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BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the Application)
of Black Fork Wind Energy, LLC for)
a Certificate to Install Numerous)
Electricity Generating Wind Turbines in)
Crawford and Richland Counties, Ohio)

Case No. 10-2865-EL-BGN

PUCO

**APPLICANT'S MEMORANDUM CONTRA TO THE REQUESTS TO INTERVENE BY
WILLIAM ALT, BRETT HEFFNER, GARY BIGLIN AND KAREL DAVIS**

I. INTRODUCTION

Black Fork Wind Energy, LLC ("Black Fork" or the "Applicant") submits this Memorandum Contra pursuant to Ohio Administrative Code ("OAC") 4906-7-12(B)(1), requesting that William P. Alt, Brett A. Heffner, Gary Biglin and Karel Davis' Requests to Intervene be denied. Neither Mr. Alt, Mr. Heffner nor Mr. Biglin resides within the project boundary or raises issues that warrant their participation in this proceeding. Mr. Alt lives in Florida and does not own any property in Crawford or Richland County. Mr. Heffner's residence is over four miles away from any proposed turbine and 3.9 miles from the project boundary, and his argument against Ohio renewable mandates is better suited for the General Assembly rather than this Board. Mr. Biglin's residence is almost two miles from any proposed turbine and over 4,000 feet outside the project boundary. Lastly, Ms. Davis's only argument for intervention is whether the Ohio renewable energy mandate satisfies the public need, an argument the Board can consider absent her intervention. Accordingly, the Ohio Power Siting Board (the "Board") should deny these requests for intervention.

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II. BACKGROUND

Black Fork's application in this proceeding proposes the construction of a wind powered electric generation facility consisting of up to 91 wind turbines in Richland and Crawford Counties. The application was deemed filed on June 21, 2011. Black Fork Wind Energy, LLC published notice on June 30, 2011 of the proposed wind farm facility in the *Mansfield News Journal* and the *Bucyrus Telegraph Forum*, as required by Section 4906.08(C), Revised Code, and OAC 4906-5-08(c)(1). Requests to intervene were docketed for Gary Biglin, Karel Davis, and William Alt on August 1, 2011, and for Brett Heffner on July 27, 2011.¹

Mr. Alt bases his request to intervene on his claim that he intended to purchase land in Crawford County but has not done so because of the proposed wind turbine project. Mr. Heffner argues against Ohio's renewable mandates and asserts that the public is the only "resource to determine the accuracy of the application" because it "contains numerous errors of fact." Ms. Davis similarly argues that Ohio's renewable mandates are "not adequate to allow this project to claim public need." Mr. Biglin voices generalized concerns over safe setback provisions for non-participating property owners and claims that project has been leased around his property for a "phase II."

Neither Mr. Alt, Mr. Heffner nor Mr. Biglin reside in the project area. Mr. Alt resides in Apopka, Florida and does not own any property in Crawford or Richland County. Mr. Heffner resides in Shelby, Ohio. His address is approximately 3.9 miles outside the project boundary and

¹ The following individuals have also requested intervention in this proceeding: John Warrington (2,917 ft. from nearest turbine to residence); Thomas Karbula (1,460 ft.); Loren and Carol Gledhill (1,897 ft.); Mary Studer (3,411 ft.); Nick and Margaret Rietschlin (1,956 ft.); Alan and Catherine Price (2,446 ft.); Debra and Bradley Bauer (2,057 ft.); Grover Reynolds (1,268 ft.). In the event any of these individuals is granted intervention status, the Board should order them to clarify whether they will be participating in the public hearing or the adjudicatory hearing. If individuals wish to participate in the adjudicatory hearing, the Board should exercise its authority under Rule 4906-7-04(D) to only grant intervention status to the specific issues raised by the individuals, to ensure a just and expeditious hearing.

4.4 miles from the nearest turbine. Mr. Biglin resides almost a mile outside the project boundary and 1.9 miles from the nearest turbine.

III. ARGUMENT

A. Standard of Review and Legal Requirements

Under both Section 4906.08(A)(3), Revised Code, and OAC Rule 4906-7-04(B), a request for leave to intervene must show good cause in order to be granted. The Board may consider the following factors in determining whether “good cause” to permit intervention exists:

- (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.
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

OAC 4906-7-04(B)(1). In addition, the Board’s Rules 4906-7-04(A)(3) and 4906-7-06 require prospective intervenors to send copies of their requests to all parties involved, and file a certificate of service with the Board at the time of filing.

B. Neither Mr. Alt, Mr. Heffner, Mr. Biglin nor Ms. Davis have Shown Good Cause to Warrant their Intervention in this Proceeding.

As discussed below, three of the four proposed intervenors reside well outside the project boundary. In addition, the proposed intervenors submit either policy issues better suited for the General Assembly or general concerns that can be addressed regardless of their intervention.

1. William P. Alt

Mr. Alt’s request states that he is opposed to the plan because, although a resident of Apopka, Florida, he “planned to purchase property and build a home in Crawford County.” Mr. Alt’s basis for intervention is not a valid reason for him to participate in this proceeding. The nature and extent of his interest is extremely remote considering he lives in Florida and does not

own property in Crawford County or Richland County. As well, other intervenors can capably represent any concerns he has over the Project. Mr. Alt has also failed to demonstrate how his intervention will assist in a just and expeditious hearing. Indeed, granting him intervenor status would open the door to intervention to any person making a speculative claim that they planned on buying property within a project area, or any other type of speculative claim. That is a result that should not be permitted by the Board. Mr. Alt's request for intervention should be denied.

2. Brett A. Heffner

Mr. Heffner's request to intervene in the previous Black Fork action was denied because he failed to set forth any grounds for proposed intervention other than the fact that he lives in Shelby, Ohio. Mr. Heffner has now come up with alternative reasons why his request should be granted; however, none of his new arguments set forth good cause for intervention. Mr. Heffner first argues that Ohio renewable mandates force him to purchase power from sources without his consent at artificial prices. A policy argument of this nature, however, is better suited for the General Assembly and not the Board. Permitting a person whose purpose for intervention is to attack Ohio's statutory renewable energy portfolio requirement will delay the proceedings on arguments that are irrelevant to the application before the Board. Likewise, Mr. Heffner's claimed interest of checking the accuracy of Black Fork's application because it "contains numerous errors of fact" is not a valid basis for intervention because as he recognizes in his request, "errors of fact" in the application can be addressed by the other intervenors.

Lastly, Mr. Heffner admits that he is over one mile from any property leased to Black Fork for the wind turbine project. In fact, Mr. Heffner's residence is over four miles from the

closest turbine and 3.9 miles outside the project boundary.² Mr. Heffner does not have sufficient interest in this proceeding to justify intervenor status. His request to intervene should be denied.

3. Gary Biglin

Like Mr. Alt and Mr. Heffner, Mr. Biglin resides well outside the project boundary, almost one mile outside the project boundary and over two miles from the nearest turbine. The fact that Mr. Biglin resides well outside the project boundary renders any interest on his part remote. Likewise, his claims that property has been leased adjacent to his property for a second phase of the project is too remote for this proceeding. Those claims properly fall in any subsequent proceeding for an application to install wind turbines in his geographic area. Moreover, Mr. Biglin's concerns that the project is not a convenience or a necessity, and that all non-participating property owners should give consent to the State of Ohio for calculation of wind turbine setbacks, fail to show good cause to intervene. Mr. Biglin's concerns are general in nature and can be adequately represented by other parties in this proceeding. Additionally, Mr. Biglin fails to show how his intervention will contribute to a just and expeditious resolution of the issues in this proceeding. Indeed, permitting multiple individuals to intervene who have only generalized concerns will simply delay the proceeding for existing parties. Mr. Biglin has not provided sufficient reason to justify his intervention in this proceeding.

4. Karel Davis

Ms. Davis seeks to intervene so she can testify that Ohio's renewable mandates are not sufficient to show public need for the project. She provides no other reasons for her intervention, so her interest is general in nature. This is not a sufficient reason to grant her intervention status as the Board can easily consider Ms. Davis' concerns without the need for her to intervene in this

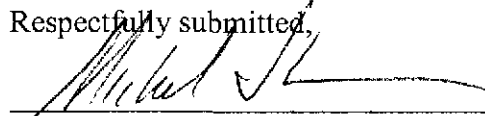
² If the Board so requests, the Applicant will provide detailed data on the location of these individuals residing outside the project boundary.

proceeding. Her intervention will not lead to a just and expeditious resolution of the issues involved in this proceeding, and if granted, would simply add delay to the hearing in this matter. Rather than intervening, Ms. Davis can easily testify on this topic before the Board at the public hearing without being granted intervenor status.

IV. CONCLUSION

For the foregoing reasons, William P. Alt, Brett A. Heffner, Gary Biglin and Karel Davis' requests to intervene in this proceeding should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by hand delivery upon John Jones and Stephen Reilly, Assistant Attorneys General, Public Utilities Section, 180 E. Broad Street, 6th Floor, Columbus, OH 43215 and via U.S. Mail upon the following persons listed below this 12th day of August 2011:

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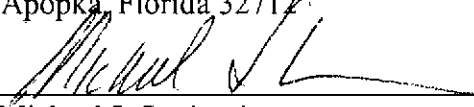
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