BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of Republic Wind, LLC, for a Certificate to Site Wind Powered Electric Generating Facilities in Seneca and Sandusky Counties, Ohio	))))	Case No. 17-2295-EL-BGN

REPLY OF THE LOCAL RESIDENT INTERVENORS IN SUPPORT OF THEIR MOTION TO REOPEN PROCEEDINGS FOR ADMISSION OF NEWLY-DISCOVERED EVIDENCE

Pursuant to Ohio. Admin. Code (OAC) 4906-2-31(B), the Local Resident Intervenors submit this reply in support of their motion that the Ohio Power Siting Board ("OPSB" or "Board") reopen the hearing record to admit evidence about two new Bald Eagle nests that have been built in or near the Republic Wind Project Area and the death of a Bald Eagle struck by a wind turbine blade near Bowling Green, Ohio.[1]

From reading Republic Wind's Post-Hearing Reply Brief in this case (at Pages 56-58), a person would conclude that the company believes its turbines pose very little risk of eagle mortalities based on mortality surveys it claims were accurate (but which were not) that supposedly detected few deaths. For example, Republic Wind touted (at 57) that the state of New York has 1000 turbines but has discovered only one fatality since 2000. Republic Wind also recounted (at 57) surveys at other wind farms in other states at which few or no eagle

[1] This reply is filed on behalf of Local Resident Intervenors Joseph and Diane Anderson, Denise Bell, Aaron and Carrie Boes, Richard and Linda Bollenbacher, Rob and Mary Chappell, Thomas and Kathleen Fries, Leslie Hackenburg, Jeffrey and DeeAnne Hamilton, Mary and Allen Hassellbach, Duane and Deb Hay, Ethan and Crystal Hoepf, Gary and Dawn Hoepf, Jason and Michelle Hoepf, Taylor Hoepf, David P. Hoover, Jeffrey A. Hoover, Kenneth and Debra Hossler, Greg and Laura Jess, Leonard and Beverly Kubitz, Gary and Michelle Miller, Steven and Kelley Miller, Kim Mitchell, Charles and Linda Morsher, Patricia Motry, Steven and Linda Mulligan, Doug and Jennifer Myers, Linda Niederkohr, Kevin and Jennifer Oney, Nicholas and Michelle Reiter, Tom and Lori Scheele, Elaine Schultz, James and Victoria Seliga, Eugene & JoAnn Smith, James and Elaine Steinmetz, Herman and Patricia Studer, Christine Vogt, Mark Weber and Cindra Riley, Charles and Rhonda Weyer, Ann Wright, and Chris and Danielle Zeman.

fatalities were recorded as support for its view that turbines pose a low risk to eagles. Republic Wind's wildlife expert, Paul Kerlinger, represented that he found no dead eagles in his survey on a Michigan wind farm. Transcript Vol. III, Page 653, Lines 13-18. Now eyewitnesses have observed the gruesome death of a Bald Eagle at a turbine array of only four turbines in a county adjacent to Seneca County where Republic Wind seeks to site its project. Whereas Republic Wind has sought to convey the impression that eagle mortalities are a non-issue at wind projects, this incident shows otherwise.

Having based its argument about low eagle risk on anecdotal testimony of eagle mortalities at other wind projects in other states, Republic Wind cannot credibly contend that a recent eagle mortality in an Ohio turbine array of only four turbines is irrelevant.

Nor does an ongoing investigation by the U.S. Fish and Wildlife Service (U.S.FWS) about this incident have any bearing on relevance. Two individuals, one of whom is identified by name in the news article, saw the eagle die as it tumbled to the ground upon being struck by the turbine blade and observed its severed wing floating to the ground. No U.S.FWS investigation is necessary to diagnose the cause of this bird's death.[2]

OAC 4906-2-31(B) requires a motion to admit newly discovered evidence to "specifically describe the nature and purpose of the requested reopening of such evidence." The Local Residents have provided the required information. The newspaper article attached to the motion describes the nature of the information in detail. The motion (at 2) identified the purpose of this evidence as being "pertinent to the Republic Wind Project's threats to Bald Eagles."

[2] Republic Wind notes that the copy of the news article attached to the Local Residents' motion was missing a quote from a U.S.FWS representative about its ongoing investigation. This inadvertently occurred in the conversion of the online article to pdf form, which eliminated a line of text at a page break. Apparently, the same problem inadvertently occurred in Republic Wind's conversion of the article to pdf form, since its copy of the article omitted the article's photograph of the eagle's severed wing and another photograph of the rest of the eagle's carcass.

Given Republic Wind's own reliance on testimony about eagle kill information from other wind projects, no additional elaboration about the purpose of the Bowling Green eagle kill is necessary. The purpose of this evidence is so obvious that it needs no such introduction.

OAC 4906-2-31(B) does not require the motion to identify the witnesses or other means by which the Local Residents will sponsor the new evidence. Currently, the Local Residents plan to produce a witness to sponsor this information, but they also would be willing to consider a stipulation to admit evidence about the incident, with or without introducing the news article into evidence.

The purpose of the evidence about the two new eagle nests is equally obvious. As with the evidence of the eagle kill in Bowling Green, the Residents' motion (at 2) identified the purpose of the evidence about the new eagle nests as being "pertinent to the Republic Wind Project's threats to Bald Eagles." A dissertation is hardly necessary to further explain the evidence's purpose, as the testimony and post-hearing briefs are amply populated with discussions about whether nesting eagles will collide with turbines located near their nests. The importance of current eagle nest information is illustrated by the fact that Republic Wind is continuing to collect information about eagle nests in the Project Area after the hearing. This spring, a Republic Wind consultant used an airplane to look for and monitor eagle nests in the Project Area, at one point flying so low over the Weller Nest that it scared the nesting eagles off the nest. Currently, a Republic Wind wildlife consultant is watching the newly discovered N&F Wildlife Nest for hours at a time. Obviously, Republic Wind believes new information about eagle nests (including both new and previously existing nests) in the Project Area is important. The Board should recognize its importance, too, and admit the information.

During the hearing, Republic Wind project manager Dalton Carr testified that the only eagle nest known to be inside the Project Area at that time, the Weller nest, was farther than the inter-nest buffer zone from turbines proposed by the U.S.FWS. Transcript, Vol. I, Page 42, Lines 4-11. Republic Wind's Post-Hearing Reply Brief (at 56, n. 27) identifies this inter-nest distance to be 1.17 miles. Mark Shieldcastle's testimony established that the buffer zone should be 2.5 miles. LR Exh. 22, Shieldcastle Direct Testimony, A.16, Page 18, Lines 18-19. Now, for the first time, eagles have built a nest closer than 1.17 miles from a proposed turbine site in this project. In fact, as shown in Exhibit C of the Residents' motion to reopen, the new N&F nest is closer than 1.17 miles to eight turbine sites. It is closer than 2.5 miles to 14 turbine sites. This information does not duplicate the evidence already in the record. This is important new evidence that should result in the Board's elimination of these 14 turbine sites from the project.

As explained above, OAC 4906-2-31 only requires the Residents to identify the new evidence it wants to introduce. The rule contains no requirement to identify the witness(es) or other means that will be used to sponsor the evidence. Notwithstanding this fact, the Residents can tell the Board that Dawn Hoepf and/or Mark Shieldcastle would provide brief testimony about the location of the new nests and their proximity to the turbine locations. This testimony will not duplicate their past testimony, but would only sponsor the information described in the motion and its exhibits. This information also could be established by stipulation, if the other parties are willing to enter into one.

Republic Wind raises (at 3) the specter of open floodgates if the Board reopens the record "every time a new nest is discovered." However, Republic Wind brought this problem on itself by choosing a project area in which the Bald Eagle population, as stated in the company's own words (at 2), "has proliferated." If other wind companies are not as irresponsible as Republic

Wind, they will not try to site turbines in areas with burgeoning eagle populations, and reopening the record upon the discovery of new eagle nests between the hearing and the Board's decision will not be an issue. In this case, Republic Wind has chosen a risky location for its turbines, and the new evidence of drastically increased risk should be admitted into the record.

Finally, Republic Wind argues that the Board should ignore this new evidence about its turbines' threat to the eagles, and just let the U.S.FWS handle the problem. Nothing in OPSB's enabling statute (R.C. Chapter 4906) allows the Board to abdicate its duty to protect the state's wildlife from the unwise siting of energy facilities. The Board should reopen the record to admit this new evidence.

Respectfully submitted,

/s/ Jack A. Van Kley
Jack A. Van Kley (0016961)
Van Kley & Walker, LLC
132 Northwoods Blvd., Suite C-1
Columbus, Ohio 43235
(614) 431-8900 (telephone)
(614) 431-8905 (facsimile)
Email: jvankley@vankleywalker.com
Counsel for the Local Residents

CERTIFICATE OF SERVICE

On June 26, 2020, the docketing division's e-filing system will electronically serve notice of the filing of this document on the following counsel for the parties: Sally W. Bloomfield (sbloomfield@bricker.com), Dylan Borchers (dborchers@bricker.com), Joshua D. Clark (jclark@senecapros.org), Leah F. Curtis (lcurtis@ofbf.org), Chad A. Endsley (cendsley@ofbf.org), Miranda Leppla (mleppla@theoec.org), Amy M. Milam (amilam@ofbf.org), Mark Mulligan (mulligan_mark@co.sandusky.oh.us), Devin D. Parram (dparram@bricker.com), Chris Tavenor (ctavenor@theoec.org), Trent Dougherty (theoec.org), Dane Stinson (dstinson@bricker.com), Derek Devine (dwd@senecapros.org), Jodi Bair (jodi.bair@ohioattorneygeneral.gov), and William Cody. On the same date, I served a copy of this filing by electronic mail on the above-listed counsel, Dennis Hackenburg at Dennyh7@frontier.com, and Mike and Tiffany Kessler at mkessler7@gmail.com.

/s/ Jack A. Van Kley
Jack A. Van Kley

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/26/2020 4:53:33 PM

in

Case No(s). 17-2295-EL-BGN

Summary: Reply in Support of Motion to Reopen Record electronically filed by Mr. Jack A Van Kley on behalf of Local Resident Intervenors