

BEFORE  
THE OHIO POWER SITING BOARD

In the Matter of the Application of )  
Firelands Wind, LLC for a Certificate )  
of Environmental Compatibility and )  
Public Need to Construct a Wind-Powered )  
Electric Generation Facility in Huron and )  
Erie Counties, Ohio )

Case No. 18-1607-EL-BGN

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**PETITION FOR LEAVE TO INTERVENE OF  
THE BLACK SWAMP BIRD OBSERVATORY**

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Pursuant to R.C. 4906.08(A)(3) and Ohio Administrative Code (“OAC”) § 4906-2-12, the Black Swamp Bird Observatory (BSBO) submits this petition to the Ohio Power Siting Board (“OPSB” or “Board”) for leave to intervene in the above captioned proceeding. BSBO is an Ohio nonprofit corporation whose address is 13551 West State Route 2, Oak Harbor, OH 43449. A memorandum in support of this motion is provided below.

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**MEMORANDUM IN SUPPORT OF  
PETITION FOR LEAVE TO INTERVENE**

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OAC 4906-2-12(B) provides that the Board or administrative law judge may consider the following when considering petitions to intervene:

- (a) The nature and extent of the person’s interest;
- (b) The extent to which the person’s interest is represented by existing parties;
- (c) The person’s 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.

For the following reasons, there is good cause under these criteria to grant intervenor status to BSBO in these proceedings.

**Nature and extent of interest:**

Wind turbines kill birds and bats. For this reason, any birds or bats that fly into or through the air column of a wind project's footprint may die. As explained below, the loss of these birds and bats injures not only the neighbors whose properties abut the wind project, but also harms other citizens in nearby areas who are deprived of the opportunity to watch and enjoy the presence of these creatures of public trust. As explained below, BSBO's members will be injured by a wind project that has inadequately evaluated risk and may kill birds and bats in Huron County and Erie County.

BSBO was formed for the specific purpose of fostering the appreciation, enjoyment, and conservation of birds and their habitats through research, education, and outreach. Its members also have a strong interest in bats. BSBO has approximately 3000 members, and about 60-70 of them reside in Erie County and Huron County, Ohio. BSBO's members are active birdwatchers (a/k/a "birders") and conservationists in Huron County and Erie County and nearby areas of northwest Ohio that are located squarely within the migratory pathway of birds flying through these counties on their way to and from breeding areas in the northern United States and Canada and wintering areas of Central and South America. This migratory pathway is one of the preeminent and most important migration routes for birds in North America. For that reason, the Lake Erie shoreline in northwest Ohio is famed as one of the best migration stopover habitats and birding areas in North America, especially during spring migration. Therefore, BSBO has a vital interest in protecting the safety of the birds that fly through this migratory corridor, as well as the birds and bats residing in these counties, for the enjoyment of its members.

BSBO organizes and hosts the Biggest Week In American Birding, a 10-day birding festival timed to coincide with the peak of spring songbird migration in early May. This event raises awareness and appreciation for birds and habitat conservation in a major way. The festival also markets the area to birders around the world. For example, more than 80,000 birders from 48 states and 22 countries visited the area in 2019 just to watch birds. BSBO stands for wise and scientific bird and bat conservation, and the placement of wind turbines with an inadequate determination of scientific risk to these public trust resources is contrary to BSBO's interests. This is an important reason why the protection of birds in this migratory route is of vital importance to BSBO and its members.

If the Board grants BSBO's Petition to Intervene, BSBO would provide scientific information about, *inter alia*, the following concerns with the Applicant's application:

- Inadequate and inappropriate study to assess nocturnal migration utilizing the air column habitat of Huron County and Erie County. The studies of the Applicant's consultant do not support the Applicant's conclusions about this project.
- Inadequate study of bats in the project area, including an endangered species (Indiana bat) that is present in the project area. The studies of the Applicant's consultant do not support the Applicant's conclusions about this project.
- Inadequate study to assess diurnal raptor migration in study area. The studies of the Applicant's consultant do not support the Applicant's conclusions about this project.
- Inadequate study to assess bald eagle populations and their use of the project area. The studies of the Applicant's consultant do not support the Applicant's conclusions about this project.
- The Applicant's study design for evaluating bird and bat populations failed to cover the entire project area due to timing and being road based. The studies of the Applicant's consultant do not support the Applicant's conclusions about this project.

- The Applicant's field studies do not support its conclusion of no significant impact on wildlife resources (birds and bats) by being too old to be meaningful or inadequately done.
- The Applicant relies on avian and bat field studies by the wind industry standards that fail to adequately address the risk or miss-represent ecological fact of these public natural resources in the realm of scientific accepted standards.

These concerns fall squarely within BSBO's expertise to address and are of vital interest to BSBO and its members.

**Extent to which interests are represented by existing parties and potential contribution to the just and expeditious resolution of these proceedings:**

BSBO has a unique expertise in birds, bats, and their habitats that no other party to this proceeding can match, and its testimony will be useful to the Board. BSBO was founded in 1992 by a group of biologists studying bird migration in the area. Having collected several years of data, they recognized the need for an organization to help disseminate their research findings. BSBO's long-term research projects have helped to develop a greater understanding of bird migration and the habitat needs of songbirds, raptors, and other birds. BSBO data has been used to assist both private and governmental land owners in better managing their properties for migratory bird species.

BSBO's education and outreach programs have received national accolades. Its strong focus on youth education is highlighted by its Wetland Investigation Network program, which offers students grades K-12 a day long exploration of the entire marsh ecosystem. Its highly acclaimed Ohio Young Birders Club for ages 12-18 encourages, educates, and empowers our youth conservation leaders. This club also serves as a model program for many other state-wide youth birding clubs.

As illustrated by these activities, BSBO is staffed by highly acclaimed biologists whose scientific expertise will be beneficial in this proceeding. This expertise will apply not only to the effects of the wind project on birds and bats residing in Erie County and Huron County, but on its effects on migratory birds that travel through the wind project area.

The wind project's anticipated effects on bird life in this migratory pathway are of great concern to BSBO's members. However, protecting bird life from these potential impacts should also be a concern to the Board as an agency of the State of Ohio, for both conservationist and economic reasons. The State has a responsibility to protect its public trust resources and the wise use of these resources will economically benefit the State and its citizens, as highlighted by the fact that since birders spend more than 40 million dollars in this area during spring migration from mid-April to mid-May based on data gathered in 2019. Recognizing the importance of this natural resource, BSBO has developed the Birds and Business Alliance program to raise awareness among local businesses of birding tourism in the area, and provide business owners with valuable information on providing quality services for the birding audience. The Alliance is also an important component of BSBO's Conservation Business Plan, creating a network that allows BSBO to communicate birding and conservation information to Alliance members. The benefit to Alliance members is the promotion of their business directly to the world-wide birding audience.

Given the importance of this issue to the State, OPSB should grant BSBO's intervention to ensure that it hears the bird and bat conservation information that BSBO can provide.

**Potential for undue delay or unjust prejudice:**

Granting intervenor status to BSBO will not unduly delay the proceedings or cause unjust prejudice to the Applicant. BSBO is filing this petition within the deadline set by the hearing

officer and BSBO will comply with whatever case management schedule that the Board establishes. BSBO participation in this case will be limited, because it plans to actively participate only with regard to issues affecting birds and bats. Moreover, BSBO will be represented in these proceedings by counsel experienced in practice before the Board.

For the foregoing reasons, Petitioner BSBO requests the Board to grant this Petition for Leave to Intervene.

Respectfully submitted,

/s/ Jack A. Van Kley  
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(Counsel willing to accept service by email)

### **CERTIFICATE OF SERVICE**

On February 6, 2020, the docketing division's e-filing system will electronically serve notice of the filing of this document on the persons listed below. The Local Residents' counsel also served a courtesy copy of this filing on these counsel by electronic mail on the same date.

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**Case No(s). 18-1607-EL-BGN**

Summary: Petition to Intervene electronically filed by Mr. Jack A Van Kley on behalf of Black Swamp Bird Observatory