

FILE

BEFORE THE OHIO POWER SITING BOARD

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

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DIRECT TESTIMONY OF TODD MATTSON

Q.1 Please state your name and business address.

A.1 My name is Todd Mattson, Director of Environmental Affairs, Element Power,
 222 South Ninth Street, Suite 2870, Minneapolis, Minnesota 55402.

Q.2 What are your duties at Element Power?

A.2 I am responsible for leading environmental permitting and compliance efforts for
 Element Power's wind and solar energy development projects throughout the United
 States. As part of my duties, I routinely advise the Element Power senior management
 and development team on project permitting strategy and risks. I represent Element
 Power before environmental and energy siting boards, and participate in regional and
 national environmental forums on behalf of the industry, assisting in shaping
 environmental regulations and renewable energy policy. I am also responsible for
 securing appropriate environmental and permitting documentation for project financing.
 Finally, I am responsible for ensuring compliance with environmental regulations and
 Element Power's environmental policy during project construction and operation phases.

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Q.3 What is your educational and professional background?

A.3 I received a Bachelor's of Arts degree in biology from Moorhead State University in Biology in 1992 and a Master's of Science degree in Wildlife Ecology from the University of Wyoming in 1994. I have over 16 years of experience as an environmental professional in the energy sector. Having worked on energy development projects throughout the United States, I have been responsible for directing project feasibility and planning analyses, field studies, federal and state environmental reviews, endangered species compliance, mitigation development, permitting, and agency consultations. This includes supporting the development of over 1,000 MW of wind energy projects since 1997. I currently serve on the American Wind Energy Association's Siting Committee. Prior to joining Element Power, I was a Vice President and wind energy program manager at HDR Engineering, Inc., one of the leading engineering and consulting firms serving the renewable energy industry.

Q.4 Have you read the Staff Report?

A.4 Yes.

Q.5 Do you have any concerns with Condition 27?

A.5 Yes, I have read Condition 27 and have concerns with some of the wording in this condition. To be clear, it is Element Power's corporate policy to conduct formal and rigorous post-construction wildlife mortality monitoring studies for all of its projects. We believe this is entirely appropriate to confirm that our pre-construction assessments of potential wildlife impacts was accurate and to contribute additional knowledge related to actual project impacts that could be useful in an adaptive management context as well as for future project development and siting activities. As such, the Applicant is committed

to developing and implementing a post-construction avian and bat monitoring plan that is consistent with industry standards and subject to agency review and approval. However, the specific wording of condition #27 is problematic from several perspectives.

First, strict adherence to the ODNR's *On-Shore Bird and Bat Pre- and Post-Construction Monitoring Protocol for Commercial Wind Energy Facilities in Ohio* (hereafter, which I will refer to as the "Monitoring Protocol") will lead to extensive additional post-construction bird and bat monitoring studies that will be of limited value. This is due to several factors:

- The preconstruction studies were not conducted in a way that lend themselves to post-construction comparison studies;
- Project turbines have been sited to avoid or minimize impacts to birds and bats by being set back away from forest edges in lands dominated by cultivated agriculture – areas of relatively low value to diverse wildlife communities and not the habitat where you would typically find grassland or forest-dwelling birds – the species of interest in the post-construction wildlife monitoring section of the ODNR's Monitoring Protocol; and
- There is no evidence that post-construction breeding bird and bat acoustic studies have provided meaningful information on use or behavioral changes in agricultural landscapes when compared to pre-construction survey results.

My second concern related to the wording of Condition 27 is in regards to requiring a post-construction study design that strictly follows the ODNR's Monitoring Protocol. The ODNR's Monitoring Protocol describes an intensive and costly approach for completing mortality searches. Alternative, but well-designed studies more typically

undertaken by the industry, can still provide robust data on wildlife mortality. For example, conducting mortality monitoring searches less frequently than the daily searches called for in the ODNR's Monitoring Protocol can still lead to similar results in environments where scavenging rates are low and searcher efficiencies are high.

Finally, I am concerned that the mitigation language included in the condition leaves little room for negotiation or discussion. As I understand the ODNR's Monitoring Protocol, mitigation is required if mortality rates exceed the "regional average" by more than one standard deviation. This "regional average" is not currently defined and may not be reflective of the specific sensitivities and population dynamics of the species under consideration for this project. As such, this condition could result in the application of strict mitigation measures for impacts to common or even non-native species that populations would not be impacted by the project. In summary, the current wording of Condition 27 will result in extensive additional costs to the project without a corresponding benefit to wildlife or wildlife conservation.

Q.6 Do you recommend any revisions to Condition 27?

A.6 Yes. I recommend that Condition 27 be revised to be more consistent with similar recent conditions for other wind energy projects approved by the Ohio Power Siting Board. To that end, I believe the condition can be revised as follows:

(27) That sixty (60) days prior to the first turbine becoming commercially operational, the Applicant shall submit a post-construction avian and bat monitoring plan for DOW and OPSB Staff review and approval. This plan will be based on the turbine layout in conjunction with Condition 1 of this report. The Applicant's plan shall be developed in conjunction with the methodologies included in the consistent with ODNR-approved, standardized protocol, as outlined in ODNR's *On-Shore Bird and Bat Pre- and Post-Construction Monitoring Protocol for Commercial Wind Energy Facilities in Ohio*. The post-construction monitoring shall begin within two weeks of operation and be conducted for a minimum of two seasons (April 1 to November 15), which may

be split between calendar years. If monitoring is initiated after April 1 and before November 15, then portions of the first season of monitoring shall extend into the second calendar year (e.g., start monitoring on July 1, 2011 and continue to November 15, 2011; resume monitoring April 1, 2012 and continue to June 30, 2012). The second monitoring season may be waived at the discretion of ODNR and OPSB Staff. The monitoring start date and reporting deadlines will be provided in the DOW approval letter and the OPSB concurrence letter. ~~If it is determined that significant mortality, as defined in ODNR's approved, standardized protocols, has occurred to birds and/or bats, then the DOW and OPSB Staff will require the Applicant to develop a mitigation plan. If required, the Applicant shall submit a mitigation plan to the DOW and OPSB Staff for review and approval within thirty (30) days from the date reflected on ODNR letterhead, in coordination with OPSB Staff, in which the DOW is requiring the Applicant to mitigate for significant mortality to birds and/or bats. Mitigation initiation timeframes shall be outlined in the DOW approval letter and the OPSB concurrence letter.~~

Q.7 Does this conclude your testimony?

A.7 Yes.

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 8th day of September 2011:

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