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SEPTEMBER 6, 2011

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TO: DOCKETING DIVISION
PUCO- OPSB
180 EAST BROAD STREET
COLUMBUS, OHIO 43215

RE: CASE #10-2865-EL-BGN
INTERVIEWER'S LIST
OF ISSUES

FAXED TO: 614-466-0313
DOCKETING DIVISION
9-6-11

POSTED VIA REGULAR MAIL
9-6-11

GREETINGS,

PLEASE NOTE MY LIST OF ISSUES. MY UNDERSTANDING IS THAT THE COMPLETE TESTIMONY AND EVIDENCE FOR THESE ISSUES IS DUE IN TOTAL ON OR BEFORE SEPTEMBER 15, 2011. THE INDIVIDUAL ISSUES WITHIN THE LIST HAVE BEEN BRIEFLY STATED WITH THE EXPECTATION THAT I WILL HAVE THE OPPORTUNITY TO ELABORATE AND PRESENT EVIDENCE IN THE SEPTEMBER 15 FILING. LISTED IN ORDER OF APPEARANCE IN STAFF REPORT:

- ① CLARIFICATION OF STATEMENT PAGE ONE PARAGRAPH TWO OF STAFF REPORT "ORC 4906.13(A)... BUT LESS THAN 50 MW". STATED PROJECT GOAL IS 200MW.
- ② PAGE 17 OF STAFF REPORT, STAFF RECOMMENDATION OF INAPPLICABILITY OF 4906.10(A)(i) CONCERNING PUBLIC NEED FOR TRANSMISSION LINE. THIS WOULD CONTRADICT PAGE 53 OF STAFF REPORT

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Technician SM Date Processed SEP 07 2011

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ITEM 4 UNDER THE HEADING "RECOMMENDED CONDITIONS OF CERTIFICATE". "THAT ANY NEW TRANSMISSION LINE CONSTRUCTED IN ORDER TO DELIVER ELECTRICITY... MUST BE APPROVED PRIOR TO THE CONSTRUCTION OF THE WIND FARM". THIS CREATES CHICKEN AND EGG SCENARIO OF WIND FARM - TRANSMISSION LINE APPROVAL.

③ PAGE 20 OF STAFF REPORT NUMBER (17) STATES "NO WETLANDS... WOULD BE IMPACTED". WHO CREATES THE OHIO WETLAND INVENTORY AND WHY IS IT MALLEABLE FOR WIND DEVELOPERS BUT INFLEXIBLE FOR PRIVATE LANDOWNERS?

④ PAGE 20 OF STAFF REPORT, NUMBER (19), "FIELD ASSESSMENTS OF THE SURVEY CORRIDOR". DID THE COMPANY RETAINED CONSULTING FIRM DO ANY STUDIES ON THE 9400 ACRES OF UNLEASED GROUND WITHIN THE PROJECT BOUNDARIES? IF SO, WITH WHOSE PERMISSION? IF THEY DID NOT, 39% OF THE PROJECT AREA WAS WITHOUT SURVEY. PAGE 21 LAST PARAGRAPH UNDER (ii) STAFF PROPERLY NOTES THAT DOW DETERMINED E+E DID NOT FOLLOW SURVEY PROTOCOL, AND FURTHER STATES THAT TO DATE STAFF IS NOT AWARE OF CORRESPONDENCE BETWEEN DOW AND APPLICANT CONCERNING THIS MATTER. PAGE 22 (iv) NO STUDY WAS DONE BECAUSE "AGRICULTURAL LAND IS NOT CONSIDERED TO BE SUITABLE NESTING HABITAT". I CONTEND THAT MUCH OF THE 9400 ACRES OF UNLEASED

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GROUND MAY NOT BE AGRICULTURAL AND IS SUITABLE NESTING HABITAT. A STUDY WITH LANDOWNER PERMISSION SHOULD HAVE BEEN DONE. IN OTHER COURTS OF JURISDICTION EVIDENCE ILLEGALLY OBTAINED IS INADMISSABLE.

- ⑤ PAGE 24 (21) "SHOULD" SHOULD BE REPLACED WITH "SHALL" OR "WILL" FOR ADJACENT PROPERTY OWNER COMFORT, AND TO MAKE IT ACTIONABLE IN CIVIL COURT RATHER THAN JUST A COMPANY GOAL. ALSO (22) "SIGNIFICANT" SHOULD BE REMOVED, AND "ANTICIPATED" SHOULD BE REPLACED BY A WORD THAT DOES NOT RELY ON THE APPLICANT'S ABILITY TO IMAGINE FUTURE SCENARIOS. PAGE 26 (34), "SHOULD" SHOULD BE REPLACED BY "WILL", MAKING IT MEANINGFUL IN INEVITABLE FUTURE LITIGATION.
- ⑥ PAGE 26 OF STAFF REPORT (37), BOND OR FINANCIAL SECURITY, STAFF PROPERLY STATES BELIEF OF SCHEDULE INADEQUACY. I WOULD LIKE STAFF TO MAKE SPECIFIC RECOMMENDATION OF REMEDY.
- ⑦ THE APPLICANT'S EVALUATION OF "COMMUNITY ACCEPTANCE" AND "INTEREST FROM LANDOWNERS" ON PAGE 27 IS WEIGHTED BY TOTAL ACREAGE RATHER THAN BY TOTAL PERSONS. PAGE 48 STAFF REPORT "LEASE AGREEMENTS WITH ABOUT 150 LANDOWNERS". IS THAT THE TOTAL IN RICHLAND AND CRAWFORD COUNTY, OR STRICTLY WITHIN THE PROJECT BOUNDARY? A VERY SMALL MINORITY OF RESIDENTS SIGNED, A VERY LARGE

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MAJORITY OF RESIDENTS DID NOT. WHEN CONSIDERED PER CAPITA RATHER THAN PER ACRE, SUPPORT IS MINIMAL.

- ⑧ PAGE 29 OF STAFF REPORT, "AESTHETICS", STAFF PROPERLY POINTS OUT THAT SCREENING IS NOT A "PRACTICAL MITIGATION MEASURE", BUT MAKES NO STRATEGY RECOMMENDATIONS.
- ⑨ PAGE 30 OF STAFF REPORT CITES HIGH CARRYING COSTS OF TURBINES AS A COST OF DELAY. THE COMPANY HAS STATED THAT IT WILL PURCHASE WHATEVER IS AVAILABLE ON THE SPOT MARKET AT TIME OF CONSTRUCTION AS A JUSTIFICATION FOR ITS' DECISION NOT TO CHOOSE A SPECIFIC TURBINE FOR THE APPLICATION. NO TURBINES HAVE BEEN PURCHASED. THEY ARE NOT EATING ANY HAY.
- ⑩ PAGE 31 OF STAFF REPORT, "BAROTRAUMA".
- IF YOU DID THIS TO YOUR DOG, YOU WOULD MAKE NATIONAL NEWS AND BE UNIVERSALLY REVILED. LARGE CORPORATIONS DO THIS TO THOUSANDS OF BIRDS AND BATS SO THAT MANAGERS OF HEDGE FUNDS CAN REPORT RETURNS ABOVE THE LONDON AVERAGE. DID THE ENVIRONMENTAL CONSULTING COMPANY EMPLOYEE WHEN YOUNG DREAM OF THE DAY WHEN THEY COULD HELP A MULTI-BILLION DOLLAR FACELESS CORPORATION BUILD HUGE MACHINES THAT POP THE LUNGS OF LIVING ANIMALS LIKE A STICKPIN IN A BALLOON WHILE THE BIRDS BRAIN AND HEART CONTINUE TO THINK AND FEEL? ENVIRONMENTAL COMPATIBILITY?

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- ⑪ PAGE 47 OF STAFF REPORT "AN APPLICATION FOR A CERTIFICATE... MUST INCLUDE A DESCRIPTION OF THE APPLICANTS PUBLIC INTERACTION PROGRAMS". ALL INFORMATION STAFF HAS CONCERNING INTERACTION WITH PUBLIC OFFICIALS IS PER APPLICANT STATEMENT OUTSIDE OF APPLICATION. NO PROGRAM IS DETAILED
- ⑫ PAGE 48 OF STAFF REPORT UNDER "PUBLIC COMMENT", "AT THE TIME THIS REPORT WAS PUBLISHED, THERE WAS ONE LETTER OF SUPPORT FILED IN THIS PROCEEDING". I SUGGEST THE STAFF AND BOARD REVIEW THE AUTHORSHIP OF THAT LETTER, READ THE LETTER AND EVALUATE WHETHER IT WAS IN FACT A LETTER OF SUPPORT. THE LETTER LISTS MANY THINGS THAT ANY WIND COMPANY, INCLUDING OURS, SHOULD DO BUT REFUSES TO DO TO SECURE PUBLIC SUPPORT. I BELIEVE THE STATED NUMBER OF PUBLIC SUPPORT LETTERS SHOULD BE REVISED DOWNWARD.
- ⑬ STATE AND LOCAL TAXES, DISCUSSED ON PAGE 50 OF THE STAFF REPORT, HAVE BEEN TO DATE NEITHER SPECIFIED NOR CONFIRMED.
- ⑭ INELIGIBILITY FOR 1003 GRANT IS CONTINGENT UPON AS YET UNDEFINED "CONSTRUCTION" START DATE. STAFF AND BOARD MAY HAVE OPINIONS ABOUT FEDERAL LAW, BUT CANNOT ISSUE FINDINGS OR RULINGS.
- ⑮ PAGE 53 IV(8) THE RICHLAND AND CRAWFORD COUNTY ENGINEERS SHOULD ALSO BE REPRESENTED AT THE PRECONSTRUCTION CONFERENCE.

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- ⑩ PAGE 54 (11) AEP HAS NOT FILED WITH PULC FOR APPROVAL OF TRANSMISSION LINGS TWO YEARS BEFORE CONSTRUCTION DATE AS REQUIRED. A WAIVER MUST BE REQUESTED.
- ⑪ PAGE 56 (25) OF STAFF REPORT "SENSITIVE AREAS". NONE WERE IDENTIFIED IN APPLICATION.
- ⑫ THE EMERGENCY RESPONDER TRAINING PROVISIONS OF SB 221 HAVE BEEN MADE LAW BUT NOT YET RECORDED IN A FORM READILY AVAILABLE TO ME. PAGE 58 OF THE STAFF REPORT (41) DOES NOT MENTION THIS PART OF THE ORC. A CITING OF THIS LAW SHOULD PERHAPS BE FOUND IN STAFF RECOMMENDATIONS AND ALSO IN BOARD FINDINGS.
- ⑬ PAGE 59 ITEM (46). "THE APPLICANT SHALL MAKE ALL IMPROVEMENTS OUTLINED...". THIS IS ONE OF THE MANY STAFF RECOMMENDATIONS I WOULD LIKE TO REINFORCE BY POSITIVE COMMENT. THERE IS MUCH TO SUPPORT IN THIS REPORT, I AM SORRY TO FOCUS ON MY DISAGREEMENT.
- ⑭ PAGE 60 OF REPORT (48) "APPROPRIATE" SHOULD BE DEFINED IN REFERENCE TO REGULATORY AGENCY.
- ⑮ PAGE 60 (49) LET ME EXPRESS MY SUPPORT FOR STAFF RECOMMENDATION, AND INCLUDE IT AS AN ISSUE.
- ⑯ PAGE 61 (51) IF THE COMPANY HAS EXTENSIVE INSTALLED CAPACITY, WHY ARE WE USING ACOUSTIC MODELING RATHER THAN TAKING ACTUAL READINGS AROUND INSTALLED TURBINES? IF THE COMPANY DOES NOT, OTHER COMPANIES DO.

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- (23) PAGE 65 OF STAFF REPORT CONCERNING DE-COMMISSIONING. WHAT PROTECTIONS AGAINST BANKRUPTCY OF THE LEGALLY ISOLATED THIRD TIER LIMITED LIABILITY CORPORATION HAVE BEEN RECOMMENDED?
- (24) EXTENSION OF TIME TO SUBMIT ISSUES DUE TO KNOWN NATIONAL HOLIDAY SHOULD RESULT IN MOVEMENT OF SUBSEQUENT DATES. THE COMPANY HAD NO OBJECTION TO EXTENSION "IF" OTHER DATES UNAFFECTED. "IF" CONSTITUTES AN OBJECTION. THE ADJUDICATORY LAW JUDGE MAY HAVE MADE A PROPER RULING ON EXTENSION, BUT PERHAPS NEEDED TO MAKE A RULING ON OTHER DATES.
- (25) THE TIME ALLOWED INTERVENORS TO DIGEST AND RESPOND TO STAFF REPORT WAS INADEQUATE BY ANY DUE PROCESS STANDARD. I WAS NOT GRANTED STATUS UNTIL AUGUST 30, DID NOT RECEIVE NOTIFICATION UNTIL ~~AN~~ SEPTEMBER 3 (POSTMARK SEPT 2), STAFF REPORT WAS FILED AUGUST 31, POST MARKED SEPTEMBER FIRST AND RECEIVED SEPTEMBER THIRD, THE SATURDAY BEFORE LABOR DAY, A NATIONAL HOLIDAY WITHOUT MAIL OR GOVERNMENT OFFICE FUNCTIONS. WE WERE EXPECTED TO FILE OUR LIST OF ISSUES BY SEPTEMBER 7.
- (26) VALENTINE ANTITRUST ACT ORC 1331 WILL INVALIDATE MANY CONTRACTS, MAKING THE PROJECT AS PROPOSED UNWORKABLE. LANDOWNERS SHOULD HAVE HAD ACCESS TO VARIOUS CONTRACTS BY COMPETING COMPANIES BEFORE THE PROJECT BOUNDARIES WERE DRAWN. NO LANDOWNER WAS OFFERED A CONTRACT BY MORE THAN ONE COMPANY FOR ANY PARCEL. THE UNIQUE QUALITY OF A

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A PUBLIC UTILITY CANNOT BE CLAIMED, AS THE APPLICANT STATES IT IS NOT A PUBLIC UTILITY.

(27) WHEN STAFF DID A SITE VISIT, IT DID NOT MEET WITH PERSONS IN OPPOSITION. PUBLIC ACCEPTANCE WAS NOT PROPERLY GAUGED. IF THE COMPANY EXERTED AS MUCH INITIATIVE SURVEYING RESIDENTS AS THEY DID SURVEYING "PASSERINE" (PERCHING!) BIRDS, THEY WOULD CONCLUDE THAT THERE IS DEEP AND WIDE OPPOSITION TO THIS PROJECT.

(28) THE COMPANY RETAINED ENVIRONMENTAL CONSULTING COMPANY HAS NEVER ON PUBLIC RECORD RECOMMENDED AGAINST A WIND PROJECT. IN MY VIEW THAT DIMINISHES THEIR USEFULNESS IN CONTRIBUTING TO A JUST AND EXPEDITIOUS HEARING.

(29) LEASE HOLDERS ARE REPRESENTED BY THE FARM BUREAU FEDERATION, COUNSEL FOR THE COMPANY, AND THE COMPANY AS PARTIES OF RECORD IN THE ADJUDICATORY HEARINGS, AND ARE THEREFORE PRECLUDED FROM TESTIMONY AT THE PUBLIC HEARING SCHEDULED FOR THE SHELBY HIGH SCHOOL. AS STATED IN THE ENTRY OF THE ALJ FINDING DATED AUGUST 30, 2011, (THE LEASE HOLDERS ARE PARTY TO THE CASE BY CONTRACTUAL OBLIGATION.) "NO PARTY TO THE CASE SHALL BE PERMITTED TO PROVIDE TESTIMONY AT THE LOCAL PUBLIC HEARING". THE FARM BUREAU, E+E, THE ATTORNEYS FOR THE COMPANY, AND THE

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APPLICANT MAY DECIDE THAT HE OR SHE MAY 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.

IN CONCLUSION, ALL TESTIMONY AND EVIDENCE IS TO BE SUBMITTED IN WRITING BY SEPTEMBER 15, 2011. IT IS AT THE BOARD'S DISCRETION WHETHER TESTIMONY IS TO BE CONSIDERED. BREVITY OR LENGTH OF TESTIMONY AND THE SCOPE OF ISSUES SHOULD HAVE MINIMAL IMPACT ON THE TIMELINESS OF THE HEARINGS.

BEST REGARDS,

BRETT ~~BA~~

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