FILE

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Black Fork Wind Energy, LCC for a Certificate to Site a Wind-Powered Electric Generating Facility in Crawford And Richland Counties, Ohio	)))))	Case No.: 17-0412 On Appeal from the Ohio Power Siting Board, Case No. 10-2865-EL-BGN

NOTICE OF APPEAL OF INTERVENORS-APPELLANTS GARY J. BIGLIN, KAREL A. DAVIS, BRETT A. HEFFNER, MARGARET RIETSCHLIN, JOHN WARRINGTON, ALAN PRICE, AND CATHERINE PRICE

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Pursuant to R.C. 4903.11, 4903.13, and 4906.12, Intervenor-Appellants Gary J. Biglin, Karel A. Davis, Brett A. Heffner, Margaret Rietschlin, John Warrington, and Alan Price, and Catherine Price (Collectively, "Appellants") hereby give notice of their appeal to the Ohio Supreme Court from the following attached orders of Appellee Ohio Power Siting Board ("Board") in Case Number 10-2865-EL-BGN: (1) *Entry* entered by the Board on March 24, 2016, and (2) *Entry on Rehearing* entered by the Board on February 2, 2017 (collectively, "Board's Orders"). Pursuant to S.Ct.R.Prac. 10.02(A)(2), copies of both of the Board's Orders are attached hereto.

Appellants are parties of record in Case Number 10-2865-EL-BGN, and on April 22, 2016, timely filed their *Application for Rehearing* of the Board's March 24, 2016 *Entry* pursuant to R.C. 4903.10 and 4906.12.

The Board's Orders granted Applicant Black Fork Wind Energy, LCC's ("Black Fork") *Motion for Extension of Certificate,* thereby amending a material condition of the Board's January 23, 2012 Certificate of Environmental Compatibility and Public Need ("Certificate")—the five-year deadline for Black Fork to commence construction of its facility—allowing Black Fork an two additional years, from January 23, 2017 to January 23, 2019, within which to commence construction. The Board's Orders are in error for the following reasons:

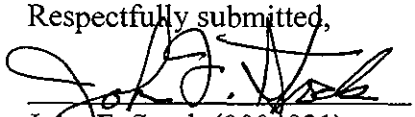
(1) The Board's Orders are unlawful and unreasonable because they purport to amend an express, material term of the January 23, 2012 Certificate without complying with the statutorily-required procedure for amending a certificate.

(2) The Board's Orders are unlawful and unreasonable because the Board lacks the authority to alter, waive, or otherwise dispense with the statutorily-required procedure for amending a certificate.

(3) The Board's Orders are unlawful and unreasonable because Black Fork has failed to show good cause for an extension of the Certificate by motion or otherwise.

(4) The Board's Orders, and the amendment-by-motion procedure they sanction, are unlawful and unreasonable because they illegally effect Black Fork's evasion of the now-applicable setback requirements of R.C. 4906.20 and R.C. 4906.201. Pursuant to R.C. 4906.201(B)(2), the new setback requirements apply to any amendment to an existing certificate made after September 15, 2014 (the effective date of Am.Sub.H.B. 483).

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Appeal was served, via regular U.S. mail, postage prepaid, and email this 24th day of March, 2017, upon the following:

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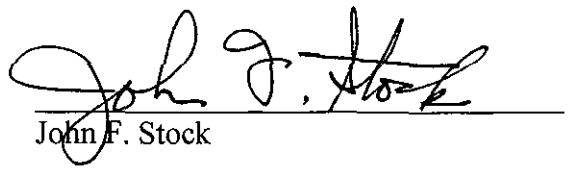
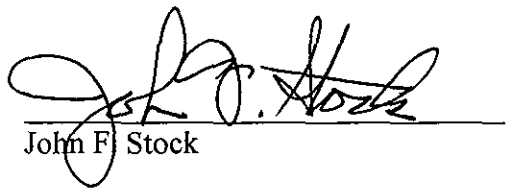


John F. Stock

CERTIFICATE OF FILE

Pursuant to S.Ct.Prac.R. 3.11(D)(2) and 10.02(A)(2) the undersigned hereby certifies that a true and correct copy of the foregoing was filed with the Docketing Division of the Public Utilities Commission and the Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215 pursuant to R.C. 4903.13 and 4906.12 and Ohio Admin. Code §§4901-1-02(A), 4901-1-36, and 4906-2-33.



John F. Stock

BEFORE

THE 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 Generating Facility in Crawford and Richland Counties, Ohio.	)))))	Case No. 10-2865-EL-BGN

ENTRY

The Ohio Power Siting Board finds:

(1) Black Fork Wind Energy, LLC (Black Fork) is a person as defined in R.C. 4906.01.

(2) R.C. 4906.04 provides that no person shall construct a major utility facility in the state without obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

(3) On March 10, 2011, Black Fork filed an application for a certificate of environmental compatibility and public need to construct the Black Fork Wind Energy Project, a wind-powered electric generation facility in Crawford and Richland counties, Ohio, consisting, in part, of up to 91 wind turbines, access roads, an electric collection substation, and an underground electric collection system.

(4) On January 23, 2012, the Board issued its opinion, order, and certificate (Order) approving and adopting a stipulation entered into by Black Fork and certain other parties to this case. Under the Order, which authorized the construction, operation, and maintenance of the proposed facility, a certificate of environmental compatibility and public need was issued to Black Fork, subject to the 80 conditions set forth in the stipulation. The Order provides that the certificate shall become invalid if Black Fork has not commenced a continuous course of construction of the proposed facility within five years of the date of the journalization of the Certificate, in other words by January 23, 2017.

(5) After the Board granted the certificate and denied rehearing applications, certain intervenors appealed the decision to the Supreme Court of Ohio (the Court) in May 2012. On December

18, 2013, the Court issued a decision affirming the Board's issuance of the certificate. *In re Application of Black Fork Wind Energy L.L.C.*, 138 Ohio St.3d 43, 2013-Ohio-5478, 3 N.E.3d 173.

(6) On September 12, 2014, Black Fork filed a motion in this case seeking to have the Board extend the term of its certificate for two additional years, from January 23, 2017, to January 23, 2019. Black Fork argues that the extension requested is warranted for two reasons: (a) to recoup the nearly two years of construction time that was lost while the intervenors' appeal was under consideration by the Court; and also (b) because, to date, Black Fork's ability to proceed with the project has been hampered by recent energy market changes in Ohio.

(7) As its first argument in favor of certificate extension, Black Fork contends that, as a practical matter, it could not commence construction until the intervenors' appeals were resolved by the Court, because any change to or reversal of the Board's decision could have resulted in significant changes to the certificate. Black Fork states that the Board, in a previous case, has granted a three-year certificate extension based primarily on delays in the project caused by litigation. *In re Application of Buckeye Wind, LLC*, Case No. 08-666-EL-BGN (*Buckeye Wind*), Entry (Aug. 25, 2014).

(6) Secondly, Black Fork points out that, ever since receiving its certificate, it has continued to expend resources to develop the project, including payment for land leases and significant expenditures to support the project's interconnection to the PJM regional transmission organization. Nevertheless, says Black Fork, commencing construction of its project has been delayed because of two prevailing factors in the Ohio energy market, namely: (a) the advent of increasing supplies of natural gas from shale; and (b) an overall lower demand for electricity due to a general economic downtown. Black Fork asserts that together, these two factors have undercut Black Fork's ability to enter into an economic power purchase agreement for the project's energy and renewable energy credits at a price sufficient to support construction and financing of the project. Black Fork submits that three important events must still occur before it can commence a continuous course of construction of its project. It argues that granting the requested two-year certificate extension will function to provide the time still

needed in order for all three events to come about. Black Fork identifies these three events as: (a) a change in market conditions sufficient to support project financing; (b) completion of project financing, once market conditions improve; and (3) only after the project financing occurs, proceeding to engineering design of the project. Black Fork points out that previously, in another case, the Board has granted a three-year extension of a wind-facility certificate based in part on market conditions. *In re Application of Hardin Wind Energy LLC,* Case No. 09-479-EL-BGN (*Hardin*) Entry (Aug. 25, 2014).

(7) On September 29, 2014, five persons who have previously been granted intervention in this case filed pleadings opposing Black Fork's September 12, 2014 request for certificate extension. These five intervenors are: Gary J. Biglin, Karel A. Davis, Brett A. Heffner, Margaret Rietschlin, and John Warrington. On October 6, 2014, Black Fork filed a reply to these intervenors' pleadings.

(8) Ms. Davis and Mr. Biglin argue that Black Fork's request for certificate extension should be rejected by the Board on grounds that it has been prematurely filed, that is, too far in advance of the January 23, 2017 deadline for commencement of continuous construction of the project (Davis Memorandum Contra, at 1; Biglin Memorandum Contra, at 1). The Board rejects this argument. We do not find the timing of Black Fork's filing of its certificate extension request to be a valid reason for rejecting that request. At the time of the filing, there was still pending before the Board, a separate application by which Black Fork was seeking to amend its certificate to add two additional turbine engines. *In re Application of Black Fork Wind Energy, LLC,* Case No. 14-1591-EL-BGA (*Black Fork Cert. Amendment*), Order on Certificate (August 27, 2015). Concern over how long it might take before reaching any final decision on the certificate amendment application reasonably contributed to Black Fork's decision to file its certificate extension request as early as it did (Black Fork Reply, at 2). The fact that a final outcome has now been achieved in the certificate amendment case renders moot any question which might have otherwise arisen concerning whether the timing of that outcome could have impacted on our consideration of the

arguments raised by Black Fork in support of its certificate extension request.

(9) Mr. Biglin and Mr. Heffner dispute whether recouping time spent in litigation is a legally valid reason for extending a certificate (Biglin Memorandum Contra, at 1; Heffner Response to Motion for Certificate Expansion, at 1). In fact, however, the Board has previously found that a certificate may be extended precisely for such a purpose. *Buckeye Wind*, Entry (Aug. 25, 2014). Moreover, in the case now before us, we find that none of the intervenors have overcome the showing made here by Black Fork that litigation before the Court has impaired Black Fork's efforts to move more expeditiously toward commencement of project construction. This showing by Black Fork presents, in our view, grounds for granting Black Fork's request for a two-year extension of its certificate.

(10) Arguing that market conditions do not provide a valid basis for granting a certificate extension, Mr. Biglin contends that extending the certificate and thereby continuing to wait on an answer to the broad question of whether industrial wind generated power is economically viable in Ohio "is not good cause to limit efficient land use of property for years to come" (Biglin Memorandum Contra, at 1). Black Fork points out that no landowners who actually participate in its project have submitted public comments opposing the company's request for certificate extension. This is not surprising, says Black Fork, given that participating landowners can continue to use their property for agricultural purposes, itself an efficient use of property, even as they also continue receiving payments from the project (Black Fork Reply, at 4). The Board has previously determined, in another case, that market conditions may, in part, form the basis for granting a three-year certificate extension. *Hardin*, Entry (Aug. 25, 2015). Upon review of all the pleadings, the Board finds that none of the intervenors has provided a convincing reason why market conditions should not provide the basis for granting the certificate extension requested. On balance, we find that the benefit participating landowners will continue to receive, along with our prior precedent which recognizes market conditions as among the factors upon which we may base a grant of certificate extension, provides support for our decision to grant the certificate extension requested by Black Fork.

(11) Mr. Biglin and Mr. Heffner both argue that extending the life of the certificate in the manner proposed by the company amounts to a material change to the project which necessitates a public hearing on the motion (Biglin Memorandum Contra, at 2; Heffner Response to Motion for Certificate Expansion, at 1). Black Fork, on the other hand, argues that a request for a certificate extension is not a change in facility design which would trigger an amendment application and, with it, the need for a public hearing (Black Fork Reply at 5). The Board observes that, under R.C. 4906.07(B), a hearing is required on an amendment of a certificate application only 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 for in the alternates set forth in the application.

The certificate extension request under consideration in this case potentially affects only the lifespan of the involved certificate. The request does not encompass any change that potentially affects either the environmental impact of the facility or that potentially affects the facility's location. Therefore, the request does not trigger the need for a public hearing under R.C. 4906.07(B) and the Board may proceed to rule on it without first holding a public hearing.

(12) Mr. Biglin additionally argues that, before the certificate extension request in this case can be granted, the Board should first require Black Fork to further substantiate its claims that, despite the delays in construction caused by the litigation and energy market conditions, the company has continued to expend resources to develop its project ever since receiving its certificate (Biglin Memorandum Contra, at 1). The Board rejects this argument. In our view, Black Fork has documented its claims sufficiently. No reason has been presented for questioning Black Fork's claims that it: (a) continues to make landowner payments; and (b) has worked on the project's PJM interconnect. In our view, Black Fork has sufficiently established that its investment in the project continues, and

that, considered along with other factors, provides good cause for granting the requested certificate extension.

(13) Mr. Biglin, Ms. Rietschlin, and Mr. Warrington have argued that the Black Fork Wind Energy Project should be subject to the setback requirements established by Amended Substitute House Bill 483, codified at R.C. 4906.201 (Biglin Memorandum Contra, Attachment A; Rietschlin Memorandum Contra, at 1; Warrington Objections to Requests For Waivers, at 1). Black Fork has argued that the new setback requirements cannot have retroactive applicability and, consequently, do not apply in this case because it was initiated before the new setback requirements were enacted into law (Black Fork Reply, at 6). The question of whether the new setback requirements apply to the Black Fork Wind Energy Project has no bearing on the separate question, presented here, of whether Black Fork's request for certificate extension should be granted. For this reason, the separate issue of the whether the new setback requirements apply is not properly before us and cannot have been properly raised by the intervenors in the course of their responding to Black Fork's certification extension request. Accordingly, the topic of the applicability of the new setback requirements will not be further addressed here.

(14) For the reasons set forth in the above findings, we conclude that Black Fork's request to extend the term of its certificate for two additional years is reasonable and should be granted.

It is, therefore,

ORDERED, That Black Fork's request to extend the term of its certificate for two additional years, from January 23, 2017, to January 23, 2019, is granted. 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

Andre T. Porter, Chairman
Public Utilities Commission of Ohio

David Goodman, Board Member
and Director of the Ohio
Development Services Agency

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

Richard Hodges, Board Member
and Director of the Ohio
Department of Health

Craig Butler, Board Member
and Director of the Ohio
Environmental Protection Agency

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

Jeffrey J. Lechak, Board Member
and Public Member

DEF/dah

Entered in the Journal

MAR 2 4 2016

Barcy F. McNeal
Secretary

BEFORE

THE 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 Generating Facility in Crawford and Richland Counties, Ohio.	)))))	Case No. 10-2865-EL-BGN

ENTRY ON REHEARING

The Ohio Power Siting Board finds:

(1) All proceedings before the Ohio Power Siting Board (Board) are conducted in accordance with the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906.

(2) R.C. 4906.04 provides that no person shall construct a major utility facility in the state without obtaining a certificate for the facility from the Board.

(3) Black Fork Wind Energy, LLC (Black Fork) is a person as defined in R.C. 4906.01.

(4) On March 10, 2011, Black Fork filed an application for a certificate of environmental compatibility and public need to construct the Black Fork Wind Energy Project, a wind-powered electric generation facility in Crawford and Richland counties, Ohio, consisting, in part, of up to 91 wind turbines, access roads, an electric collection substation, and an underground electric collection system.

(5) On January 23, 2012, the Board issued its opinion, order, and certificate (Order) approving and adopting a stipulation entered into by Black Fork and certain other parties to this case. Under the Order, which authorized the construction, operation, and maintenance of the proposed facility, a certificate of environmental compatibility and public need was issued to Black Fork, subject to the 80 conditions set forth in the stipulation. The Order provided that the certificate shall become invalid if Black Fork had not commenced a continuous course of construction of the proposed facility within five years of the date of the journalization of the Certificate, in other words by January 23, 2017.

(6) After the Board granted the certificate and denied rehearing applications, certain intervenors appealed the decision to the Supreme Court of Ohio (the Court) in May 2012. On December 18, 2013, the Court issued a decision affirming the Board's issuance of the certificate. *In re Application of Black Fork Wind Energy L.L.C.*, 138 Ohio St.3d 43, 2013-Ohio-5478, 3 N.E.3d 173.

(7) On September 12, 2014, Black Fork filed a motion in this case seeking to have the Board extend the term of its certificate for two additional years, from January 23, 2017, to January 23, 2019. Black Fork argued that the extension requested was warranted for two reasons: (a) to recoup the nearly two years of construction time that was lost while the intervenors' appeal was under consideration by the Court; and also (b) because, to date, Black Fork's ability to proceed with the project has been hampered by recent energy market changes in Ohio.

(8) By Entry issued March 24, 2016, the Board granted Black Fork's request to extend the term of its certificate for two additional years, from January 23, 2017, to January 23, 2019.

(9) R.C. 4906.12 states, in relevant part, that R.C. 4903.02 to 4903.16 and 4903.20 to 4903.23 apply to a proceeding or order of the Board as if the Board were the Public Utilities Commission of Ohio (Commission).

(10) R.C. 4903.10 provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.

(11) Further, Ohio Adm.Code 4906-2-32(A) 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, form, and under the circumstances set forth in R.C. 4903.10.

(12) Ohio Adm.Code 4906-2-32(E) provides that the administrative law judge (ALJ) may issue an order granting rehearing for the limited purpose of affording the Board more time to consider the issues raised in an application for rehearing.

(13) On April 22, 2016, seven persons who have previously been granted intervention in this case jointly filed an application for

rehearing of the Board's March 24, 2016 Entry. The seven intervenors are: Gary J. Biglin, Karel A. Davis, Brett A. Heffner, Margaret Rietschlin, John Warrington, Alan Price, and Catherine Price. The intervenors propound four assignments of error:

(a) The Board did not comply with the legally mandated procedure for amending a certificate.

(b) The Board lacks the legal authority to waive legally mandated procedures for amending a certificate.

(c) Black Fork has not shown good cause to extend its certificate.

(d) The Entry illegally effects Black Fork's evasion of the now-applicable setback requirements of R.C. 4906.20 and R.C. 4906.201.

(14) On May 2, 2016, Black Fork filed a memorandum contra the intervenors' rehearing application. Black Fork's position is that the granted extension of Black Fork's certificate is supported by good cause and also by Board precedent. Black Fork submits that common sense and statutory context support the Board's holding. Black Fork argues that, because extending the certificate's expiration date, as proposed in this case, does not change the facility, relocate turbines, or give rise to new or additional environmental impacts, no amendment of the certificate within the meaning of R.C. 4906.06 or of R.C. 4906.201(B)(2) is entailed. Black Fork argues that, since only extending -- but not amending --- the existing certificate was at issue, it was reasonable for the Board to grant the requested extension without applying new setback requirements that were established subsequent to the initial grant of Black Fork's certificate.

(15) By Entry issued May 16, 2016, the intervenors' application for rehearing was granted, for the limited purpose of affording the Board additional time to consider the rehearing arguments raised by the intervenors, without addressing the merits of any arguments raised.

(16) The Board has reviewed and considered all of the arguments raised in the intervenors' application for rehearing and in Black Fork's memorandum contra. Any argument raised on rehearing

that is not specifically discussed herein has been thoroughly and adequately considered by the Board and is denied.

Intervenor's First Assignment of Error – Procedures for Certificate Amendment Were Not Followed.

(17) As their first assignment of error, the intervenors argue that the March 24, 2016 Entry is unlawful and unreasonable because it purports to amend an express, material term of the January 23, 2012 certificate issued to Black Fork through a procedure other than that which is statutorily and by regulatory rule required, namely, through Black Fork's filing, and the Board's consideration, of an application to amend a certificate. In this case, say the intervenors, Black Fork filed, and the Board cursorily granted, a mere motion to extend the term of Black Fork's certificate. Consequently, say the intervenors, both failed to comply with the statutory and regulatory mandates requiring that any change to a material condition of a certificate must come about only through the certificate holder's filing, and the Board's consideration, of an application to amend a certificate. The intervenors contend that, because no application for an amendment was filed by Black Fork or demanded by the Board, the Board rendered its decision to extend the term of the certificate without first conducting an investigation and/or holding a hearing to establish the continued accuracy and validity of the information the Board initially relied upon in granting Black Fork's certificate back in 2012.

(18) In its memorandum contra, Black Fork submits that the intervenors have cited no authority for their claim that any change in a certificate's terms and conditions is, by statutory definition, an amendment of the certificate. Indeed, says Black Fork, the Board has a long-standing administrative practice, which the company argues should not be overturned here, of extending the terms of certificates by motion, rather than by applications to amend. Citing *In re Application of Buckeye Wind LLC*, Case No. 08-666-EL-BGN (*Buckeye Wind*), Entry on Rehearing at 6 ¶15 (Aug. 27, 2015), Black Fork submits that a certificate amendment application is required only for purposes of obtaining Board approval of proposed changes regarding how – and not when – a certificated facility will be operated and built.

(19) The Board finds the intervenors first assignment of error is unfounded and should be denied. We find no merit in the

intervenors contention that modification of the expiration date constitutes amendment of the certificate. While the five-year time frame for the commencement of construction was listed as among the 80 conditions in the Board's January 23, 2012 Opinion, Order, and Certificate in this case, that directive has historically been included within every Board order and is a function of when construction work on the project is expected to begin. There is no statutory requirement dictating that applicants commence a continuous course of construction by a date certain. Rather, 4906.06 requires that an application shall be filed no more than five years before the planned date of commencement of construction and that the Board may waive this time period for good cause shown. Moreover, as the Board has previously determined, a request to extend the commencement of construction is not an amendment as contemplated under R.C. 4906.06. Importantly, there is no description or definition in R.C. 4906.06 of what activity constitutes an amendment under the statute that requires the filing of an application. There is, however, a description of what amendments require a hearing in R.C. 4906.07 and that provision plainly provides that the General Assembly intended that an amendment involves a proposed change in a facility. As previously noted, Black Fork's request for an extension of the construction of the facility in no way involves a proposed change in the facility or any of its components. Since 1996, the Board's interpretation of the applicable statutes have considered extensions of certificate expiration dates by motion and as not constituting an amendment of the certificate. The Board's long-standing interpretation of the applicable statutes is entitled to considerable weight.

(20) Furthermore, the Board notes that the directive regarding the commencement of construction is similar to several other procedural directives included with other conditions set forth in Black Fork's certificate. For example, Condition 69 provides that Black Fork shall submit a copy of the as-built plans and specifications to Staff within 60 days after commencement of commercial operation unless, for good cause shown, an extension of more time for doing so is obtained from the Board. Condition 71 directs Black Fork to provide Staff information as it becomes known related to the date on which construction will begin, when construction is completed, and the date on which the facility begins commercial operation. Similarly, Condition 70 relates to when Black Fork should commence the construction

of the project, not how it will construct, operate, or maintain the project. Clearly, revisions to these time frames do not equate to an amendment to the certificate.

Intervenor's Second Assignment of Error -- Board Cannot Waive Legally Mandated Procedures for Amending a Certificate.

(21) As their second assignment of error, the intervenors argue that the March 24, 2016 Entry is unlawful and unreasonable because the Board lacks the authority to alter, waive, or otherwise dispense with the statutorily required procedure for amending a certificate. The intervenors say that the language in the Entry indicating "that a request for a certificate extension is not a change in facility design which would trigger an amendment application and, with it, the need for a public hearing" (Entry at 5 ¶11) has no support in the plain language of the statute *pertaining to certificate amendments. The intervenors note that* R.C. 4906.06(E) requires that all requests to amend a certificate be by application and, that any such application be in such form and contain such information as the Board prescribes. Meanwhile, Ohio Adm.Code 4906-3-11(B) requires that applications for amendments to certificates shall be submitted in the same manner as if they were applications for a certificate. According to the intervenors, the Board has impermissibly interpreted the plain language of the statutory provision dealing with whether a hearing is required on an application to amend, as license to dispense with the statutory and regulatory requirement that amendments to existing certificates be sought by the filing of an application. Further, say the intervenors, there is no statutory authority for the Board to dispense with the requirement, in certificate amendment application cases, to conduct an investigation on such applications. The Board's failure to conduct such an investigation in this case, say the intervenors, is an abdication of its statutory duty, under R.C 4906.07, to do so. That statute requires, among other things, that the Board's chairperson shall cause each application filed with the Board to be investigated, with a report of the investigation to be made available at least fifteen days prior to any hearing on the application. Nowhere in the governing statutes or the Board's rules, say the intervenors, is there authority for the Board to dispense with the requirement that it conduct an investigation of an application to amend an existing certificate simply because a full board hearing is not required on the application.

(22) In its memorandum contra, Black Fork points out that the Board has often, over a long legal precedential history, considered extensions of certificate expiration dates by motion, and as not constituting an amendment of the certificate. Black Fork argues that the Board's long-standing interpretation of its enabling statutes is entitled to considerable weight and should not be overturned.

(23) The Board finds the intervenors' second assignment of error to be without merit; therefore, the request for rehearing based on it should be denied. The intervenor's argument relies on the assumption that Black Fork's filing requesting an extension of the term of its certificate is a certificate amendment application. As discussed above, a request for an extension of the term of a certificate is not an amendment to a certificate because it does not fall within the statutory requirements of R.C. Chapter 4906 that necessitate the filing of an amendment application. The Board has not waived or otherwise altered any legally mandated procedures applicable to an amendment of the certificate, because this is not an amendment application. In addition, R.C. 4906.03(B) provides that the Board shall conduct any studies or investigations that it considers necessary or appropriate to carry out its responsibility under this chapter. The Board has previously found that no studies or investigations provided for in R.C. 4906.03(B) are applicable for a request for an extension. *Buckeye Wind,* Entry on Rehearing at 7 ¶18 (Aug. 27, 2015). In addition, Black Fork's request for an extension for the certificate did not propose a change in the location of all or part of the facility and did not create any environmental impact. As Black Fork's motion is the proper procedural mechanism to request an extension for the term of the certificate, there are no statutory duties to be waived.

Intervenor's Third Assignment of Error -- Black Fork Has Failed to Show Good Cause for an Extension.

(24) As their third assignment of error, the intervenors submit that there has been no showing of good cause for granting the requested certificate extension. In the intervenor's view, the passage of time has greatly affected the assumptions underlying the Board's 2012 issuance of the certificate; consequently, a new, updated review of all the same criteria that were considered in reaching that earlier decision is now necessary. The intervenors contend that some of the very factors Black Fork has cited to

support its extension request – such as Black Fork's claim that its ability to proceed immediately with the project has been hampered by recent energy market changes in Ohio – demonstrate a need to explore anew whether the project continues to serve the public interest, convenience, and necessity, and whether it still satisfies the criteria established in R.C. 4906.10(A)(6). By foregoing the certification amendment procedures (which together, entail the submission of an application, then a Board investigation of that application, followed by a Board or Staff report of that investigation), the Board left itself, say the intervenors, without any basis upon which to decide whether good cause exists for granting the extension requested. Consequently, according to the intervenors, the Board reached a decision that is both unreasonable and unlawful.

(25) In its memorandum contra, Black Fork argues that the Board's decision to extend the term of its certificate is supported by good cause and is consistent with prior Board decisions. According to Black Fork, the intervenors' argument against the Board's finding of good cause boils down to their allegation that a Staff investigation, allegedly mandated by statute, failed to occur. Black Fork contends that, because the extension was properly sought by motion and not amendment, no such investigation was required. Nor, indeed, was any such investigation necessary, claims Black Fork, because the Board was aware of circumstances and potential impacts of the facility when the extension request was granted, especially because, at the same time it was considering the motion for extension, the Staff was investigating Black Fork's application to amend its certificate to add eligible turbine models.

(26) The Board concludes that the intervenors' third assignment of error is without merit and should be denied. The grounds supporting Black Fork's motion to extend its certificate, all of which were thoroughly considered and addressed in the Board's March 24, 2016 Entry, were more than adequate to support the Board's decision to extend the term of Black Fork's certificate. Moreover, the Board has often and consistently granted motions to extend certificates for reasons essentially similar to those presented in this case by Black Fork. These grounds include delay shown to have been caused by factors beyond Black Fork's control, including litigation over the validity of its certificate. Also, significant though temporary changes in Ohio's overall

energy market, occurring since the initial issuance of Black Fork's certificate, are among the factors, beyond Black Fork's control, which contributed to a commencement of construction delay and, as such, were relied upon by the Board in granting the extension. However, the Board finds no basis for holding that these temporary market changes provide sufficient grounds for negating or re-litigating the initial grant of certificate, or to otherwise necessitate a complete reexamination of the public interest factors, already established of record in this case, which formed the basis for the initial grant of Black Fork's certificate.

Intervenor's Fourth Assignment of Error -- The Entry Fails to Impose Now-Applicable Setback Requirements

(27) As their fourth assignment of error, the intervenors argue that in its decision to grant the extension, the Board should have, but unlawfully and unreasonably did not impose now-applicable setback requirements of R.C. 4906.20 and R.C. 4906.201, which became effective after the initial issuance of Black Fork's certificate in 2012. The intervenors point out that R.C. 4906.201 was amended to expressly provide that the new statutory setback requirements (established in Amended Substitute House Bill 483) expressly apply to any amendments to existing certificates made after September 15, 2014. The intervenors position is that, because the Board impermissibly allowed Black Fork to extend the five-year time limitation of its certificate without properly applying certificate amendment application procedures, it enabled Black Fork to illegally evade the new setback requirements that the Ohio General Assembly expressly mandated as applicable to certificates amended after September 15, 2014. Moreover, argue the intervenors, the Board's failure to conduct an investigation on Black Fork's motion, or any factual inquiry into the project as it now stands, precluded the Board from making any determination that the project, as amended, is in compliance with the now-applicable setback requirements, thus rendering the Board's March 24, 2016 Entry as unreasonable and unlawful.

(28) In its memorandum contra, Black Fork submits that the intervenors have made no factual or legal showing that the Board erred in extending the certificate without applying the revised setbacks. Black Fork contends that, because the extension of time is not an amendment within the meaning of R.C. 4906.06, there was no basis to apply or analyze the new

setbacks relative to the facility. Indeed, notes Black Fork, the Board has already rejected the intervenors' attempt to apply the revised setbacks in an earlier case involving an application by Black Fork to add two new turbine models as eligible for the project. *In re Black Fork*, Case No. 14-1591-EL-BGA, Order at 7. Further, because the intervenors did not take an appeal on that decision, argues Black Fork, the intervenors are barred by the doctrine of collateral estoppel from raising the same issue yet again in this case.

(29) The Board finds no merit in, and denies rehearing on, the intervenors' fourth assignment of error. Because Black Fork's motion to extend the term of the certificate, as requested, does not change the facility, does not relocate turbines, or provide new or additional environmental impacts, it does not constitute an amendment within the scope of R.C. 4906.06 or R.C. 4906.201(B)(2). Therefore, the Board concludes that the conditions required by the January 23, 2012 Order in this case, including the setback requirements that adhere to the provisions in R.C. 4906.20(B)(2) that were applied to the turbines prior to September 29, 2013, continue to apply to the turbines for this project.

It is, therefore,

ORDERED, That the application for rehearing, jointly filed on April 22, 2016, by the seven intervenors, is denied. It is, further,

ORDERED, That any argument raised on rehearing that is not specifically discussed in this Entry on Rehearing has been thoroughly and adequately considered by the Board and is hereby expressly denied. It is, further,

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

THE OHIO POWER SITING BOARD

Asim Z. Haque, Chairman
Public Utilities Commission of Ohio

David Goodman, Board Member
and Director of the Ohio
Development Services Agency

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

Richard Hodges, Board Member
and Director of the Ohio
Department of Health

Craig Butler, Board Member
and Director of the Ohio
Environmental Protection Agency

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

Jeffrey J. Lechak, Board Member
and Public Member

DEF/dah

Entered in the Journal

FEB 02 2017

Barcy F. McNeal
Secretary