

BEFORE

OHIO POWER SITING BOARD

In the Matter of the Application of Black)
Fork Wind Energy, LLC for a Certificate)
to Site a Wind-Powered Electric) Case No. 10-2865-EL-BGN
Generating Facility in Richland and)
Crawford Counties, Ohio.)

ENTRY

The administrative law judge finds:

- (1) On March 10, 2011, Black Fork Wind Energy, LLC (Black Fork or applicant) filed an application for a certificate of environmental compatibility and public need to site a wind-powered electric generating facility in Richland and Crawford counties, Ohio.
- (2) By entry of June 22, 2011, a local public hearing was scheduled to commence at 6:00 p.m., on September 15, 2011, at the Shelby Senior High School in Shelby, Ohio, and the evidentiary hearing was scheduled to commence at 10:00 a.m., on September 19, 2011, in Columbus, Ohio. The purpose of the local public hearing is to allow interested persons in the local community affected by the project to provide written or oral testimony regarding the project; whereas the purpose of the evidentiary hearing is for the applicant, staff, and all persons or entities granted intervention (intervenors) to provide evidence regarding the project.
- (3) In accordance with Section 4906.08, Revised Code, petitions to intervene in the adjudicatory hearing will be accepted by the Board up to 30 days following publication of the notice required by Section 4906.06, Revised Code, and Rule 4906-5-08(C)(1), O.A.C., or later if good cause is shown.
- (4) On July 19, 2011, the applicant filed an affidavit, which attested that the notice of the hearing was published in newspapers of general circulation in Richland and Crawford counties on June 30, 2011.
- (5) Notices of intervention were filed in this case as follows: on June 24, 2011, by the Board of County Commissioners of Richland County (Board of Richland County Commissioners) and the Richland County Engineer; on June 27, 2011, by the Board of

Richland County Engineer; on June 27, 2011, by the Board of County Commissioners of Crawford County (Board of Crawford County Commissioners); on July 8, 2011, by the Board of Township Trustees of Plymouth Township, Richland County, Ohio (Plymouth Township Trustees), as well as the Board of Township Trustees of Sharon Township, Richland County, Ohio (Sharon Township Trustees); and on July 14, 2011, by the Board of Township Trustees of Sandusky Township, Richland County, Ohio (Sandusky Township Trustees). Both boards of county commissioners, all three boards of township trustees, as well as the Richland County Engineer were served with a copy of the application pursuant to Section 4906.06(B), Revised Code. Consequently, each respectively claims to be entitled to intervene as a party in this matter pursuant Section 4906.08(A)(2), Revised Code, and Rule 4906-7-04(A)(1), O.A.C.

- (6) No one filed memorandum contra to the notices of intervention filed by the Board of Crawford County Commissioners, the Board of Richland County Commissioners, the Plymouth Township Trustees, the Sharon Township Trustees, the Sandusky Township Trustees, and the Richland County Engineer. The administrative law judge (ALJ) finds that each of these six entities meets the requirements for intervention set forth in Section 4906.08(A)(2), Revised Code, and Rule 4906-7-04(A)(1), O.A.C. Accordingly, the ALJ finds that each of these six entities should be granted intervention in this matter.
- (7) Motions to intervene were filed by 16 members of the public as follows: on May 19, 2011, by John Warrington; on July 21, 2011, by Loren Gledhill, Carol Gledhill, and Mary Studer; on July 26, 2011, by Alan Price, Catherine Price, Thomas Karbula, Nick Rietschlin, and Margaret Rietschlin; on July 27, 2011, by Bradley Bauer, Debra Bauer, and Brett A. Heffner; and on August 1, 2011, by Grover Reynolds, Gary Biglin, Karel Davis, and William P. Alt. No one filed memorandum contra to 12 of these 16 motions to intervene, namely, those filed by John Warrington, Loren Gledhill, Carol Gledhill, Mary Studer, Alan Price, Catherine Price, Thomas Karbula, Nick Rietschlin, Margaret Rietschlin, Bradley Bauer, Debra Bauer, and Grover Reynolds. The ALJ finds that each of these 12 persons meets the requirements for intervention set forth in Section 4906.08, Revised Code, and Rule 4906-7-04(A)(2), O.A.C.

Accordingly, the ALJ finds that each of these 12 persons should be granted intervention in this matter.

- (8) On August 12, 2011, the applicant filed a memorandum contra the motions to intervene filed by Brett Heffner, William Alt, Gary Biglin, and Karel Davis.
- (9) Mr. Heffner's motion to intervene shall be considered as unopposed because the applicant's memorandum contra his motion to intervene was not timely filed. The deadline for filing the memorandum contra was August 11, 2011, i.e., 15 days after Mr. Heffner's motion for intervention was filed on July 27, 2011. The ALJ finds that, on its face, Mr. Heffner's motion to intervene meets the requirements for intervention set forth in Section 4906.08(A)(2), Revised Code, and Rule 4906-7-04(A)(1), O.A.C. Given that his motion is unopposed, the ALJ finds that Mr. Heffner's motion to intervene shall be granted.
- (10) In his motion to intervene, Mr. Alt states that his interest in opposing the application in this case is based on his status as a prospective owner. He indicates that he "had planned to purchase property and build a home in Crawford County" but that "there is no way I will purchase property and build a home that is within sight of the wind turbines." Black Fork, in its memorandum contra, argues that the nature and extent of Mr. Alt's interest in this case is "extremely remote" considering that he lives in Florida and does not own property in either Ohio county affected by the proposed project. The ALJ finds that Mr. Alt's claim that he may buy property in one of the affected counties is too speculative to warrant him status as an intervenor in this case. Accordingly, Mr. Alt has failed to show good cause for granting his motion to intervene and it shall be denied.
- (11) Black Fork, in its memorandum contra, even while admitting that it has leased property situated adjacent to Mr. Biglin's property for a second phase of its proposed project, argues that Mr. Biglin resides "well outside of the project boundary," and, as such, has an interest that should be considered as too remote to warrant his participation as an intervenor in this matter. The ALJ finds to the contrary. The nature and extent of Mr. Biglin's interest in this case is individual and direct. It is amply demonstrated by the facts that: he has been offered contract claims with regard to this project by

Element Power; that the applicant has leased property on three sides of his farm; and that the application refers to a phase of the project that could entirely encompass his property. On this basis, the ALJ finds that Mr. Biglin meets the requirements for intervention and his motion to intervene shall be granted.

- (12) Black Fork, in its memorandum contra, claims that Karel Davis has provided only one reason why she seeks to intervene, namely, to provide testimony concerning whether Ohio's renewable mandates are sufficient to meet the public need showing that the applicant must make in this case. The company then proceeds to characterize her interest in this case as "general in nature" and claims that, as such, it is insufficient to warrant a grant of her motion to intervene. Such arguments fail to address the additional claims made by Ms. Davis that she and her husband live within the boundaries of the proposed project, and that, as an intervenor, she wishes to represent the interests of "many non-contract land owners within the project area." Based on the fact that she resides within the boundaries of the proposed project, which the company has failed to address in its response to Ms. Davis' motion to intervene, the ALJ finds that Ms. Davis should be permitted to intervene on her own behalf; accordingly, her motion to intervene shall be granted. However, with regard to Ms. Davis' desire to represent the interests of "many non-contract land owners within the project area," the ALJ notes that Ms. Davis may only represent herself in this matter.
- (13) Because of the large number of *pro se* intervenors in this case, who may have never previously participated in this type of proceeding, the ALJ believes that it is important to provide some clarification of the procedures as set forth in the findings below.
- (14) The June 22, 2011, entry directed that all expert and factual testimony to be offered by any intervenor at the evidentiary hearing must be filed by September 15, 2011. This means that any intervenor interested in testifying at the September 19, 2011, evidentiary hearing, and any person who an intervenor may call as an expert witness, must file in this case by September 15, 2011, a written statement of their testimony. That statement shall comprise the entirety of their testimony. During the September 19, 2011, evidentiary hearing, intervenors and witnesses called by intervenors, who have timely filed their testimony, will be sworn in and be subject to cross-examination by the other parties regarding

their filed statement. Any party or witness not filing a written statement by September 15, 2011, will not be permitted to testify at the September 19, 2011, evidentiary hearing.

- (15) As further clarification, the ALJ notes that, in cases involving this type of application, the Board always conducts a local public hearing and an evidentiary hearing, but each type of hearing has a different purpose. The purpose of the local public hearing is to receive testimony concerning the proposed project from members of the local community who are not parties to the case, which the Board will consider in its deliberations in this case. The purpose of the evidentiary hearing is to allow the parties to the case the opportunity to present sworn testimony subject to cross-examination that will form the evidentiary record that the board will weigh and consider in arriving at its formal decision on the merits of the application in this case. All persons who are granted the right to intervene are parties to the case and, as such, will not only be allowed to present testimony at the evidentiary hearing (on their own behalf or through the testimony of witnesses that they bring to the hearing, so long as such testimony is timely filed by September 15, 2011), but will also have the right to cross-examine all other parties' witnesses who appear and testify at the evidentiary hearing.

Because each of the two hearings serves a separate function, and there is not benefit in the Board receiving cumulative evidence, no party to the case shall be permitted to provide testimony at the local public hearing. If a person who is granted the right to intervene in this case decides that he or she would prefer to testify at the local public hearing, rather than at the evidentiary hearing, he or she may do so by informing the ALJ at the local public hearing that he or she no longer wishes to be an intervenor in the case.

- (16) The ALJ finds that a prehearing teleconference should be held at 1:00 p.m., on September 9, 2011. The purpose of the prehearing teleconference will be to review administrative rules of the Board which may be applicable to this proceeding, to explain the procedures that will be followed at the evidentiary hearing, and to discuss any procedural matters of concern to the parties. Interested parties may participate in the teleconference by telephoning the Board's bridge line at 614-644-1099.

- (17) The June 22, 2011, entry in this case required that the applicant and intervenors must file a list of the issue(s), citing specific section(s) of the Staff Report, that they may be interested in cross-examining Staff's witnesses on at the evidentiary hearing. The deadline for the applicant and intervenors to file their issues lists was established as September 5, 2011. However, in light of the fact September 5, 2011, falls on a legal holiday, on July 22, 2011, certain intervenors¹ filed a motion requesting that the deadline for filing the issues lists be extended to September 7, 2011. The ALJ finds such motion to extend the deadline for filing the issues lists, which is unopposed, is reasonable and should be granted. Accordingly, the deadline for filing the issues lists will be extended to September 7, 2011.

It is, therefore,

ORDERED, That, in accordance with the above findings, the following persons or entities are each respectively granted intervention in this matter: the Board of Crawford County Commissioners; the Board of Richland County Commissioners; the Richland County Engineer; the Plymouth Township Trustees; the Sharon Township Trustees; the Sandusky Township Trustees; John Warrington; Loren Gledhill; Carol Gledhill; Mary Studer; Alan Price; Catherine Price; Thomas Karbula; Nick Rietschlin; Margaret Rietschlin; Bradley Bauer; Debra Bauer; Grover Reynolds; Brett A. Heffner; Gary Biglin; and Karel Davis. It is, further,

ORDERED, That the motion to intervene filed by William Alt is denied in accordance with Finding (10). It is, further,

ORDERED, That a prehearing teleconference should be held at 1:00 p.m., on September 9, 2011. It is, further,

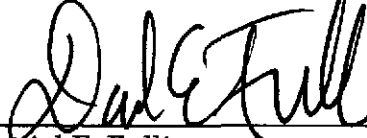
ORDERED, That, the applicant and intervenors shall file by September 7, 2011, their list of the issue(s) citing specific section(s) of the Staff Report that they may be interested in cross-examining Staff's witnesses on at the evidentiary hearing. It is, further,

ORDERED, That a copy of this entry be served upon Black Fork and its counsel; upon counsel for the Board of Crawford County Commissioners, the Board of Richland

¹ The intervenors who filed the motion to extend the date for filing of the issues lists were the Board of Crawford County Commissioners, the Board of Richland County Commissioners, the Richland County Engineer, the Plymouth Township Trustees, the Sharon Township Trustees, and the Sandusky Township Trustees.

Trustees, the Sharon Township Trustees, the Sandusky Township Trustees; upon John Warrington, Loren Gledhill, Carol Gledhill, Mary Studer, Alan Price, Catherine Price, Thomas Karbula, Nick Rietschlin, Margaret Rietschlin, Bradley Bauer, Debra Bauer, Grover Reynolds, Brett A. Heffner, Gary Biglin, Karel Davis, William Alt; and upon all parties and interested persons of record.

THE OHIO POWER SITING BOARD



By: Daniel E. Fullin
Administrative Law Judge

JPJ
dah

Entered in the Journal

AUG 30 2011

Betty McCauley

Betty McCauley
Secretary