

**BEFORE
THE OHIO POWER SITING BOARD**

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

**REPUBLIC WIND, LLC’S MEMORANDUM CONTRA MOTION FOR
CONTINUANCE OF THE ADJUDICATORY HEARING**

I. INTRODUCTION

Republic Wind, LLC (“Republic”) understands that vacation and personal commitments sometimes conflict with hearing schedules. However, a delay in the adjudicatory hearing could negatively impact Republic’s project schedule, which may have an adverse impact on the viability of the project. Republic is already operating under an aggressive project construction timeline with the current procedural schedule. If the Local Residents’ motion for continuance is granted, the project’s proposed project schedule will be pushed even further off track.

Instead of delaying the start of the adjudicatory hearing, Republic proposes starting the hearing earlier than June 10, 2019. Republic offered to start the hearing on June 3, 2019, but counsel for Local Residents rejected this offer. Regardless, starting the hearing before June 10 would address counsel for Local Residents’ scheduling conflict and avoid further impacts to Republic’s anticipated project schedule. To properly coordinate a new procedural schedule, Republic requests that the administrative law judge (“ALJ”) hold a scheduling conference with the parties to select a hearing start date **that is before June 10, 2019**. This would be a more efficient and equitable way to address the parties’ scheduling concerns than postponing the hearing date to accommodate only counsel for the Local Residents’ schedule.

II. ARGUMENT

Republic cannot afford additional delays in this case. According to the projected project schedule in its Amended Application, Republic anticipated issuance of a certificate by the second or third quarter of 2019. In addition, Republic anticipated beginning construction in the first or second quarter of 2020. In its December 26, 2018 motion for procedural schedule, Republic proposed that the hearing be set 90 days after the filing of the Amended Application to accommodate its projected schedule. If Republic's proposal was accepted, it would have established a hearing date of March 26, 2019. However, to address staff's wishes for additional time to review the Amendment Application, the ALJ set the hearing for June 10, 2019 – **76 days after the hearing date proposed by Republic.**

With all due respect to the ALJ, the June 10, 2019 is not ideal from Republic's perspective; however, Republic has to live with this date at this stage. But postponing the hearing even later is completely unworkable for Republic. Additional delays to the hearing will negatively impact the overall project schedule and potentially harm Republic's interest. In addition, the time between the filing of the staff report (April 19, 2019) and the adjudicatory hearing (June 10, 2019) is already long in comparison to other OPSB projects. Moving the hearing to June 24, 2019 will create a gap of over two months between the filing of the staff report and the adjudicatory hearing.

In addition, Republic and its counsel already modified their schedule to accommodate the June 10 hearing start date. For example, one of Republic's attorneys canceled his family vacation to accommodate the June 10 hearing date. It would be unfair to Republic and its counsel to continue the hearing to accommodate the Local Residents' schedule without considering the impacts on the parties and the project schedule.

Another concern is the timing of the Local Residents' request. If the Local Residents would have raised this issue immediately after the issuance of the February 15, 2019 scheduling entry, the parties could have coordinated with the ALJ to determine a hearing date that would accommodate all parties. But counsel for Local Residents did not contact Republic regarding the alleged scheduling conflict until almost two weeks after the issuance of the February 15, 2019 scheduling entry. At that point, Republic and its counsel already modified its schedule to accommodate the June 10 hearing start date.

In addition, Republic has already published notification of the hearing dates in the local papers. If the adjudicatory hearing date is moved, not only will Republic have to republish notice (which results in additional publication costs), but this may also result in confusion for the public.

Counsel for the Local Residents indicates that a previously scheduled travel commitment is the why the hearing should be postponed. It is not clear from their motion which one of the Local Residents attorneys will be on vacation the week of June 10. What is clear is that there are plenty attorneys at Benesch, Friedlander, Coplan, & Aronoff LLP ("Benesch") who can assist during the hearing. Benesch is large law firm with plenty of experienced litigators. One of the benefits of hiring a large law firm is that numerous attorneys are available to assist on matters. There is no need to postpone the entire hearing because one attorney has a conflict. The Local Residents could still participate in the adjudicatory hearing if one of their attorneys is unavailable.

The Local Residents claim that the continuance should be granted because Republic previously sought and received a suspension of the procedural schedule. The fact that Republic obtained a suspension of the project schedule is irrelevant. First, as the applicant, Republic had

the right under the OPSB's rules to amend its application. This amended application benefits surrounding landowners by reducing the size of the project area and reducing the number of turbines. Second, a suspension of the procedural schedule allowed parties to focus their time and energy on analyzing the amended application. This benefited all parties to the case including the Local Residents. Third, while a suspension of the procedural schedule did not prejudice the Local Residents, a delay of the hearing will prejudice Republic by negatively impacting the project schedule.

III. CONCLUSION

Republic requests that the Board deny the Local Residents' motion to continue the procedural schedule. A more appropriate path forward is scheduling a conference call with the ALJ to select an **earlier** hearing date. This would help avoid personal scheduling conflicts, provide Staff time to complete its investigation, and avoid the negative impact of delaying the project.

Respectfully submitted on behalf of
REPUBLIC WIND, LLC



Sally W. Bloomfield (0022038)

Dylan F. Borchers (0090690)

Devin D. Parram (0082507)

BRICKER & ECKLER LLP

100 South Third Street

Columbus, OH 43215-4291

Telephone: (614) 227-2368; 227-4854; 227-8813

Facsimile: (614) 227-2390

E-Mail: sbloomfield@bricker.com

dborchers@bricker.com

dparram@bricker.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following parties listed below by electronic mail, this 4th day of March 2019.



Devin D. Parram

jstock@beneschlaw.com
cendsley@ofbf.org
lcurtis@ofbf.org
amilam@ofbf.org
jclark@senecapros.org
mleppla@theoec.org
tdougherty@theoec.org
ctavenor@theoec.org
jvankley@vankleywalker.com
cwalker@vankleywalker.com
william.wright@ohioattorneygeneral.gov
jodi.bair@ohioattorneygeneral.gov
mjsettineri@vorys.com
glpetrucci@vorys.com
mwtaylor@vorys.com

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Summary: Text Republic Wind, LLC's Memorandum Contra Motion for Continuance of Adjudicatory Hearing electronically filed by Teresa Orahod on behalf of Devin D. Parram