of the public utilities commission.

Effective Date: 10-17-1985

See 129th General Assembly File No. 39, SB 171, §4.

APPX000214

The amendment to this section by 129th General Assembly File No. 10, SB 5, § 1 was rejected by voters in the November, 2011 election.

4906.04 Certificate required for construction of major utility.

No person shall commence to construct a major utility facility in this state without first having obtained a certificate for the facility. The replacement of an existing facility with a like facility, as determined by the power siting board, shall not constitute construction of a major utility facility. Such replacement of a like facility is not exempt from any other requirements of state or local laws or regulations. Any facility, with respect to which such a certificate is required, shall thereafter be constructed, operated, and maintained in conformity with such certificate and any terms, conditions, and modifications contained therein. A certificate may only be issued pursuant to Chapter 4906. of the Revised Code. 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.

Effective Date: 11-15-1981

4906.07 [Effective Until 9/10/2012] Public hearing on application.

(A) Upon the receipt of an application complying with section 4906.06 of the Revised Code, the power siting board shall promptly fix a date for a public hearing thereon, not less than sixty nor more than ninety days after such receipt, and shall conclude the proceeding as expeditiously as practicable.

(B) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(C) The chairman of the power siting board shall cause each application filed with the board to be investigated and shall, not less than fifteen days prior to the date any application is set for hearing submit a written report to the board and to the applicant. A copy of such report shall be made available to any person upon request. Such report shall set forth the nature of the investigation, and shall contain recommended findings with regard to division (A) of section 4906.10 of the Revised Code and shall become part of the record and served upon all parties to the proceeding.

R.C. § 4906.07

Effective Date: 10-17-1985

This section is set out twice. See also § 4906.07, as amended by 129th General Assembly File No. 125, SB 315, § 101.01, eff. 9/10/2012.

4906.07 [Effective 9/10/2012] Public hearing on application

(A) Upon the receipt of an application complying with section 4906.06 of the Revised Code, the power siting board shall promptly fix a date for a public hearing thereon, not less than sixty nor more than ninety days after such receipt, and shall conclude the proceeding as expeditiously as practicable.

(B) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(C) The chairperson of the power siting board shall cause each application filed with the board to be investigated and shall, not less than fifteen days prior to the date any application is set for hearing submit a written report to the board and to the applicant. A copy of such report shall be made available to any person upon request. Such report shall set forth the nature of the investigation, and shall contain recommended findings with regard to division (A) of section 4906.10 of the Revised Code and shall become part of the record and served upon all parties to the proceeding.

R.C. § 4906.07

Amended by 129th General Assembly File No. 125, SB 315, § 101.01, eff. 9/10/2012.

Effective Date: 10-17-1985

This section is set out twice. See also § 4906.07, effective until 9/10/2012.

4906.08 Parties - testimony.

(A) The parties to a certification proceeding shall include:

(1) The applicant;

(2) Each person entitled to receive service of a copy of the application under division (B) of section 4906.06 of the Revised Code, if the person has filed with the power siting board a notice of intervention as a party, within thirty days after the date the person was served with a copy of the application;

(3) Any person residing in a municipal corporation or county entitled to receive service of a copy of the application under division (B) of section 4906.06 of the Revised Code and any other person, if the person has petitioned the board for leave to intervene as a party within thirty days after the date of publication of the notice required by division (C) of section 4906.06 of the Revised Code, and if that petition has been granted by the board for good cause shown.

(B) The board , in extraordinary circumstances for good cause shown, may grant a petition, for leave to intervene as a party to participate in subsequent phases of the proceeding, that is filed by a person identified in division (A)(2) or (3) of this section that failed to file a timely notice of intervention or petition for leave to intervene, as the case may be.

(C) The board shall accept written or oral testimony from any person at the public hearing, but the right to call and examine witnesses shall be reserved for parties. However, the board may adopt rules to exclude repetitive, immaterial, or irrelevant testimony.

Effective Date: 04-07-2004

4906.10 [Effective Until 9/10/2012] Basis for decision granting or denying certificate.

(A) The power siting board shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the board considers appropriate. The certificate shall be conditioned upon the facility being in compliance with standards and rules adopted under sections 1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code. The period of initial operation under a certificate shall expire two years after the date on which electric power is first generated by the facility. During the period of initial operation, the facility shall be subject to the enforcement and monitoring powers of the director of environmental protection under Chapters 3704., 3734., and 6111. of the Revised Code and to the emergency provisions under those chapters. If a major utility facility constructed in accordance with the terms and conditions of its certificate is unable to operate in compliance with all applicable requirements of state laws, rules, and standards pertaining to air pollution, the facility may apply to the director of environmental protection for a conditional operating permit under division (G) of section 3704.03 of the Revised Code and the rules adopted thereunder. The operation of a major utility facility in compliance with a conditional operating permit is not in violation of its certificate. After the expiration of the period of initial operation of a major utility facility, the facility shall be under the jurisdiction of the environmental protection agency and shall comply with all laws, rules, and standards pertaining to air pollution, water pollution, and solid and hazardous waste disposal. The board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas or natural gas transmission line;
- (2) The nature of the probable environmental impact;
- (3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.
- (6) That the facility will serve the public interest, convenience, and necessity;
- (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an

existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

(8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

(B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon that modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification shall have been given reasonable notice thereof.

(C) A copy of the decision and any opinion issued therewith shall be served upon each party.

R.C. § 4906.10

Effective Date: 04-07-2004

This section is set out twice. See also § 4906.10, as amended by 129th General Assembly File No. 125, SB 315, § 101.01, eff. 9/10/2012.

4906.10 [Effective 9/10/2012] Basis for decision granting or denying certificate

(A) The power siting board shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the board considers appropriate. The certificate shall be conditioned upon the facility being in compliance with standards and rules adopted under sections 1501.33, 1501.34, and 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code. An applicant may withdraw an application if the board grants a certificate on terms, conditions, or modifications other than those proposed by the applicant in the application. The period of initial operation under a certificate shall expire two years after the date on which electric power is first generated by the facility. During the period of initial operation, the facility shall be subject to the enforcement and monitoring powers of the director of environmental protection under Chapters 3704., 3734., and 6111. of the Revised Code and to the emergency provisions under those chapters. If a major utility facility constructed in accordance with the terms and conditions of its certificate is unable to operate in compliance with all applicable requirements of state laws, rules, and standards pertaining to air pollution, the facility may apply to the director of environmental protection for a conditional operating permit under division (G) of section 3704.03 of the Revised Code and the rules adopted thereunder. The operation of a major utility facility in compliance with a conditional operating permit is not in violation of its certificate. After the expiration of the period of initial operation of a major utility facility, the facility shall be under the jurisdiction of the environmental protection agency and shall comply with all laws, rules, and standards pertaining to air pollution, water pollution, and solid and hazardous waste disposal.

The board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the board, unless it finds and determines all of the following:

(1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline;

- (2) The nature of the probable environmental impact;
 - (3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
 - (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
 - (5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.
 - (6) That the facility will serve the public interest, convenience, and necessity;
 - (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.
 - (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.
- (B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon that modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification shall have been given reasonable notice thereof.

(C) A copy of the decision and any opinion issued therewith shall be served upon each party.

R.C. § 4906.10

Amended by 129th General Assembly File No. 125, SB 315, § 101.01, eff. 9/10/2012.

Effective Date: 04-07-2004

This section is set out twice. See also § 4906.10, effective until 9/10/2012.

4906.12 Procedures of public utilities commission to be followed.

Sections 4903.02 to 4903.16 and 4903.20 to 4903.23 of the Revised Code shall apply to any proceeding or order of the power siting board under Chapter 4906. of the Revised Code, in the same manner as if the board were the public utilities commission under such sections.

Effective Date: 11-15-1981

4906.13 No local jurisdiction.

(A) As used in this section and sections 4906.20 and 4906.98 of the Revised Code, "economically significant wind farm" means wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of five or more megawatts but less than fifty megawatts. The term excludes any such wind farm in operation on the effective date of this section.

(B) No public agency or political subdivision of this state may require any approval, consent, permit, certificate, or other condition for the construction or initial operation of a major utility facility or economically significant wind farm authorized by a certificate issued pursuant to Chapter 4906. of the Revised Code. Nothing herein shall prevent the application of state laws for the protection of employees engaged in the construction of such facility or wind farm nor of municipal regulations that do not pertain to the location or design of, or pollution control and abatement standards for, a major utility facility or economically significant wind farm for which a certificate has been granted under this chapter.

Effective Date: 10-23-1972; 2008 HB562 06-24-2008

4906.20 [Effective Until 9/10/2012] Certificate required to construct certain wind farms.

(A) No person shall commence to construct an economically significant wind farm in this state without first having obtained a certificate from the power siting board. An economically significant wind farm with respect to which such a certificate is required shall be constructed, operated, and maintained in conformity with that certificate and any terms, conditions, and modifications it contains. A certificate shall be issued only pursuant to this section. The certificate may be transferred, subject to the approval of the board, to a person that agrees to comply with those terms, conditions, and modifications.

(B) The board shall adopt rules governing the certificating of economically significant wind farms under this section. Initial rules shall be adopted within one hundred twenty days after this section's effective date.

(1) The rules shall provide for an application process for certificating economically significant wind farms that is identical to the extent practicable to the process applicable to certificating major utility facilities under sections 4906.06, 4906.07, 4906.08, 4906.09, 4906.11, and 4906.12 of the Revised Code and shall prescribe a reasonable schedule of application filing fees structured in the manner of the schedule of filing fees required for major utility facilities.

(2) Additionally, the rules shall prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with power lines and with regional transmission organizations, independent transmission system operators, or similar organizations, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations. The rules also shall prescribe a minimum setback for a wind turbine of an economically significant wind farm. That minimum shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be at least seven hundred fifty feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the certification application. The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.

(C) The board shall approve, or may modify and approve, an application for economically significant wind farm certification if it finds that the construction, operation, and maintenance of the economically significant wind farm will comply with the rules adopted under division (B) of this section. The certificate shall be conditioned upon the economically significant wind farm complying with rules adopted under section 4561.32 of the Revised Code.

R.C. § 4906.20

Effective Date: 2008 HB562 06-24-2008

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This section is set out twice. See also § 4906.20, as amended by 129th General Assembly File No. 125, SB 315, § 101.01, eff. 9/10/2012.

4906.20 [Effective 9/10/2012] Certificate required to construct certain wind farms

(A) No person shall commence to construct an economically significant wind farm in this state without first having obtained a certificate from the power siting board. An economically significant wind farm with respect to which such a certificate is required shall be constructed, operated, and maintained in conformity with that certificate and any terms, conditions, and modifications it contains. A certificate shall be issued only pursuant to this section. The certificate may be transferred, subject to the approval of the board, to a person that agrees to comply with those terms, conditions, and modifications.

(B) The board shall adopt rules governing the certificating of economically significant wind farms under this section. Initial rules shall be adopted within one hundred twenty days after June 24, 2008.

(1) The rules shall provide for an application process for certificating economically significant wind farms that is identical to the extent practicable to the process applicable to certificating major utility facilities under sections 4906.06, 4906.07, 4906.08, 4906.09, 4906.10, 4906.11, and 4906.12 of the Revised Code and shall prescribe a reasonable schedule of application filing fees structured in the manner of the schedule of filing fees required for major utility facilities.

(2) Additionally, the rules shall prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with power lines and with regional transmission organizations, independent transmission system operators, or similar organizations, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations. The rules also shall prescribe a minimum setback for a wind turbine of an economically significant wind farm. That minimum shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be at least seven hundred fifty feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the certification application. The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.

R.C. § 4906.20

Amended by 129th General Assembly File No. 125, SB 315, § 101.01, eff. 9/10/2012.

Effective Date: 2008 HB562 06-24-2008

This section is set out twice. See also § 4906.20, effective until 9/10/2012.

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4928.01 [Effective Until 9/10/2012] Competitive retail electric service definitions.

(A) As used in this chapter:

- (1) "Ancillary service" means any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability service.
- (2) "Billing and collection agent" means a fully independent agent, not affiliated with or otherwise controlled by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent that the agent is under contract with such utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on behalf of the utility company, cooperative, or aggregator.
- (3) "Certified territory" means the certified territory established for an electric supplier under sections 4933.81 to 4933.90 of the Revised Code.
- (4) "Competitive retail electric service" means a component of retail electric service that is competitive as provided under division (B) of this section.
- (5) "Electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901, and owns or operates facilities in this state to generate, transmit, or distribute electricity, or a not-for-profit successor of such company.
- (6) "Electric distribution utility" means an electric utility that supplies at least retail electric distribution service.
- (7) "Electric light company" has the same meaning as in section 4905.03 of the Revised Code and includes an electric services company, but excludes any self-generator to the extent that it consumes electricity it so produces, sells that electricity for resale, or obtains electricity from a generating facility it hosts on its premises.
- (8) "Electric load center" has the same meaning as in section 4933.81 of the Revised Code.
- (9) "Electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent.
- (10) "Electric supplier" has the same meaning as in section 4933.81 of the Revised Code.
- (11) "Electric utility" means an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying a noncompetitive retail electric service in this state

or in the businesses of supplying both a noncompetitive and a competitive retail electric service in this state. "Electric utility" excludes a municipal electric utility or a billing and collection agent.

(12) "Firm electric service" means electric service other than nonfirm electric service.

(13) "Governmental aggregator" means a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of a competitive retail electric service under authority conferred under section 4928.20 of the Revised Code.

(14) A person acts "knowingly," regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

(15) "Level of funding for low-income customer energy efficiency programs provided through electric utility rates" means the level of funds specifically included in an electric utility's rates on October 5, 1999, pursuant to an order of the public utilities commission issued under Chapter 4905. or 4909. of the Revised Code and in effect on October 4, 1999, for the purpose of improving the energy efficiency of housing for the utility's low-income customers. The term excludes the level of any such funds committed to a specific nonprofit organization or organizations pursuant to a stipulation or contract.

(16) "Low-income customer assistance programs" means the percentage of income payment plan program, the home energy assistance program, the home weatherization assistance program, and the targeted energy efficiency and weatherization program.

(17) "Market development period" for an electric utility means the period of time beginning on the starting date of competitive retail electric service and ending on the applicable date for that utility as specified in section 4928.40 of the Revised Code, irrespective of whether the utility applies to receive transition revenues under this chapter.

(18) "Market power" means the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market.

(19) "Mercantile customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.

(20) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity.

(21) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section.

(22) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by an electric utility.

(23) "Percentage of income payment plan arrears" means funds eligible for collection through the percentage of income payment plan rider, but uncollected as of July 1, 2000.

(24) "Person" has the same meaning as in section 1.59 of the Revised Code.

(25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources. "Advanced energy project" also includes any project described in division (A), (B), or (C) of section 4928.621 of the Revised Code.

(26) "Regulatory assets" means the unamortized net regulatory assets that are capitalized or deferred on the regulatory books of the electric utility, pursuant to an order or practice of the public utilities commission or pursuant to generally accepted accounting principles as a result of a prior commission rate-making decision, and that would otherwise have been charged to expense as incurred or would not have been capitalized or otherwise deferred for future regulatory consideration absent commission action. "Regulatory assets" includes, but is not limited to, all deferred demand-side management costs; all deferred percentage of income payment plan arrears; post-in-service capitalized charges and assets recognized in connection with statement of financial accounting standards no. 109 (receivables from customers for income taxes); future nuclear decommissioning costs and fuel disposal costs as those costs have been determined by the commission in the electric utility's most recent rate or accounting application proceeding addressing such costs; the undepreciated costs of safety and radiation control equipment on nuclear generating plants owned or leased by an electric utility; and fuel costs currently deferred pursuant to the terms of one or more settlement agreements approved by the commission.

(27) "Retail electric service" means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For the purposes of this chapter, retail electric service includes one or more of the following "service components" : generation service, aggregation service, power marketing service, power brokerage service, transmission service, distribution service, ancillary service, metering service, and billing and collection service.

(28) "Starting date of competitive retail electric service" means January 1, 2001.

(29) "Customer-generator" means a user of a net metering system.

(30) "Net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider.

(31) "Net metering system" means a facility for the production of electrical energy that does all of the following:

(a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell;

(b) Is located on a customer-generator's premises;

(c) Operates in parallel with the electric utility's transmission and distribution facilities;

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(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(32) "Self-generator" means an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity, whether the facility is installed or operated by the owner or by an agent under a contract.

(33) "Rate plan" means the standard service offer in effect on the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008.

(34) "Advanced energy resource" means any of the following:

(a) Any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of an electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility;

(b) Any distributed generation system consisting of customer cogeneration technology;

(c) Clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American society of testing and materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or clean coal technology that includes the design capability to control or prevent the emission of carbon dioxide, which design capability the commission shall adopt by rule and shall be based on economically feasible best available technology or, in the absence of a determined best available technology, shall be of the highest level of economically feasible design capability for which there exists generally accepted scientific opinion;

(d) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory commission; other, later technology; or significant improvements to existing facilities;

(e) Any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell;

(f) Advanced solid waste or construction and demolition debris conversion technology, including, but not limited to, advanced stoker technology, and advanced fluidized bed gasification technology, that results in measurable greenhouse gas emissions reductions as calculated pursuant to the United States environmental protection agency's waste reduction model (WARM).

(g) Demand-side management and any energy efficiency improvement.

(35) "Air contaminant source" has the same meaning as in section 3704.01 of the Revised Code.

(36) "Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.

(37) "Renewable energy resource" means solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility, geothermal energy, fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion, biomass energy, energy produced by

cogeneration technology that is placed into service on or before December 31, 2015, and for which more than ninety per cent of the total annual energy input is from combustion of a waste or byproduct gas from an air contaminant source in this state, which source has been in operation since on or before January 1, 1985, provided that the cogeneration technology is a part of a facility located in a county having a population of more than three hundred sixty-five thousand but less than three hundred seventy thousand according to the most recent federal decennial census, biologically derived methane gas, or energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors. "Renewable energy resource" includes, but is not limited to, any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; wind turbine located in the state's territorial waters of Lake Erie; methane gas emitted from an abandoned coal mine; storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak; or distributed generation system used by a customer to generate electricity from any such energy. As used in division (A)(37) of this section, "hydroelectric facility" means a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering this state or within or bordering an adjoining state and meets all of the following standards:

- (a) The facility provides for river flows that are not detrimental for fish, wildlife, and water quality, including seasonal flow fluctuations as defined by the applicable licensing agency for the facility.
- (b) The facility demonstrates that it complies with the water quality standards of this state, which compliance may consist of certification under Section 401 of the "Clean Water Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has not contributed to a finding by this state that the river has impaired water quality under Section 303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 U.S.C. 1313.
- (c) The facility complies with mandatory prescriptions regarding fish passage as required by the federal energy regulatory commission license issued for the project, regarding fish protection for riverine, anadromous, and catadromous fish.
- (d) The facility complies with the recommendations of the Ohio environmental protection agency and with the terms of its federal energy regulatory commission license regarding watershed protection, mitigation, or enhancement, to the extent of each agency's respective jurisdiction over the facility.
- (e) The facility complies with provisions of the "Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as amended.
- (f) The facility does not harm cultural resources of the area. This can be shown through compliance with the terms of its federal energy regulatory commission license or, if the facility is not regulated by that commission, through development of a plan approved by the Ohio historic preservation office, to the extent it has jurisdiction over the facility.
- (g) The facility complies with the terms of its federal energy regulatory commission license or exemption that are related to recreational access, accommodation, and facilities or, if the facility is not regulated by that commission, the facility complies with similar requirements as are recommended by resource agencies, to the extent they have jurisdiction over the facility; and the facility provides access to water to the public without fee or charge.

(h) The facility is not recommended for removal by any federal agency or agency of any state, to the extent the particular agency has jurisdiction over the facility.

(B) For the purposes of this chapter, a retail electric service component shall be deemed a competitive retail electric service if the service component is competitive pursuant to a declaration by a provision of the Revised Code or pursuant to an order of the public utilities commission authorized under division (A) of section 4928.04 of the Revised Code. Otherwise, the service component shall be deemed a noncompetitive retail electric service.

R.C. § 4928.01

Amended by 129th General Assembly File No. 98, SB 289, § 1, eff. 7/16/2012.

Amended by 128th General Assembly File No. 47, SB 181, § 1, eff. 9/13/2010.

Amended by 128th General Assembly File No. 48, SB 232, § 1, eff. 6/17/2010.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-05-1999; 01-04-2007; 2008 SB221 07-31-2008

This section is set out twice. See also § 4928.01, as amended by 129th General Assembly File No. 125, SB 315, § 101.01, eff. 9/10/2012.

4928.01 [Effective 9/10/2012] Competitive retail electric service definitions

(A) As used in this chapter:

(1) "Ancillary service" means any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability service.

(2) "Billing and collection agent" means a fully independent agent, not affiliated with or otherwise controlled by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent that the agent is under contract with such utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on behalf of the utility company, cooperative, or aggregator.

(3) "Certified territory" means the certified territory established for an electric supplier under sections 4933.81 to 4933.90 of the Revised Code.

(4) "Competitive retail electric service" means a component of retail electric service that is competitive as provided under division (B) of this section.

(5) "Electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901, and owns or operates facilities in this state to generate, transmit, or distribute electricity, or a not-for-profit successor of such company.

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(6) "Electric distribution utility" means an electric utility that supplies at least retail electric distribution service.

(7) "Electric light company" has the same meaning as in section 4905.03 of the Revised Code and includes an electric services company, but excludes any self-generator to the extent that it consumes electricity it so produces, sells that electricity for resale, or obtains electricity from a generating facility it hosts on its premises.

(8) "Electric load center" has the same meaning as in section 4933.81 of the Revised Code.

(9) "Electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent.

(10) "Electric supplier" has the same meaning as in section 4933.81 of the Revised Code.

(11) "Electric utility" means an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying a noncompetitive retail electric service in this state or in the businesses of supplying both a noncompetitive and a competitive retail electric service in this state. "Electric utility" excludes a municipal electric utility or a billing and collection agent.

(12) "Firm electric service" means electric service other than nonfirm electric service.

(13) "Governmental aggregator" means a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of a competitive retail electric service under authority conferred under section 4928.20 of the Revised Code.

(14) A person acts "knowingly," regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

(15) "Level of funding for low-income customer energy efficiency programs provided through electric utility rates" means the level of funds specifically included in an electric utility's rates on October 5, 1999, pursuant to an order of the public utilities commission issued under Chapter 4905. or 4909. of the Revised Code and in effect on October 4, 1999, for the purpose of improving the energy efficiency of housing for the utility's low-income customers. The term excludes the level of any such funds committed to a specific nonprofit organization or organizations pursuant to a stipulation or contract.

(16) "Low-income customer assistance programs" means the percentage of income payment plan program, the home energy assistance program, the home weatherization assistance program, and the targeted energy efficiency and weatherization program.

(17) "Market development period" for an electric utility means the period of time beginning on the starting date of competitive retail electric service and ending on the applicable date for that utility as specified in section 4928.40 of the Revised Code, irrespective of whether the utility applies to receive transition revenues under this chapter.

- (18) "Market power" means the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market.
- (19) "Mercantile customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.
- (20) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity.
- (21) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section.
- (22) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by an electric utility.
- (23) "Percentage of income payment plan arrears" means funds eligible for collection through the percentage of income payment plan rider, but uncollected as of July 1, 2000.
- (24) "Person" has the same meaning as in section 1.59 of the Revised Code.
- (25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources. "Advanced energy project" also includes any project described in division (A), (B), or (C) of section 4928.621 of the Revised Code.
- (26) "Regulatory assets" means the unamortized net regulatory assets that are capitalized or deferred on the regulatory books of the electric utility, pursuant to an order or practice of the public utilities commission or pursuant to generally accepted accounting principles as a result of a prior commission rate-making decision, and that would otherwise have been charged to expense as incurred or would not have been capitalized or otherwise deferred for future regulatory consideration absent commission action. "Regulatory assets" includes, but is not limited to, all deferred demand-side management costs; all deferred percentage of income payment plan arrears; post-in-service capitalized charges and assets recognized in connection with statement of financial accounting standards no. 109 (receivables from customers for income taxes); future nuclear decommissioning costs and fuel disposal costs as those costs have been determined by the commission in the electric utility's most recent rate or accounting application proceeding addressing such costs; the undepreciated costs of safety and radiation control equipment on nuclear generating plants owned or leased by an electric utility; and fuel costs currently deferred pursuant to the terms of one or more settlement agreements approved by the commission.
- (27) "Retail electric service" means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For the purposes of this chapter, retail electric service includes one or more of the

following "service components" : generation service, aggregation service, power marketing service, power brokerage service, transmission service, distribution service, ancillary service, metering service, and billing and collection service.

(28) "Starting date of competitive retail electric service" means January 1, 2001.

(29) "Customer-generator" means a user of a net metering system.

(30) "Net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider.

(31) "Net metering system" means a facility for the production of electrical energy that does all of the following:

(a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell;

(b) Is located on a customer-generator's premises;

(c) Operates in parallel with the electric utility's transmission and distribution facilities;

(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(32) "Self-generator" means an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity, whether the facility is installed or operated by the owner or by an agent under a contract.

(33) "Rate plan" means the standard service offer in effect on the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008.

(34) "Advanced energy resource" means any of the following:

(a) Any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of an electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility;

(b) Any distributed generation system consisting of customer cogeneration technology;

(c) Clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American society of testing and materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or clean coal technology that includes the design capability to control or prevent the emission of carbon dioxide, which design capability the commission shall adopt by rule and shall be based on economically feasible best available technology or, in the absence of a determined best available technology, shall be of the highest level of economically feasible design capability for which there exists generally accepted scientific opinion;

(d) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory commission; other, later technology; or significant improvements to existing facilities;

(e) Any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell;

(f) Advanced solid waste or construction and demolition debris conversion technology, including, but not limited to, advanced stoker technology, and advanced fluidized bed gasification technology, that results in measurable greenhouse gas emissions reductions as calculated pursuant to the United States environmental protection agency's waste reduction model (WARM);

(g) Demand-side management and any energy efficiency improvement;

(h) Any new, retrofitted, refueled, or repowered generating facility located in Ohio, including a simple or combined-cycle natural gas generating facility or a generating facility that uses biomass, coal, modular nuclear, or any other fuel as its input;

(i) Any uprated capacity of an existing electric generating facility if the uprated capacity results from the deployment of advanced technology.

"Advanced energy resource" does not include a waste energy recovery system that is, or has been, included in an energy efficiency program of an electric distribution utility pursuant to requirements under section 4928.66 of the Revised Code.

(35) "Air contaminant source" has the same meaning as in section 3704.01 of the Revised Code.

(36) "Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.

(37)(a) "Renewable energy resource" means any of the following:

(i) Solar photovoltaic or solar thermal energy;

(ii) Wind energy;

(iii) Power produced by a hydroelectric facility;

(iv) Geothermal energy;

(v) Fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion;

(vi) Biomass energy;

(vii) Energy produced by cogeneration technology that is placed into service on or before December 31, 2015, and for which more than ninety per cent of the total annual energy input is from combustion of a waste or byproduct gas from an air contaminant source in this state, which source has been in operation since on or before January 1, 1985, provided that the cogeneration technology is a part of a facility located in a county having a population of more than three hundred sixty-five thousand but less than three hundred seventy thousand according to the most recent federal decennial census;

(viii) Biologically derived methane gas;

(ix) Energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors.

"Renewable energy resource" includes, but is not limited to, any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; wind turbine located in the state's territorial waters of Lake Erie; methane gas emitted from an abandoned coal mine; waste energy recovery system placed into service or retrofitted on or after the effective date of the amendment of this section by S.B. 315 of the 129th general assembly, except that a waste energy recovery system described in division (A)(38)(b) of this section may be included only if it was placed into service between January 1, 2002, and December 31, 2004; storage facility that will promote the better utilization of a renewable energy resource ; or distributed generation system used by a customer to generate electricity from any such energy.

"Renewable energy resource" does not include a waste energy recovery system that is, or was, on or after January 1, 2012, included in an energy efficiency program of an electric distribution utility pursuant to requirements under section 4928.66 of the Revised Code.

(b) As used in division (A)(37) of this section, "hydroelectric facility" means a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering this state or within or bordering an adjoining state and meets all of the following standards:

(i) The facility provides for river flows that are not detrimental for fish, wildlife, and water quality, including seasonal flow fluctuations as defined by the applicable licensing agency for the facility.

(ii) The facility demonstrates that it complies with the water quality standards of this state, which compliance may consist of certification under Section 401 of the "Clean Water Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has not contributed to a finding by this state that the river has impaired water quality under Section 303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 U.S.C. 1313.

(iii) The facility complies with mandatory prescriptions regarding fish passage as required by the federal energy regulatory commission license issued for the project, regarding fish protection for riverine, anadromous, and catadromous fish.

(iv) The facility complies with the recommendations of the Ohio environmental protection agency and with the terms of its federal energy regulatory commission license regarding watershed protection, mitigation, or enhancement, to the extent of each agency's respective jurisdiction over the facility.

(v) The facility complies with provisions of the "Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as amended.

(vi) The facility does not harm cultural resources of the area. This can be shown through compliance with the terms of its federal energy regulatory commission license or, if the facility is not regulated by that commission, through development of a plan approved by the Ohio historic preservation office, to the extent it has jurisdiction over the facility.

(vii) The facility complies with the terms of its federal energy regulatory commission license or exemption that are related to recreational access, accommodation, and facilities or, if the facility is not regulated by that commission, the facility complies with similar requirements as are recommended by

resource agencies, to the extent they have jurisdiction over the facility; and the facility provides access to water to the public without fee or charge.

(viii) The facility is not recommended for removal by any federal agency or agency of any state, to the extent the particular agency has jurisdiction over the facility.

(38) "Waste energy recovery system" means either of the following:

(a) A facility that generates electricity through the conversion of energy from either of the following:

(i) Exhaust heat from engines or manufacturing, industrial, commercial, or institutional sites, except for exhaust heat from a facility whose primary purpose is the generation of electricity;

(ii) Reduction of pressure in gas pipelines before gas is distributed through the pipeline, provided that the conversion of energy to electricity is achieved without using additional fossil fuels.

(b) A facility at a state institution of higher education as defined in section 3345.011 of the Revised Code that recovers waste heat from electricity-producing engines or combustion turbines and that simultaneously uses the recovered heat to produce steam, provided that the facility was placed into service between January 1, 2002, and December 31, 2004.

(39) "Smart grid" means capital improvements to an electric distribution utility's distribution infrastructure that improve reliability, efficiency, resiliency, or reduce energy demand or use, including, but not limited to, advanced metering and automation of system functions.

(40) "Combined heat and power system" means the coproduction of electricity and useful thermal energy from the same fuel source designed to achieve thermal-efficiency levels of at least sixty per cent, with at least twenty per cent of the system's total useful energy in the form of thermal energy.

(B) For the purposes of this chapter, a retail electric service component shall be deemed a competitive retail electric service if the service component is competitive pursuant to a declaration by a provision of the Revised Code or pursuant to an order of the public utilities commission authorized under division (A) of section 4928.04 of the Revised Code. Otherwise, the service component shall be deemed a noncompetitive retail electric service.

R.C. § 4928.01

Amended by 129th General Assembly File No. 125, SB 315, § 101.01, eff. 9/10/2012.

Amended by 128th General Assembly File No. 47, SB 181, § 1, eff. 9/13/2010.

Amended by 128th General Assembly File No. 48, SB 232, § 1, eff. 6/17/2010.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-05-1999; 01-04-2007; 2008 SB221 07-31-2008

This section is set out twice. See also § 4928.01, effective until 9/10/2012.

This section is set out twice. See also § 4928.01, as amended by 129th General Assembly File No. 98, SB 289, § 1, eff. 7/16/2012.

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4906-5-10 Amendments of accepted, complete certificate applications and of certificates.

(A) The applicant shall submit to the board any applications for amendment to a pending accepted, complete application in accordance with rule 4906-5-03 of the Administrative Code.

(1) Each application for amendment shall specifically identify the portion of the pending accepted, complete application which has been amended.

(2) The applicant shall serve a copy of the application for amendment upon all persons previously entitled to receive a copy of the application, and shall supply the board with proof of such service, pursuant to rules 4906-5-06 and 4906-5-07 of the Administrative Code.

(3) The applicant shall place a copy of such application for amendment or notice of its availability in all libraries consistent with of rule 4906-5-06 of the Administrative Code, and shall supply the board with proof of such action.

(4) Upon review, the board or the administrative law judge may require such additional action as is determined necessary to inform the general public of the proposed amendment, including, but not limited to:

(a) Ordering the applicant to issue public notice pursuant to rule 4906-5-08 of the Administrative Code.

(b) Postponing public hearings on the pending, accepted, complete application and/or application for amendment up to ninety days after receipt of said application for amendment.

(5) The board staff shall review the application for amendment pursuant to paragraph (D) of rule 4906-5-05 of the Administrative Code.

(6) Unless otherwise ordered by the board or administrative law judge, modifications to a proposed route that are introduced into the record by the applicant during review of the accepted, complete application and during the hearing process shall not be considered amendments if such modifications are within the two thousand foot study corridor and do not impact additional landowners by requiring easements for construction, operation, or maintenance or create further impacts within the planned right-of-way of the proposed facility.

Unless otherwise ordered by the board or administrative law judge, modifications to the footprint of an electric power generating facility that are introduced into the record by the applicant during review of the accepted, complete application and during the hearing process shall not be considered amendments if such modifications do not create further impacts for each property owner or within the planned site, or within the right-of-way of the proposed facility.

(B) Applications for amendments to certificates shall be submitted in the same manner as if they were applications for a certificate, unless such amendment falls under a letter of notification or construction notice pursuant to the appendices to rule 4906-1-01 of the Administrative Code.

(1) The board staff shall review applications for amendments to certificates pursuant to rule 4906-5-05 of the Administrative Code and make appropriate recommendations to the board and the administrative law judge.

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(a) If the board, its executive director, or the administrative law judge determines that the proposed change in the certified facility would result in any significant adverse environmental impact of the certified facility or a substantial change in the location of all or a portion of such certified facility other than as provided in the alternates set forth in the application, then a hearing shall be held in the same manner as a hearing is held on a certificate application.

(b) If the board, its executive director, or the administrative law judge determines that a hearing is not required, as defined in paragraph (B)(1)(a) of this rule, the applicant shall be directed to take such steps as are necessary to notify all parties of that determination.

(2) The applicant shall:

(a) Serve a copy of the application for amendment to a certificate upon:

(i) The persons entitled to service pursuant to rule 4906-5-06 of the Administrative Code.

(ii) All parties to the original certificate application proceedings.

(b) File with the board proof of service and, if required, proof of notice pursuant to rules 4906-5-06 to 4906-5-08 of the Administrative Code.

(C) Unless otherwise ordered by the board, its executive director, or administrative law judge, the filing, notifications, informational requirements and processing timelines for a letter of notification or construction notice application for an amendment to a certificate issued for a transmission facility shall be determined by referring to the appropriate appendix to rule 4906-1-01 of the Administrative Code. Such application shall use the letter of notification or construction notice docketing code. In such application, the applicant shall reference the case docket in which the certificate was granted.

Effective: 06/19/2009

R.C. 119.032 review dates: 11/30/2013

Promulgated Under: 111.15

Statutory Authority: 4906.03

Rule Amplifies: 4906.03, 4906.06, 4906.07

Prior Effective Dates: 12/27/76, 6/10/89, 8/28/98, 12/15/03, 1/25/09

4906-7-01 Hearings.

(A) Unless otherwise ordered, all hearings shall be held at the principal office of the board. However, where practicable, the board shall schedule a session of the hearing for the purpose of taking public testimony in the vicinity of the project. Reasonable notice of each hearing shall be provided to all parties.

(B) The administrative law judge shall regulate the course of the hearing and conduct of the participants. Unless otherwise provided by law, the administrative law judge may without limitation:

- (1) Administer oaths and affirmations.
- (2) Determine the order in which the parties shall present testimony and the order in which witnesses shall be examined.
- (3) Issue subpoenas.
- (4) Rule on objections, procedural motions, and other procedural matters.
- (5) Examine witnesses.
- (6) Grant continuances.
- (7) Require expert or factual testimony to be offered in board proceedings to be reduced to writing, filed with the board, and served upon all parties and the staff prior to the time such testimony is to be offered and according to a schedule to be set by the administrative law judge.
- (8) Take such actions as are necessary to:
 - (a) Avoid unnecessary delay.
 - (b) Prevent the presentation of irrelevant or cumulative evidence.
 - (c) Prevent public disclosure of trade secrets, proprietary business information, or confidential research, development, or commercial materials and information. The administrative law judge may, upon motion of any party, direct that a portion of the hearing be conducted in camera and that the corresponding portion of the record be sealed to prevent public disclosure of trade secrets, proprietary business information or confidential research, development, or commercial materials and information. The party requesting such protection shall have the burden of establishing that such protection is required.
 - (d) Assure the hearing proceeds in an orderly and expeditious manner.

(C) Members of the public to offer testimony shall be sworn in or affirmed at the portion or session of the hearing designated for the taking of public testimony.

(D) Formal exceptions to rulings or orders of the administrative law judge are unnecessary if, at the time any ruling or order is made, the party makes known the action which he or she desires the presiding hearing officer to take, or his or her objection to action which has been taken and the basis for that objection.

Effective: 01/25/2009

R.C. 119.032 review dates: 11/10/2008 and 11/30/2013

Promulgated Under: 111.15

Statutory Authority: 4906.03

Rule Amplifies: 4903.22, 4906.03, 4906.07, 4906.08, 4906.12

Prior Effective Dates: 12/27/76, 6/10/89, 8/28/98, 12/15/03

4906-7-03 Parties.

(A) The parties to a board proceeding concerning an application for a certificate shall include:

- (1) Any person who files an application or a petition for a jurisdictional determination.
- (2) Any person who is designated as the subject of a board investigation.
- (3) Any person granted leave to intervene under rule 4906-7-04 of the Administrative Code.
- (4) Any other person expressly made a party by order of the board or administrative law judge.

(B) If any owner of a major utility facility is operated by a receiver or trustee, the receiver or trustee shall also be made a party.

(C) Except for purposes of rules 4906-7-05, 4906-7-06, paragraph (C) of rule 4906-7-07, paragraph (I) of rule 4906-7-07, and rules 4906-7-09, 4906-7-11, 4906-7-12, 4906-7-14, 4906-7-15, and 4906-7-16 of the Administrative Code, the board staff shall not be considered a party to any proceeding.

Eff 12-27-76; 6-10-89; 8-28-98; 12-15-03

Rule promulgated under: RC 111.15

Rule authorized by: RC 4906.03

Rule amplifies: RC 4906.08, 4906.03, 4903.22

R.C. 119.032 review dates: 11/10/2008 and 09/30/2013

4906-7-05 Role of participants in public hearings.

At the public hearing, the board or the administrative law judge shall accept written or oral testimony from any person regardless of that person's status. However, the right to examine witnesses is reserved exclusively for parties and the staff.

R.C. 119.032 review dates: 11/10/2008 and 09/30/2013

Promulgated Under: 111.15

Statutory Authority: 4906.03

Rule Amplifies: 4906.08, 4906.12, 4906.03, 4903.02

Prior Effective Dates: 12/27/76, 6/10/89, 8/28/98

4906-7-09 Stipulations.

Any two or more parties may enter into a written or oral stipulation concerning issues of fact or the authenticity of documents.

(A) A written stipulation must be signed by all of the parties joining therein, and must be filed with the board and served upon all parties to the proceeding.

(B) An oral stipulation may be made only during a public hearing or record prehearing conference, and all parties joining in such a stipulation must acknowledge their agreement thereto on the record. The board or the administrative law judge may require that an oral stipulation be reduced to writing and filed and served in accordance with paragraph (A) of this rule.

(C) No stipulation shall be considered binding upon the board.

Effective: 06/19/2009

R.C. 119.032 review dates: 11/30/2013

Promulgated Under: 111.15

Statutory Authority: 4906.03

Rule Amplifies: 4906.03, 4906.06, 4906.08, 4906.09, 4906.12

Prior Effective Dates: 12/27/76, 7/7/80, 6/10/89, 8/28/98, 12/15/03, 1/25/09

4906-7-11 Practice before the board and designation of trial attorney and spokesperson.

(A) Except as otherwise provided in paragraphs (B), (C), and (D) of this rule, each party shall be represented by an attorney at law authorized to practice before the courts of this state, with the exception of an individual person who is appearing on his or her own behalf.

(B) Persons authorized to practice law in other jurisdictions may be permitted to appear before the board in a particular proceeding upon motion of an attorney of this state.

(C) Certified legal interns may appear before the board under the direction of a supervising attorney in accordance with rule II of the "Supreme Court Rules for the Government of the Bar of Ohio." No legal intern shall participate in a board hearing in the absence of the supervising attorney without:

(1) The written consent of the supervising attorney.

(2) The approval of the board or the administrative law judge.

(D) In cases where there are numerous parties whose interests are substantially similar, the board or the administrative law judge may permit or require the designation of a spokesperson or consolidation of representation.

(E) Where a party is represented by more than one attorney, one of the attorneys shall be designated as the "trial attorney," who shall have principal responsibility for the party's participation in the proceeding. The designation "trial attorney" shall appear following the name of that attorney on all pleadings or papers submitted on behalf of the party.

(F) No attorney shall withdraw from a board proceeding without prior written notice to the board and shall serve a copy of the notice upon the parties to the proceeding.

Eff 12-27-76; 6-10-89; 8-28-98; 12-15-03

Rule promulgated under: RC 111.15

Rule authorized by: RC 4906.03,

Rule amplifies: RC 4906.09, 4906.08, 4906.03, 4906.12

R.C. 119.032 review dates: 11/10/2008 and 09/30/2013

4906-7-12 Motions.

(A) All motions, unless made at a public hearing or transcribed prehearing conference, or unless otherwise ordered for good cause shown, shall be in writing and shall be accompanied by a memorandum in support. The memorandum in support shall contain a brief statement of the grounds for the motion and citations of any authorities relied upon.

(B) Except as otherwise provided in paragraphs (C) and (F) of this rule:

(1) Any party may file a memorandum contra within fifteen days after the service of a motion, or such other period as the board or the administrative law judge requires.

(2) Any party may file a reply memorandum within seven days after the service of a memorandum contra, or such other period as the board or the administrative law judge requires.

(C) Any motion may include a specific request for an expedited ruling. The grounds for such a request shall be set forth in the memorandum in support. If the motion requests an extension of time to file pleadings or other papers of five days or less, an immediate ruling may be issued without the filing of memoranda. In all other cases, the party requesting an expedited ruling must first contact all other parties to determine whether any party objects to the issuance of such a ruling without the filing of memoranda. If the moving party certifies that no party objects to the issuance of such a ruling, an immediate ruling may be issued. If any party objects to the issuance of such a ruling, or if the moving party fails to certify that no party has any objections, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the board or the administrative law judge requires. No reply memoranda shall be filed in such cases unless specifically requested by the board or the administrative law judge.

(D) All written motions and memoranda shall be filed with the board and served upon all parties in accordance with rule 4906-7-06 of the Administrative Code.

(E) For purposes of this rule, the term "party" includes all persons who have filed notices or petitions to intervene which are pending at the time a motion or memorandum is to be filed or served.

(F) Notwithstanding paragraphs (B) and (C) of this rule, the board or the administrative law judge may, upon their own motion, issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party.

(G) The administrative law judge may direct that any motion made at a public hearing or transcribed prehearing conference be reduced to writing and filed and served in accordance with this rule.

Eff 12-27-76; 6-10-89; 8-28-98; 12-15-03

Rule promulgated under: RC 111.15

Rule authorized by: RC 4906.03

Rule amplifies: RC 4906.03, 4906.12, 4906.09, 4906.08, 4906.06, 4903.22

R.C. 119.032 review dates: 11/10/2008 and 09/30/2013

4906-7-17 Decision by the board.

(A) Within a reasonable time after the conclusion of the hearing, service of the report of the administrative law judge, if any, and the filing of any exceptions and replies to the exceptions, the board shall issue a final decision based only on the record, including such additional evidence as it shall order admitted.

(1) The board may determine that the location of all or part of the proposed facility should be modified.

(a) If it so finds, it may condition its certificate upon such modifications.

(b) Persons and municipal corporations shall be given reasonable notice thereof, in accordance with the provisions of paragraph (A)(3) of this rule.

(2) Specific citation in Chapters 4906-13, 4906-15, and 4906-17 of the Administrative Code with regard to a certificate application complying with building codes and boiler pressure piping, and elevator inspections and evaluations conducted by a statutorily empowered state agency, shall not be deemed to prohibit the board from issuing a certificate conditioned upon an applicant complying with other state or local statutes, ordinances, and regulations which are designed to protect the public health, welfare, and safety.

(3) The decision of the board shall be entered on the board journal and into the record of the hearing. Copies of the decision or order shall be served on all attorneys of record and all unrepresented parties in the proceedings by ordinary mail.

(B) In its deliberations, the board may order the parties to submit briefs on such issues as it addresses to the parties within such time limits as the board shall prescribe. The board may also schedule oral arguments before it.

(C) Applications for reopening a proceeding after final submission but before a final order has been issued shall be by petition, and shall set forth specifically the grounds upon which such application is based. If such application is to reopen the proceeding for further evidence, the nature and purpose of such evidence must be briefly stated, including a statement why such evidence was not available at the time of hearing, and the evidence must not be merely cumulative.

(D) Any party or any affected person, firm, or corporation may file an application for rehearing, within thirty days after the issuance of a board order, in the manner and form and circumstances set forth in section 4903.10 of the Revised Code. An application for rehearing must set forth the specific ground or grounds upon which the applicant considers the board order to be unreasonable or unlawful. An application for rehearing must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the application for rehearing and which shall be filed no later than the application for rehearing.

(E) Any party may file a memorandum contra within ten days after the filing of an application for rehearing.

(F) As provided in section 4903.10 of the Revised Code, all applications for rehearing must be submitted within thirty days after an order has been journalized by the secretary of the board.

(G) A party or any affected person, firm, or corporation may only file one application for rehearing to a board order within thirty days following the entry of the order upon the journal of the board.

(H) An application for rehearing filed under section 4903.10 of the Revised Code, or a memorandum contra an application for rehearing filed pursuant to this rule may not be delivered via facsimile transmission.

(I) The board, the chairman of the board, or the administrative law judge may issue an order granting rehearing for the purpose of affording the board more time to consider the issues raised in an application for rehearing.

Effective: 05/07/2009

R.C. 119.032 review dates: 11/30/2013

Promulgated Under: 111.15

Statutory Authority: 4906.03, 4906.20

Rule Amplifies: 4903.22, 4906.03, 4906.10, 4906.11, 4906.12, 4906.20

Prior Effective Dates: 12/27/76, 6/10/89, 8/28/98, 12/15/03, 1/25/09

4906-17-01 Applicability and definitions.

(A) This chapter details the application filing requirements for all wind-powered electric generation facilities consisting of wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of five megawatts or more.

(B) As used in this chapter:

(1) "Project area" means the total wind-powered electric generation facility, including associated setbacks.

(2) "Wind-powered electric generation facility" or "wind-energy facility" or facility means all the turbines, collection lines, any associated substations, and all other associated equipment.

(C) With regard to certification applications under this chapter, the board shall approve, or modify and approve, a certification application for the construction, operation, and maintenance of a wind farm or shall deny, grant or grant upon such terms, conditions, or modifications as the board considers appropriate a certification application for a major utility facility, pursuant to the requirements set forth in section 4906.10 of the Revised Code.

Effective: 05/07/2009

R.C. 119.032 review dates: 09/30/2013

Promulgated Under: 111.15

Statutory Authority: 4906.03, 4906.20

Rule Amplifies: 4906.01, 4906.03, 4906.06, 4906.13, 4906.20

(a) A quantification of the acreage impacted, and an evaluation of the impact of the construction, operation, and maintenance of the proposed facility on the following agricultural practices within the proposed facility boundaries:

(i) Field operations (i.e., plowing, planting, cultivating, spraying, harvesting, etc.).

(ii) Irrigation.

(iii) Field drainage systems.

(b) A description of any mitigation procedures to be utilized by the applicant during construction, operation, and maintenance to reduce impacts to the agricultural land.

(3) Provide, for all agricultural land identified under paragraph (F)(1) of this rule, an evaluation of the impact of the construction and maintenance of the proposed facility on the viability as agricultural land of any land so identified. The evaluation shall include impacts to cultivated lands, permanent pasture land, managed woodlots, orchards, nurseries, livestock and poultry confinement areas, and agriculturally related structures. Changes in land use and changes in methods of operation made necessary by the proposed facility shall be evaluated.

Effective: 05/07/2009

R.C. 119.032 review dates: 09/30/2013

Promulgated Under: 111.15

Statutory Authority: 4906.03, 4906.20

Rule Amplifies: 4906.03, 4906.06, 4906.20

CONSTITUTION OF UNITED STATES
AMENDMENTS

Current through 2012

Amendment XIV. Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection

SECTION. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Ohio Constitution
Article I. Bill of Rights

Current through the November, 2011 General Election

§ 16. Redress in courts

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

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APPX000257

CERTIFICATE OF SERVICE

I hereby certify that, on August 27th, 2012, a copy of the foregoing Appendix (Volume I) was served by regular mail on the following counsel and party:

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