

ORIGINAL

IN THE SUPREME COURT OF OHIO

Alan K. Price, *et al.*,  
Appellants,  
v.  
The Ohio Power Siting Board,  
Appellee

) Case No. 2012-0900  
)  
) On Appeal from the Ohio Power Siting  
) Board, Case No. 10-2865-EL-BGN, *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*

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BRIEF OF AMICUS CURIAE OHIO FARM BUREAU FEDERATION  
IN SUPPORT OF APPELLEE OHIO POWER SITING BOARD

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Chad A Endsley (0080648)  
(Counsel of Record)  
Leah F. Curtis (0086257)  
Ohio Farm Bureau Federation  
P.O. Box 182383  
Columbus, OH 43218-2383  
Telephone: (614) 246-8256  
Facsimile: (614) 246-8656  
cendsley@ofbf.org  
lcurtis@ofbf.org

Counsel to Ohio Farm Bureau Federation

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Patrick T. Murphy (0007722)  
(Counsel of Record)  
Patrick T. Murphy Law Office  
153 Washington Square  
Bucyrus, Ohio 44820  
Telephone: 419.562.4989  
Facsimile: 419.562.5362  
Attorney for Appellants

Zachary L. Tidaback (0088211)  
Patrick T. Murphy Law Office  
153 Washington Square  
Bucyrus, Ohio 44820  
Telephone: 419.562.4989  
Facsimile: 419.562.5362  
Attorney for Appellants

M. Howard Petricoff (0008287)  
Stephen M. Howard (0022421)  
Michael J. Settineri (0073369)  
Vorys, Sater, Seymour and Pease LLC  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216-1008  
Telephone: 614.464.5414  
Facsimile: 614.719.4904  
Attorneys for Black Fork Wind LLC

Mike DeWine (0009181)  
Ohio Attorney General  
William L. Wright (0018010)  
Section Chief  
Stephen Reilly (0019267)  
Devin D. Parram (0082507)  
Assistant Attorneys General  
Public Utilities Section  
Office of the Attorney General  
180 East Broad Street, 6'a' Floor  
Columbus, Ohio 43215-3793  
Telephone: 614.466.4397  
Facsimile: 614.644.8764  
Attorneys for Ohio Power Siting Board

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

I. STATEMENT OF THE CASE AND FACTS ..... 1

II. THE INTEREST OF THE AMICUS CURIAE..... 3

III. ARGUMENT ..... 5

    A. Energy Projects Provide Viable Economic Development Opportunities While Preserving  
        Valuable Agricultural Land ..... 5

    B. A Fair and Open Process is Used for the Approval and Siting of Wind Energy Projects in  
        Ohio, and Should be Upheld..... 6

IV. CONCLUSION..... 10

CERTIFICATE OF SERVICE ..... 11

**TABLE OF AUTHORITIES**

<b><u>Statutes</u></b>	<b><u>Page</u></b>
R.C. 4906.06(A)(6) .....	1
R.C. 4906.02 .....	6
R.C. 121.05 .....	6

<b><u>Regulations</u></b>	<b><u>Page</u></b>
Ohio Adm.Code 4906-7-04 .....	6
Ohio Adm.Code 4906-7-05 .....	6
Ohio Adm.Code 4906-7-07 .....	6
Ohio Adm.Code 4906-7-08 .....	6
Ohio Adm.Code 4906-7-17 .....	6
Ohio Adm.Code 4906-5-08(B) .....	8

<b><u>Administrative Materials</u></b>	<b><u>Page</u></b>
<i>In the Matter of the Application for Black Fork Wind Energy, L.L.C. for a Certificate to Site a Wind-Powered Electric Generating Facility in Crawford and Richland Counties, Ohio, OPSB Case No. 10-2865-EL-BGN (Opinion, Order and Certificate) (Jan. 23, 2012).....</i>	<i>Passim</i>

<i>In the Matter of the Application for Black Fork Wind Energy, L.L.C. for a Certificate to Site a Wind-Powered Electric Generating Facility in Crawford and Richland Counties, Ohio, OPSB Case No. 10-2865-EL-BGN (Entry on Rehearing) (Mar. 26, 2012) .....</i>	<i>2, 9</i>
1977 Ohio Atty.Gen.Ops. No. 77-064, at 2-231 .....	6
1984 Ohio Atty.Gen.Ops. No. 84-074, at 2-238 .....	6

<b><u>Other Authorities</u></b>	<b><u>Page</u></b>
Ohio Farm Bureau Federation, “How is Farm Bureau Policy Developed.” available at <a href="http://ofbf.org/uploads/policydevelopment.pdf">http://ofbf.org/uploads/policydevelopment.pdf</a> .....	7

Ohio Farm Bureau Federation, *2012 State Policies* Policy 143:  
Wind and Solar, p. 1-7-8, Lines 34-44, 1-13 (Dec. 2011) available at  
<http://ofbf.org/uploads/OFBFPolicy-2012-Final.pdf>..... 7-8

**I. STATEMENT OF THE CASE AND FACTS**

Black Fork Wind Energy, LLC (“Black Fork”) filed an application for certificate of environmental compatibility and public need to construct a wind-powered electric generating facility in Crawford and Richland counties on March 10, 2011 with the Ohio Power Siting Board (OPSB). Black Fork proposed to construct 91 wind turbines over 24,200 acres and generate electricity with an estimated capacity of 200 megawatts. *In the Matter of the Application for Black Fork Wind Energy, L.L.C. for a Certificate to Site a Wind-Powered Electric Generating Facility in Crawford and Richland Counties, Ohio*, OPSB Case No. 10-2865-EL-BGN (hereinafter *Black Fork Wind*) (Opinion, Order and Certificate at 3) (Jan. 23, 2012). Prior to this filing, Black Fork had held a public meeting to initiate conversation with local stakeholders regarding its proposed wind farm in Crawford and Richland counties. *Id.* at 30.

On March 22, 2011, the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene in the Black Fork proceedings, which was later granted on May 3, 2011. *Id.* at 2. OPSB also granted motions by Black Fork to waive the requirement of filing one year prior to construction commencement under R.C. 4906.06(A)(6), a motion for protective order for certain portions of the application, and a joint motion with the OPSB staff for extension of completeness review *Id.*

The OPSB staff notified Black Fork on June 10, 2011 that the application had been deemed complete, and copies were being served upon the local government officials. *Id.* at 2. A local public hearing was scheduled for September 15, 2011 at the Shelby Senior High School, in Shelby, Ohio and an adjudicatory hearing was set for September 19, 2011 in Columbus. *Id.* Public notice of these hearings was published in two papers circulating within the project area. *Black Fork* (Opinion, Order and Certificate at 3) (Jan. 23, 2012). On September 8, 2011, Dale

Arnold, OFBF Director of Energy, Utility, and Local Government Policy provided written testimony at the request of the applicant, Black Fork. Mr. Arnold's written testimony was centered on the impacts of wind farm development on agricultural lands and farm families, and the compatibility of wind farms with the goal of sustaining the Ohio agricultural industry and the farm families involved with that industry. *Id.* at 61.

The local public hearing was held on September 15, 2011 with 25 witnesses giving public testimony. *Id.* at 3. Settlement negotiations resulted in continuation of the adjudicatory hearing to October 11, 2011. On September 28, 2011, as later amended on October 5, 2011, OPSB Staff, Black Fork, OFBF, and Crawford County filed a Joint Stipulation and Recommendation. *Id.* at 72. The parties had agreed to more than 80 stipulations to the certificate, including measures to address environmental concerns, protect road quality, maintain aesthetics, and preserve agricultural land. *See id.* at 34-52. Subsequently, the evidentiary hearing was continued to and held on October 11-13, 2011. *Black Fork* (Opinion, Order and Certificate at 3) (Jan. 23, 2012). The OPSB issued their opinion, order and certificate on January 23, 2011, approving Black Fork's application for a certificate.

Several intervening parties filed a motion for re-hearing following the issuance of the opinion, order and certificate. After a thorough review of the claims for re-hearing, the board elected not to grant the motions for re-hearing and affirmed their decision to grant Black Fork a certificate. *In the Matter of the Application for Black Fork Wind Energy, L.L.C. for a Certificate to Site a Wind-Powered Electric Generating Facility in Crawford and Richland Counties, Ohio*, OPSB Case No. 10-2865-EL-BGN (Entry on Rehearing) (Mar. 26, 2012). Appellants subsequently filed a notice of appeal to the Ohio Supreme Court for direct review of the OPSB decision.

## **II. THE INTEREST OF THE AMICUS CURIAE**

The Ohio Farm Bureau Federation (OFBF) is Ohio's largest general farm organization, representing over 214,000 member families. The Ohio Farm Bureau is a federation of county Farm Bureaus representing all 88 counties, including Crawford and Richland counties. Farm Bureau members in every county of the state serve on boards and committees working on legislation, regulations, and issues that affect agriculture, rural areas, and Ohio's citizens in general. Many members are involved in farm and agribusiness activities, including crop and livestock production, food processing, commodity processing, conditioning and handling, biofuel production, and greenhouse operations. Members of Farm Bureau run the gamut from large to small businesses, but all are keenly aware of energy and the issues surrounding it.

Since 1919, Ohio Farm Bureau members have led the way in public policy information and issue education. Today is no different, with Farm Bureau members frequently discussing the promise of new energy alternatives, including wind energy development. Along with the potential for supplementing farm or agribusiness income, farmers are dedicated to ensuring that a landowner friendly and uniform process is used to ensure all stakeholders are given an opportunity to be involved in the siting process.

On the state level, OFBF has worked with utilities, energy service providers, the Public Utilities Commission of Ohio, the Ohio Power Siting Board, other government agencies and interested citizen/consumer groups to explore and implement new strategies and technologies to help control energy costs, ensure process and make way for innovative technologies. OFBF also serves as a charter member of the Ohio Department of Development – Ohio Wind Working Group, advocating for farm and rural residential energy consumers in this stakeholder process. OFBF representatives have held key positions in action teams helping create effective wind

energy development policies for use by Ohio's state and local government leaders. These activities included working with wind developers, as well as ensuring that issues surfaced by a variety of citizen's groups with varied interests and concerns are included in constructive dialogue during the process.

On the local level, OFBF field staff and volunteer leaders with the Crawford and Richland County Farm Bureaus worked with wind developers, government leaders and interested citizen/consumer groups to explore how wind energy development should be addressed at the local level. Again, Farm Bureau represented farms, small businesses and residents in a stakeholder process that included a variety of groups with varied interests and concerns. Accordingly, Farm Bureau leaders gained insight, exchanged viewpoints and shared experiences with a variety of stakeholders in this case.

Ohio Farm Bureau continues to work with interested parties on state and local levels in utility scale, renewable energy development. OFBF is filing this amicus curiae brief at the request of the OPSB staff to provide OFBF's unique viewpoint of the current siting process in Ohio law, as well as the best practices OFBF believes wind utilities should use in preparing and constructing a wind farm. OFBF has had a unique opportunity to assist farmers and rural residents working together to address a variety of economic, environmental, property and aesthetic issues in effective wind energy development. Further, Farm Bureau expresses its continued support for the Black Fork Wind Project, and specifically, the OPSB approval process.

### III. ARGUMENT

#### A. **Energy Projects Provide Viable Economic Development Opportunities While Preserving Valuable Agricultural Land**

Ohio communities are searching for development opportunities, to enhance their local economy and ensure their vitality and growth. Although economic development can be positive, farmland near major metropolitan areas has suffered due to the land use choices influenced by promoting economic development. Farmland has been transformed into housing developments, business parks and industrial sites. While new jobs, employment, business activity and the tax revenues they create are great benefits, it is important to balance those benefits with a concern for the loss of productive farmland.

In part due to a concern for preserving farmland, some communities – and certainly landowners – are looking for development and technologies that generate economic growth, with less development cost and less land use impact. Wind farms, properly designed and built as reflected in OPSB siting guidelines present an opportunity to provide profitable development to a community while maintaining agricultural, rural and open spaces. Specifically in the Black Fork project, the number of acres that will be permanently taken out of crop or livestock production by proper siting of wind turbines on agricultural land will be minimal, less than 1% of the 12,136 acres of total agricultural land contained in the project area. *Black Fork* (Opinion, Order and Certificate at 7) (Jan. 23, 2012). The agricultural industry is a vital part of local economies, and continues to provide a powerful economic engine to this state. Wind development represents a unique opportunity to complement and enhance agriculture to the benefit of the larger community.

**B. A Fair and Open Process is Used for the Approval and Siting of Wind Energy Projects in Ohio, and Should be Upheld.**

Having been involved both legislatively and administratively with the development of procedures for the approval of wind projects, and having been an active party in the case below, OFBF believes that adequate process was provided, followed and prevailed in the approval of the Black Fork wind project. As provided for in Ohio Adm.Code 4906-7-04, interested parties were granted intervention to take part in all proceedings relevant to the application. All parties had the ability to examine witnesses at the hearing, and to participate in discovery by filing discovery requests, submitting interrogatories, and taking depositions, as provided for in Ohio Adm.Code 4906-7-05, 4906-7-07. The parties also had the opportunity to file motions to subpoena anyone who they felt was necessary to the presentation of their interests, as provided by Ohio Adm.Code 4906-7-08. The board members, or their proper designees, voted to approve the certificate, issuing a final decision within a reasonable time and providing a detailed explanation of the order granting the certificate. *See* Ohio Adm.Code 4906-7-17. As is proper under the law, the chairman and the public member were not represented by designees during the vote. *See* R.C. 4906.02, R.C. 121.05, 1977 Ohio Atty.Gen.Ops. No. 77-064, at 2-231. Other board members were represented by designees that served as assistant or deputy directors, as is proper under R.C. 121.05. 1977 Ohio Atty.Gen.Ops. No. 77-064, at 2-231, *but see* 1984 Ohio Atty.Gen.Ops. No. 84-074, at 2-238 (executive assistant to a Director cannot serve as designee to Ohio Power Siting Board.). Additionally, all parties were afforded adequate opportunities to fully brief the merits and to seek rehearing of the Board's decision. In short, all had a full and fair opportunity to be heard.

As an organization uniquely concerned with the private property rights of individuals and with good governmental procedures, Ohio Farm Bureau members have extensively discussed the desirable qualities of procedures to site utility grade wind projects. Each year, OFBF members starting at the local level, review the OFBF policy, suggest changes, and eventually vote upon them at a meeting with representative delegates from each member county Farm Bureau. *See* Ohio Farm Bureau Federation, “How is Farm Bureau Policy Developed.” available at <http://ofbf.org/uploads/policydevelopment.pdf>. Ohio Farm Bureau policy, proposed and approved by its delegate body, holds:

We support Ohio Power Siting Board Rules and regulations encouraging reasonable, landowner friendly, uniform statewide regulations and guidelines pertaining to the siting, placement, construction and operation of utility-scale wind and solar farms. These rules should include:

1. A pre-application conference with local public officials that addresses the environmental compatibility and public need for a proposed facility;
2. An initial public meeting to advise affected persons of the upcoming project and to gather initial public input and concerns that are used by the applicant to aid in preparation of an application;
3. Continued developer education/outreach activities ensuring dialogue between the company and members of the community;
4. Establishment of an accessible local office by the developer, ensuring community members have access to company representatives to discuss development issues and possible concerns;

5. Creation of an application that evaluates economic, environmental, and aesthetic impacts on the community as defined in the Ohio Revised Code, Chapter 4906, and the Ohio Administrative Code (OAC) Chapter 4906-1. The application is to be posted as a matter of public record on the OPSB website, with electronic and hard copies available at all public libraries in the county, the office of the county Commissioners, and through the township trustees in township within the project area;
6. Scheduling of adjudicatory and local public hearings, enabling citizens, interest groups, and governmental entities to present testimony and (sic) included in the case as evidence. Ohio Farm Bureau Federation, *2012 State Policies* Policy 143: Wind and Solar, p. 1-7-8, Lines 34-44, 1-13 (Dec. 2011) available at <http://ofbf.org/uploads/OFBFPolicy-2012-Final.pdf>

OFBF was very involved in the process of creating the OPSB rules for siting wind energy projects at their original inception. To a large degree, OPSB rules mirror OFBF policy. Furthermore, many utility companies see OFBF's recommendations as a list of best practices to be used when seeking to construct a new wind utility. Black Fork hosted an open informational meeting for the general public in December 2010 in the project area. *Black Fork* (Opinion, Order and Certificate at 30) (Jan. 23, 2012). With nearly 200 people in attendance, Black Fork representatives had the opportunity to field questions and concerns prior to filing an application, as is desirable by OFBF policy and required by Ohio's siting regulations. *Id.*, see also Ohio Adm.Code 4906-5-08(B). Upon the application being deemed complete, the application was accessible online through the OPSB docketing website, and properly served on local government officials – including public libraries within the project area. *Black Fork* (Opinion, Order and

Certificate at 2) (Jan. 23, 2012). Black Fork worked with OPSB staff and other intervenors, including OFBF, to ensure their application included all necessary information to satisfy the statutory requirements included in Ohio law. Black Fork agreed to more than 80 stipulations as negotiated with OFBF, OPSB staff and Crawford County, including measures to address environmental concerns, protect road quality, maintain aesthetics, and preserve agricultural land. *Black Fork* (Opinion, Order and Certificate at 34-52) (Jan. 23, 2012). As required by law and recommended by OFBF policy, a local public hearing was held in the project area giving all interested parties, both those intervening or not, the opportunity to be heard in regards to the grant of the certificate. Finally, the adjudicatory hearing provided an opportunity for those concerned citizens who had intervened, including appellants, to fully participate in the process of reviewing Black Fork's application for a certificate. All intervenors had the full gamut of opportunities to present their opinions and concerns, including discovery, subpoena, and cross-examination. After the board had rendered a decision, there was also an opportunity to appeal for rehearing, which appellants took advantage of and were denied by the board after careful consideration of the claims made. *Black Fork* (Entry on Rehearing) (Mar. 26, 2012).

Ohio Farm Bureau is an organization that has seen the opportunities of wind energy in this state grow from an ideal to reality in furtherance of important state policies. Along the way, OFBF members have kept a watchful eye and weighed in continuously as to what needs to be done prior to the establishment of a wind farm in order to protect farmland and landowner rights, as well as provide new sources of alternative energy to Ohio's power grid. Through the experiences of members and expertise of OFBF staff, OFBF policy has developed to suggest what farmers see as the best possible procedures to establish a wind farm. OFBF is pleased to find that these procedures largely match what is currently in law, and more importantly, match

what has actually transpired as wind farm projects like Black Fork have advanced through the comprehensive OPSB certification procedure. Accordingly, we ask that the process of siting wind farms and, specifically, the OPSB order granting a certificate to Black Fork be upheld.

#### IV. CONCLUSION

The proposed wind farm is important to Ohio, to Crawford and Richland Counties, and to our members, and it should be allowed to proceed as set forth in OPSB's Opinion, Order and Certificate. Accordingly, the Ohio Farm Bureau Federation urges the Ohio Supreme Court to affirm the decisions of the Ohio Power Siting Board in this case.

Respectfully submitted,



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Chad A. Endsley (0080648),  
(Counsel of Record)

Leah F. Curtis (0086257)  
Ohio Farm Bureau Federation  
P.O. Box 182383  
Columbus, OH 43218-2383  
Telephone: (614) 246-8256  
Facsimile: (614) 246-8656  
cendsley@ofbf.org  
lcurtis@ofbf.org  
Attorneys for Ohio Farm Bureau Federation

**CERTIFICATE OF SERVICE**

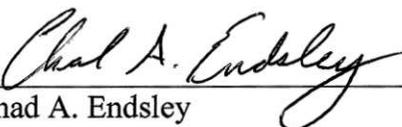
I certify that, on October 16, 2012, a copy of this Brief was served by regular U.S. mail upon the following counsel and party:

Patrick T. Murphy (0007722)  
(Counsel of Record)  
Patrick T. Murphy Law Office  
153 Washington Square  
Bucyrus, Ohio 44820  
Telephone: 419.562.4989  
Facsimile: 419.562.5362  
Attorney for Appellants

M. Howard Petricoff (0008287)  
Stephen M. Howard (0022421)  
Michael J. Settineri (0073369)  
Vorys, Sater, Seymour and Pease LLC  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216-1008  
Telephone: 614.464.5414  
Facsimile: 614.719.4904  
Attorneys for Black Fork Wind LLC

Zachary L. Tidaback (0088211)  
Patrick T. Murphy Law Office  
153 Washington Square  
Bucyrus, Ohio 44820  
Telephone: 419.562.4989  
Facsimile: 419.562.5362  
Attorney for Appellants

Mike DeWine (0009181)  
Ohio Attorney General  
William L. Wright (0018010)  
Section Chief  
Stephen Reilly (0019267)  
Devin D. Parram (0082507)  
Assistant Attorneys General  
Public Utilities Section  
Office of the Attorney General  
180 East Broad Street, 6'a' Floor  
Columbus, Ohio 43215-3793  
Telephone: 614.466.4397  
Facsimile: 614.644.8764  
Attorneys for Ohio Power Siting Board

  
\_\_\_\_\_  
Chad A. Endsley