

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of )	
<b>REPUBLIC WIND, LLC</b> for a Certificate of )	
Environmental Compatibility and Public Need )	
for a Wind-Powered Electric Generating )	Case No. 17-2295-EL-BGN
Facility in Seneca and Sandusky Counties, )	
Ohio )	

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**REPUBLIC WIND, LLC’S MEMORANDUM CONTRA  
SENECA COUNTY RESIDENTS’ PETITION TO INTERVENE**

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**I. INTRODUCTION**

Pursuant to Ohio Administrative Code (“OAC”) Rule 4906-2-27(B)(1), Republic Wind, LLC (“Republic”) respectfully submits this Memorandum Contra (“Memo Contra”) the Petition to Intervene (“Petition”) of the Seneca County Residents (“Residents”).<sup>1</sup> Republic opposes intervention of those Residents whose properties are not located within the project area. A large number of the Residents who seek to intervene in this proceeding do not live near the proposed turbine locations, and will not experience any appreciable impacts due to the proposed project. As such, these particular Residents have no vested interest in this proceeding. Further, Residents whose properties are not located within the project area cannot attempt to assert generalized concerns or theoretical claims on the behalf of other property owners. Only those property owners who will experience legitimate impacts from the project have standing to raise these concerns in this proceeding.

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<sup>1</sup> Seneca County residents listed in the Petition are: Chris & Danielle Zeman, Carol Burkholder, Duane & Deb Hay, Gary & Dawn Heopf, David Hoover, Jeffery Hoover, Greg & Laura Jess, Mike & Tiffany Kessler, Doug & Jennifer Myers, Kevin & Jennifer Oney, Duane Robinson, and John & Lisa Wilson.

In addition, to the extent the Ohio Power Siting Board (“Board”) allows any of the Residents to intervene, the Board should limit the scope of intervention of the Residents. The Board should not allow the Residents to present any evidence or arguments regarding alleged increases in the cost of electricity from the operation of the proposed facility. Issues regarding the price of electricity are outside of the purview of the Board. *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company*, Case No. 06-309-EL-BTX, Entry ¶¶8-9 (Nov. 20, 2006) (denying intervention because the petitioner sought to raise issues regarding price of electric service, which is “within the [Public Utilities Commission of Ohio’s] purview of economic regulation.”). Because the Board does not consider the price of electricity when deciding whether to grant or deny an application for a certificate, *See* R.C. 4906.10, issues regarding the price of electricity are irrelevant. The Board should preclude any evidence on such issues.

## **II. BACKGROUND**

On February 2, 2018, Republic filed its Application for a Certificate of Environmental Compatibility and Public Need for a wind-powered electric generating facility in Seneca and Sandusky Counties, Ohio (“Application”). On June 19, 2018, the Residents filed their Petition. On June 22, 2018, Rita and Jerry Cantu and Tom and Lori Scheele sought to intervene in this proceeding, claiming that they had the same interest as the Residents who filed the Petition on June 19, 2018. For purposes of this Memo Contra, Republic will respond to all the Seneca County landowner petitioners, including the Cantus and the Scheeles, and will collectively refer to all these petitioners as the “Residents.”

### **III. LAW AND ARGUMENT**

#### **A. Standard of Review**

The Petition is governed by OAC Rule 4906-2-12. Under that rule, the Residents must show good cause for their intervention. OAC Rule 4906-2-12(B). Whether good cause exists depends upon a discretionary determination of: (a) the nature and extent of the Residents' interest; (b) the extent to which the Residents' interest is represented by existing parties; (c) the Residents' potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and (d) whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party. *Id.*

#### **B. A large number of the Residents' have no interest in this proceeding because they do not live in the project area.**

In their Petition, the Residents state that they "are longtime residents of Seneca County", and that they "live in Seneca County." Petition at pg. 2. However, blanket assertions regarding living in the same county as the proposed project area are not sufficient to establish a legitimate interest in this proceeding. *See In the Matter of the Application Harrison Power, LLC*, Case No. 17-1189-BGN, Entry ¶21(March 30, 2018) (denying intervention because "living in the county of a proposed project is not enough on its own to warrant intervention."); *In the Matter of the Application of South Field Energy, LLC*, 15-1716-EL-BGN, Opinion, Order and Certificate at pg. 5 (September 22, 2016) (denying intervention by resident that lived in the same county of the proposed project because he failed to claim how he specifically would be impacted by the project); and *In the Matter of the Application of Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry ¶13 (March 2, 2010) (denying intervention because "[i]t is not enough for a person seeking to intervene...to merely state that he or she resides in the county wherein the project under consideration is proposed to be sited.").

Each one of the Residents must demonstrate how their particular interest will be impacted by the proposed facility. A number of the Residents cannot meet this requirement because they do not live in the project area.<sup>2</sup> The following Residents do not live in the project area:

- Jennifer Myers
- Douglas Myers
- Danielle Zeman
- Christopher Zeman
- Lisa Wilson
- John Wilson
- Duane Robinson
- Carol Burkholder
- David Hoover
- Jeffery Hoover
- Rita Owen

Attachment A to the Memo Contra is a map of the project which demonstrates that the above-listed Residents do not live in the project area.

Further, a number of these “outside the project area” Residents live a substantial distance away from any of the proposed turbine locations. Carol Burkholder lives approximately two miles from any proposed turbine location. The Wilsons and Duane Robinson live over one mile from any proposed turbine, while Ms. Owen lives approximately one mile from any proposed turbine. Mr. and Ms. Myers, Mr. and Ms. Zeman, and Jeffery Hoover live over half a mile from any proposed turbine location. David Hoover lives almost a half a mile from any proposed turbine location. These Residents will not experience appreciable impacts because they live far away from any potential turbine locations. As such, these “outside the project area” Residents do not have any vested interest in this proceeding.

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<sup>2</sup> Although Republic is not opposing intervention of all the Residents in the Memo Contra, Republic does not agree that any of the Residents will be negatively impacted in any manner by the project. Further, Republic does not agree with the arguments set forth in the Petition regarding alleged impacts. Republic reserves the right to conduct discovery regarding any alleged impacts raised by the Residents, and reserves the right to present arguments regarding any of the alleged concerns raised by any Resident who is allowed to intervene in this proceeding.

Residents who live outside the project area should not be allowed to intervene for a generalized purpose of addressing issues such as noise and shadow flicker. Residents cannot represent the interest of other land owners, and they can only intervene to protect their specific interest. *In the Matter of the Application of Black Fork Wind Energy, LLC*, 10-2865-EL-BGN, Entry ¶12 (Aug. 30, 2011) (allowing Ms. Davis to intervene to the extent her property was within the boundaries of the proposed project but not to assert general objections to energy policy or to represent other affected landowners). It is apparent from their Petition that the Residents intend to present arguments regarding noise and shadow flicker impacts to landowners who have not sought intervention in this proceeding. Petition at pgs. 6 and 10. None of the Residents should be allowed to raise generalized claims regarding potential impacts without showing that their particular property is affected. Further, because the above-listed Residents do not live in the project area and do not live near any proposed turbine sites, they should not be allowed to intervene to raise theoretical concerns that will not actually impact their interest.

**C. The interests of Residents who live outside the project area will be adequately represented by other parties to this proceeding.**

The Board should deny the Petition with respect to those Residents who live outside the project area because they do not have real or relevant interests in this proceeding. *See In the Matter of the Application of South Field Energy, LLC*, 15-1716-EL-BGN, Opinion, Order, and Certificate at pgs. 4-5 (September 22, 2016); *In the Matter of the Application of Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry ¶13 (March 2, 2010). Assuming, *arguendo*, that the Board believes these Residents have any interests in this proceeding (which they do not), those alleged interests would be adequately addressed by other parties to this proceeding. The Staff will perform a thorough investigation of the Application to determine the potential environmental impacts of the project. Staff will also issue a report with proposed conditions

addressing any potential impacts. The Staff report and conditions will presumably address the alleged issues raised in the Residents' Petition.

Further, the Board of Trustees for Adams, Scipio, Reed, and Pleasant Townships (Seneca County) filed notices to intervene in this proceeding. The Board of Trustees for York Township (Sandusky County) is seeking to intervene, as well. Each local government presumably will address the interests of its local residents, which includes the Residents. Moreover, those Residents that live within the project area (and their counsel and purported "experts") will be able to adequately address the alleged concerns raised in the Petition. In these circumstances, petitions/motions to intervene have been denied in prior cases. See, e.g., *In the Matter of the Application of Ohio Power Company*, No. 14-1693-EL-RDR, Entry ¶20 (Feb. 9, 2005) (denying motion to intervene because, among other reasons, the movant did not have a unique interest that was not adequately represented by other parties); *In the Matter of the Application of The Cincinnati Gas & Electric Company*, No. 04-1820-EL-ATA, Finding and Order ¶20 (Feb. 9, 2005) (denying motions to intervene because intervention was not necessary to consider movants' concerns); and *In the Matter of the Application of Ohio Power Company*, No. 93-01-EL-EFC, Entry ¶6 (March 11, 1993) (denying motion to intervene of residential customers because their interest was adequately represented by the Office of the Ohio Consumers Counsel).<sup>3</sup>

**D. The Residents who do not live in the project area will not contribute to a just and expeditious resolution of the issues involved in the proceeding.**

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<sup>3</sup> These cases address motions to intervene in Public Utilities of Commission of Ohio ("Commission") cases, which involve OAC Rule 4901-1-11. Under OAC Rule 4901-1-11(A)(2) the Commission may deny intervention if the movants "interest is adequately represented by existing parties." When determining whether to grant intervention, the Commission will consider "the extent to which the person's interest is represented by existing parties." OAC Rule 4901-1-11(B)(5). Because of the similarity between the Board's and the Commission's intervention standards, the Board should look to Commission cases for guidance.

The Residents who do not live in the project area have no actual interest that will be affected by the proposed facility. They will not provide any relevant evidence or information regarding the proposed facility. Alleged concerns regarding the proposed facility should be raised by those parties who have a vested interest in the proceeding, not individuals who have generalized concerns or theoretical objections to the proposed project. Allowing the Residents who do not live in the project area to intervene in this case will result in irrelevant, duplicative evidence, which will only serve to delay this proceeding.

**E. The Residents who do not live in the project area should not be allowed to intervene because they will unduly delay the proceeding and unjustly prejudice Republic.**

As previously stated, the Residents who do not live in the project area have no actual interest that will be affected by the proposed facility. However, the Petition clearly demonstrates that these various individuals who have no interest in the proceeding will likely be litigating various aspects of Republic's Application. This will cause unnecessary delay and prejudice to Republic because it will incur more costs in discovery, negotiations, and preparation for hearing. Considering that staff, local governments, and/or other Residents can adequately address the alleged concerns of presented in the Petition, the Board should deny the intervention of those Residents who do not live in the project area.

**F. The Board should limit the scope of intervention of all the Residents to preclude any evidence or arguments regarding the price of electricity.**

To the extent the Board allows any of the Residents to intervene, the Board should limit the scope of intervention of all the Residents regarding electricity prices. In their Petition, the Residents claim that "the cost of the electricity generated by the proposed Project will be higher than competitively-bid electricity sold to the PJM system from other generators..." Petition at

pg. 10. This claim is baseless and false. Further, the cost of electricity generated from the proposed facility is irrelevant to this proceeding.

R.C. 4906.10 establishes the specific criteria the Board considers when deciding whether to grant or deny an application for a certificate. The potential cost of electricity is not part of the Board's consideration under R.C. 4906.10, and has no bearing on the potential environmental impacts of the proposed facility. *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company*, Case No. 06-309-EL-BTX, Entry ¶¶8-9 (Nov. 20, 2006) (“*AEP-Ohio Case*”). In the *AEP-Ohio Case*, Industrial Energy Users of Ohio (“IEU-Ohio”) sought to intervene in a Board case that involved AEP-Ohio's potential construction of a transmission line. IEU-Ohio stated that its interest in the proceeding related to the price of AEP-Ohio's electric services as a result of the potential project. The Board denied IEU-Ohio's intervention because it was clear that IEU-Ohio was concerned with AEP-Ohio's cost of service, and not the environmental impacts of the transmission line or the physical need for the line. *Id.* The Board determined that “[t]he price a customer must pay for electric service is within [Public Utilities Commission of Ohio's] purview of economic regulation,” and not within the purview of the Board. *Id.* at ¶18.

The Residents are raising the same “cost of service” arguments that IEU-Ohio raised in the *AEP-Ohio Case*. Because the Board does not consider the price of electricity when deciding to grant or deny an application for a certificate, *See* R.C. 4906.10, issues regarding the price of electricity are irrelevant. The Board should preclude any evidence on such issues.

#### **IV. CONCLUSION**

For the foregoing reasons, the Board should deny intervention of the following Residents:

- Jennifer Myers
- Duane Robinson



- Douglas Myers
- Danielle Zeman
- Christopher Zeman
- Lisa Wilson
- John Wilson
- Carol Burkholder
- David Hoover
- Jeffery Hoover
- Rita Owen

Further, to the extent the Board allows any of the Residents to intervene, the Board should limit the scope of intervention of the Residents regarding electricity prices. The Board should not allow the Residents to present any evidence or arguments regarding alleged increases in the cost of electricity from the operation of the proposed facility.

Respectfully submitted on behalf of  
REPUBLIC WIND, LLC




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### **CERTIFICATE OF SERVICE**

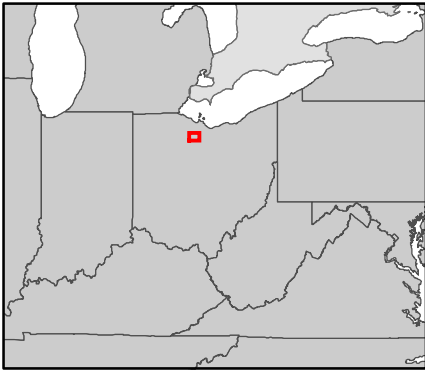
The undersigned hereby certifies that a copy of the foregoing Memo Contra Petition to Intervene has been served upon the following parties listed below by electronic mail, this 3rd day of July 2018.



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Devin D. Parram

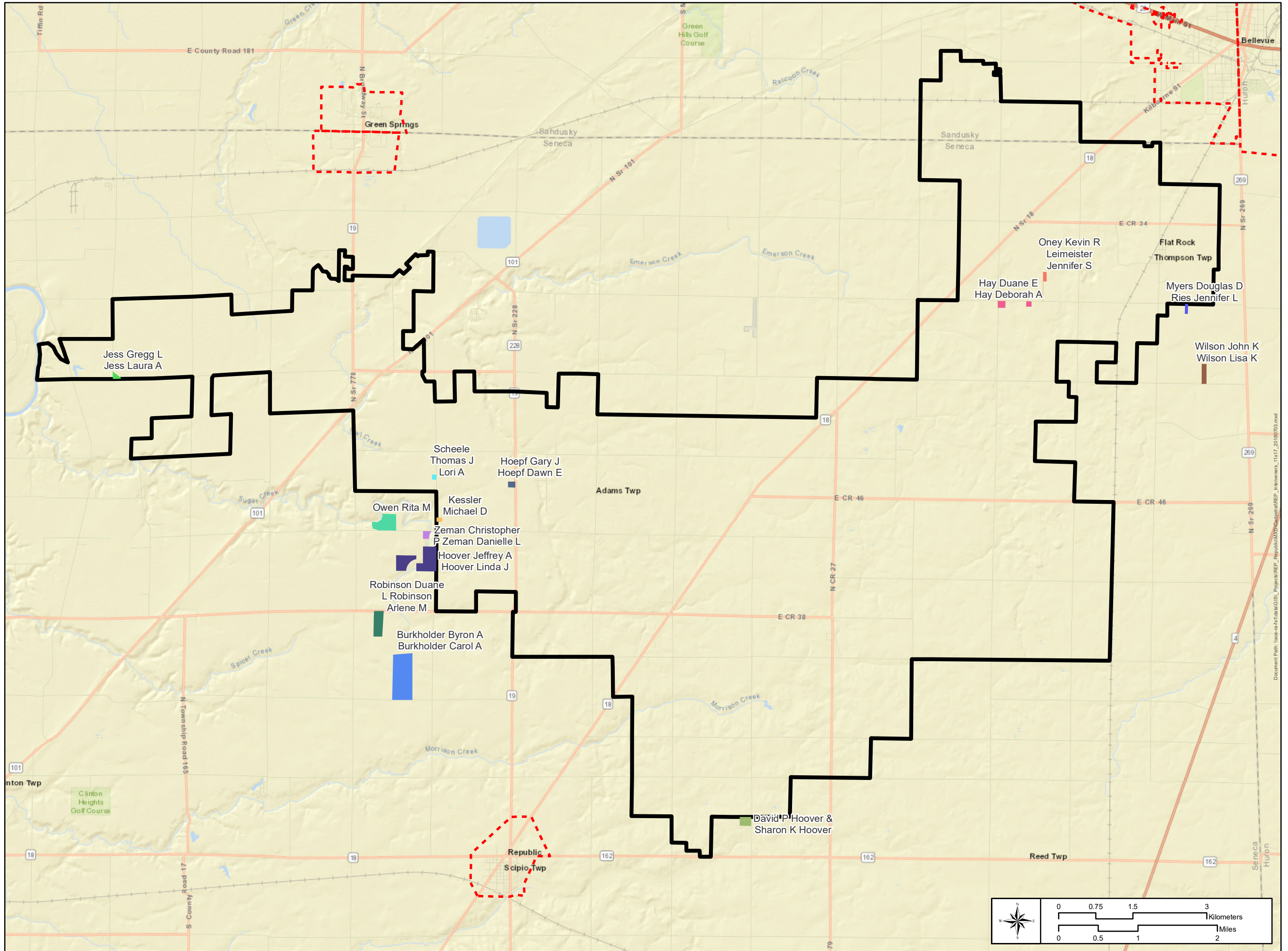
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## Republic Wind: Intervenors

- Burkholder Byron A  
Burkholder Carol A
- David P Hoover & Sharon  
K Hoover
- Hay Duane E Hay  
Deborah A
- Hoepf Gary J Hoepf  
Dawn E
- Hoover Jeffrey A Hoover  
Linda J
- Jess Gregg L Jess Laura  
A
- Kessler Michael D
- Myers Douglas D Ries  
Jennifer L
- Oney Kevin R Leimeister  
Jennifer S
- Owen Rita M
- Robinson Duane L  
Robinson Arlene M
- Scheele Thomas J Lori A
- Wilson John K Wilson  
Lisa K
- Zeman Christopher P  
Zeman Danielle L
- Project Boundary
- City/Town

Date: 7/3/2018 Author: ABC CONFIDENTIAL  
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Summary: Memorandum Republic Wind's Memo Contra Residents' Petition to Intervene electronically filed by Mr. Devin D. Parram on behalf of Republic Wind