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OHIO POWER SITING BOARD

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

- - -

PROCEEDINGS

before Mr. Scott Farkas and Mr. Dan Fullin,
Administrative Law Judges, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-C,
Columbus, Ohio, called at 10:00 a.m. on Monday,
September 19, 2011.

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1 APPEARANCES:

2 Vorys, Sater, Seymour and Pease, LLP
 3 By Mr. M. Howard Petricoff
 4 and Mr. Michael J. Settineri
 5 52 East Gay Street
 6 Columbus, Ohio 43216-1008

7 On behalf of Applicants.

8 Benesch, Friedlander, Coplan & Aronoff, LLP
 9 By Mr. Orla E. Collier
 10 41 South High Street, 26th Floor
 11 Columbus, Ohio 43215-6150

12 On behalf of the Richland and Crawford
 13 County Commissioners, the Richland County
 14 Engineer.

15 Ohio Farm Bureau
 16 By Mr. Chad A. Endsley
 17 280 N. High Street, Floor 6
 18 Columbus, Ohio 43218-2383

19 On behalf of the Southeastern Farm Bureau
 20 Federation

21 Richard Cordray, Ohio Attorney General
 22 William L. Wright, Section Chief
 23 Public Utilities Section
 24 Mr. Stephen A. Reilly
 25 Mr. John H. Jones
 Mr. Devin D. Parram
 180 East Broad Street, 9th Floor
 Columbus, Ohio 43215-3793

On behalf of the Staff of the Public
 Utilities Commission.

INTERVENORS:

Mr. Gary J. Biglin
 5331 State Route 61 South
 Shelby, Ohio 44875

Ms. Karel Davis
 6675 Champion Road
 Shelby, Ohio 44875

1 INTERVENORS (Continued):

2 Mr. Brett A. Heffner
3 3429 Stein Road
4 Shelby, Ohio 44875

5 Mr. Thomas Karbula
6 3026 Solinger Road
7 Crestline, Ohio 44827

8 Mr. Alan Price
9 7956 Remlinger Road
10 Crestline, Ohio 44827

11 Ms. Catherine Price
12 7956 Remlinger Road
13 Crestline, Ohio 44827

14 Ms. Margaret Rietschlin
15 4240 Baker Road
16 Crestline, Ohio 44827

17 Mr. John Warrington
18 7040 State Route 96
19 Tiro, Ohio 44887

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1 Monday Morning Session,
2 September 19, 2011.

3 - - -

4 EXAMINER FARKAS: The Power Siting Board
5 has called for hearing at this time and place In the
6 Matter of Black Fork Wind Energy, LLC, for a
7 Certificate to Site a Window-Powered Electric
8 Generating Facility in Richland and Crawford
9 Counties, Ohio, Case 10-2865-EL-BGN.

10 My name is Scott Farkas, and next to me
11 is Dan Fullin. We are the administrative law judges
12 assigned to hear this case at this time.

13 At this time we will take appearances.
14 First, on behalf of the company.

15 MR. PETRICOFF: Thank you, your Honor.
16 May it please the Power Siting Board, on behalf of
17 the applicant, Blackfork Wind Energy, I'd like to
18 enter the appearance of Howard Petricoff and Mike
19 Settineri of the law firm of Vorys, Sater, Seymour
20 and Pease, 52 East Gay Street, Columbus, Ohio.

21 EXAMINER FARKAS: On behalf of the staff.

22 MR. JONES: Good morning. On behalf of
23 the staff of the Ohio Power Siting Board, Ohio
24 Attorney General Mike Dewine, assistant attorneys
25 general Steve Reilly, Devin Parram, and John Jones,

1 180 East Broad Street, Columbus, Ohio.

2 EXAMINER FARKAS: On behalf of the Farm
3 Bureau.

4 MR. ENDSLEY: Good morning, Your Honor.
5 On behalf of the Southeastern Farm Bureau Federation,
6 Chad Endsley.

7 EXAMINER FARKAS: On behalf of the Board
8 of Crawford County and Richland County.

9 MR. COLLIER: On behalf of the Richland
10 and Crawford County Commissioners, the Richland
11 County Engineer, I'd like to enter an appearance for
12 intervention of the law firm of Benesch, Friedlander,
13 Coplan & Aronoff, Orla Collier, 41 South High Street,
14 Columbus, Ohio.

15 EXAMINER FARKAS: And just for the
16 record, that would include the Board of Crawford
17 County Commissioners, the Board of Richland County
18 Commissioners, the Richland County Engineer,
19 Plymouth, Sharon, and Sandusky Townships?

20 MR. COLLIER: That's correct.

21 EXAMINER FULLIN: I was thinking to the
22 extent we need to identify you separate from the
23 other intervenors, I might refer to you as the
24 statutory intervenors because you entered the case
25 through a different statutory process than the other

1 intervenors. That may be something that I refer to
2 as the hearing goes on.

3 MR. COLLIER: Thank you.

4 EXAMINER FARKAS: Okay. John Warrington,
5 is he present?

6 MR. WARRINGTON: John Warrington.

7 EXAMINER FARKAS: State your address for
8 the record.

9 MR. WARRINGTON: 7040 State Route 96,
10 Tiro, Ohio, 44887.

11 EXAMINER FARKAS: Thank you.

12 Loren Gledhill.

13 Carol Gledhill.

14 Neither of them are present.

15 Mary Studer.

16 Mary Studer is not present.

17 Alan or Catherine Price.

18 MS. PRICE: I am Catherine Price. This
19 is my husband, Alan Price, 7956 Remlinger Road,
20 Crestline, Ohio, 44827.

21 EXAMINER FARKAS: Thank you.

22 Thomas Karbula.

23 MR. KARBULA: Thomas Karbula, 3026
24 Solinger Road, Crestline, Ohio 44827.

25 EXAMINER FARKAS: Nick or Margaret

1 Rietschlin.

2 MS. RIETSCHLIN: Margaret Rietschlin,
3 R-I-E-T-S-C-H-L-I-N, 4240 Baker Road, Crestline,
4 Ohio, 44827.

5 EXAMINER FARKAS: Thank you.

6 Bradley and Debra Bauer.

7 They are not present in the hearing room.

8 Grover Reynolds.

9 Mr. Reynolds is not present.

10 Brett Heffner.

11 MR. HEFFNER: Brett A. Heffner, 3429
12 Stein Road, Shelby, Ohio, 44875.

13 EXAMINER FARKAS: Gary Biglin.

14 MR. BIGLIN: Gary J. Biglin, B-I-G-L-I-N,
15 5531 State Route 61 South, Shelby, Ohio, 44875.

16 EXAMINER FARKAS: And Karel Davis.

17 MS. DAVIS: Karel, K-A-R-E-L, Davis, 6675
18 Champion Road, Shelby, Ohio, 44875.

19 EXAMINER FARKAS: Okay. That is the list
20 of intervenors of record. Are there other -- well,
21 that's it.

22 Just for the record, the testimony that
23 we have filed in the case to date is from the
24 company, Courtney Dohoney, Jay Haley, Scott Hawken
25 Kenneth Kaliski, Todd Mattson, James Mawhorr, Diane

1 Mundt, David Stoner, Dale Arnold.

2 Upon behalf of the Ohio Farm Bureau
3 Federation, William Schroeder, a private citizen,
4 prefiled by the company.

5 For Crawford County you have Doug
6 Weisenauer, Crawford County Engineer, Cecil Newcome.

7 Richland County, Edward Olson and Tim
8 Wert, Richland County Engineer, Thomas Beck.

9 From the staff we have Timothy Burgener,
10 Andrew Conway, Christopher Cunningham, Nicholas Doss,
11 Paul Laurent, Jon Pawley, Donald Rostofer, John
12 Whitis.

13 And the individuals who prefiled
14 testimony and were granted intervention Karel Davis,
15 Margaret Rietschlin, Nick Rietschlin, John
16 Warrington. That is all the individuals that
17 prefiled testimony.

18 Yes, sir.

19 MR. HEFFNER: I filed mine within the
20 deadline. It has not been posted. Was there some
21 mishap? I sent it to all parties.

22 EXAMINER FARKAS: There's nothing
23 docketed from Mr. Heffner. Was something sent?

24 MR. SETTINERI: We are not aware of
25 receiving anything.

1 EXAMINER FARKAS: Is staff aware of
2 receiving anything?

3 MR. JONES: No, your Honor.

4 EXAMINER FARKAS: Nothing has been
5 docketed.

6 MR. HEFFNER: The Direct Testimony of
7 Brett A. Heffner, I have a proof of service fax. It
8 was sent to the Ohio Farm Bureau Federation. It was
9 sent to the 21 people listed on here, September 15,
10 2011.

11 EXAMINER FARKAS: You sent it by regular
12 mail or e-mail?

13 MR. HEFFNER: There was a fax to the fax
14 number of the Ohio Power Siting Board. It was sent
15 by regular mail to everybody on that list.

16 EXAMINER FARKAS: Did any of the parties
17 receive the testimony of Mr. Heffner?

18 The individuals are indicating they have
19 but none of the other parties have.

20 EXAMINER FULLIN: The docket did not
21 receive it.

22 MR. HEFFNER: Docketing division, it was
23 both faxed and mailed.

24 EXAMINER FARKAS: When did you mail it?

25 MR. HEFFNER: September 15.

1 EXAMINER FARKAS: You mailed it on the
2 15th?

3 MR. HEFFNER: That's right.

4 EXAMINER FARKAS: It probably wouldn't
5 have been docketed on the 15th since it was mailed on
6 the 15th.

7 Yes, sir, identify yourself.

8 MR. BIGLIN: Gary Biglin. Likewise, I
9 haven't seen my testimony posted. I mailed it out
10 regular mail on the 14th of September, and as far as
11 down here at this office, Timothy Burgener -- is that
12 how you say it? I sent it to this address to him in
13 care of the docketing division, and also -- is it
14 Donnelly Hunter?

15 EXAMINER FULLIN: Donnell Hunter.

16 MR. BIGLIN: Also to that individual at
17 this address. I sent it in care of the docketing
18 division on September 14, but I have not seen
19 anything on line recognizing that.

20 Thank you.

21 EXAMINER FARKAS: Thank you.

22 MR. ENDSLEY: Your Honor, if we may be
23 heard, we received a copy of Mr. Biglin's testimony.

24 EXAMINER FARKAS: You did receive that?

25 MR. BIGLIN: I sent it to all parties,

1 Your Honor. As far as in the building, those are the
2 two I sent it to. Thank you.

3 EXAMINER FARKAS: Okay. Thank you.

4 It's possible that something may have
5 been posted as of the 16th. Do you have copies of
6 your testimony?

7 MR. HEFFNER: I have a copy, and I can
8 get copies today. Is the testimony going to be
9 needed before Wednesday?

10 EXAMINER FARKAS: No.

11 MR. HEFFNER: I will be happy to get
12 copies if that would be suitable.

13 MR. BIGLIN: I have copies, your Honor.
14 I sent them out, but I have copies here, too.

15 EXAMINER FARKAS: On an initial basis is
16 there any objection to Mr. Heffner's or Mr. Biglin's
17 testimony being accepted as being late filed?

18 MR. PETRICOFF: No, your Honor. Assuming
19 if there is a problem, I don't anticipate one, if we
20 could have an extra day or two since we didn't get
21 it, that would be fine. We will probably be able to
22 do this on time.

23 EXAMINER FARKAS: How many pages is your
24 testimony, Mr. Heffner, just for the record?

25 MR. HEFFNER: Without the proof of

1 service, nine pages.

2 EXAMINER FARKAS: Okay. Is it typed?

3 MR. HEFFNER: It's handwritten.

4 EXAMINER FARKAS: Mr. Biglin.

5 MR. BIGLIN: I'd like to clarify. As
6 well as sending it out ahead of time to all the
7 parties, I wasn't sure I would have to have another
8 copy here today or Wednesday, so I do have them.
9 They were sent out on the 14th.

10 EXAMINER FARKAS: I would say if you have
11 yours available right now, you can distribute them
12 when we conclude so we will all have them.

13 MR. BIGLIN: As long as that covers it
14 for Wednesday.

15 EXAMINER FARKAS: No party has an
16 objection to the filing of your testimony.

17 MR. BIGLIN: Your Honor, I am not clear
18 on the code. We sent it via the mail, but as far as
19 giving people copies at the hearing, is this the
20 hearing, or is Wednesday the hearing we need to do
21 that?

22 EXAMINER FARKAS: What we are going to do
23 is today -- you can have a seat. Today what we will
24 do, the purpose of the proceeding today was to
25 initially take appearances, discuss any procedural

1 matters that the parties had, and then to adjourn the
2 hearing itself but reconvene on Wednesday, start the
3 hearing at 1:00 o'clock, but allow the parties the
4 time to conduct settlement negotiations today and
5 tomorrow, if they so choose, and, you know, if they
6 are fruitful, whatever, we will deal with that as it
7 comes about.

8 But the testimony was due on the 15th,
9 and based on your representation and Mr. Heffner's
10 representation, and the parties don't seem to object
11 to having the testimony presented by you on
12 Wednesday, if that's when it is. It may not be
13 Wednesday. It may be the day after Wednesday, but we
14 will start on Wednesday. Your testimony will be
15 accepted as if it was filed timely.

16 MR. BIGLIN: Thank you.

17 EXAMINER FARKAS: That would be the same
18 for you, Mr. Heffner.

19 Now, you had a question?

20 MS. PRICE. My name is Catherine Price,
21 and my testimony and my husband's, Alan Price's
22 testimony, both were sent out on the 14th by
23 overnight mail and to be signed for by all parties
24 involved.

25 EXAMINER FARKAS: Okay.

1 Does any party have an objection to their
2 testimony being considered timely filed if you don't
3 have it? It doesn't show on the docketing card.

4 Do you have copies available as to your
5 testimony?

6 MS. PRICE: Yes.

7 MR. PETRICOFF: We have not received it,
8 but as long as we get a copy, we will not object to
9 it.

10 EXAMINER FARKAS: Staff or for the Farm
11 Bureau?

12 MR. JONES: No objection, your Honor.

13 MR. ENDSLEY: No objection from the Farm
14 Bureau.

15 EXAMINER FARKAS: And the counties?

16 MR. COLLIER: No objection.

17 EXAMINER FARKAS: Hearing none, the
18 Prices' testimony will be considered as timely filed.

19 And I would ask that you provide copies
20 today to all the parties, so at a break, there's
21 copying at docketing so you can get copies made.
22 That's on this floor.

23 Yes, sir.

24 MR. BIGLIN: So that would be for us
25 also, whoever wants them today?

1 EXAMINER FARKAS: Yes.

2 EXAMINER FULLIN: Since most people are
3 here today, you should distribute them.

4 MR. BIGLIN: I'm trying to get it clear.

5 EXAMINER FARKAS: Right.

6 EXAMINER FULLIN: You could distribute it
7 to all the parties here today if you have enough
8 copies. The parties that didn't make an appearance,
9 I would say that it would be acceptable just to leave
10 one copy in docketing and they could download it to
11 the docketing card.

12 EXAMINER FARKAS: Okay.

13 MR. KARBULA: I want to have it known I
14 did send copies on the 15th, and I do have copies.

15 EXAMINER FULLIN: Without objection, I
16 will make the same ruling with respect to
17 Mr. Karbula's testimony. It is considered timely
18 filed and can be distributed to parties here today.

19 And I guess for each of those parties in
20 that category, if you also leave one copy while
21 you're here today at docketing so it will get
22 docketed today no matter what happened to the one in
23 the mail. That way it will be docketed and people
24 could find it in the docketing system after today.

25 EXAMINER FARKAS: Okay. All right.

1 EXAMINER FULLIN: I think that was the
2 main thing we wanted to clarify. Is there any other
3 party out there that made an attempt to prefile
4 testimony and it is not clear whether it is in the
5 record yet or not?

6 EXAMINER FARKAS: Okay.

7 EXAMINER FULLIN: I think that was the
8 main thing we were trying to accomplish before we
9 adjourn.

10 We might also want to have a discussion
11 about I think we scheduled this as a settlement
12 conference and said we would call and continue it.
13 We would ask that the parties would bring a list of
14 the witnesses. Maybe we can spend some time on the
15 record discussing the order of witnesses that might
16 be scheduled on the record.

17 We can have an off-the-record discussion
18 about that and go on the record to describe what we
19 discussed, if that would be more productive.

20 MR. PETRICOFF: That would be fine. We
21 are willing to go off the record. We have made a
22 list of witnesses from the company and have put in
23 our dates, assuming that the company will go first,
24 as we're the applicant.

25 EXAMINER FARKAS: Yes.

1 MR. PETRICOFF: We can pass that out now.
2 We can go around and talk with the others off the
3 record in terms of presentation.

4 EXAMINER FARKAS: Off the record.
5 (Discussion off the record.)

6 EXAMINER FARKAS: Off the record there
7 was discussion among the parties as to the order of
8 witnesses that will testify in the hearing, and the
9 witnesses will go in this order:

10 On September 21, we will have for the
11 company Ms. Mundt, Mr. Stoner and Hawken. On the
12 22nd we will have Kaliski, Haley, Dohoney, Mattson,
13 Mawhorr and possibly Mr. Arnold and Schroeder, if
14 time is available; otherwise, Mr. Arnold and
15 Schroeder will go on the 23rd in the morning.

16 Then on the afternoon of the 23rd of
17 September starting at 1:00 o'clock, the witnesses for
18 Crawford and Richland Counties and any of the
19 townships will testify.

20 Then on the 26th of September, staff
21 witnesses will testify on the 26th and the 27th.

22 Beginning on the 28th we will start with
23 Mr. Heffner and then any of the other intervenor
24 parties will testify, and then if need be, we will
25 have the 30th for the last day of intervenor

1 testimony.

2 EXAMINER FULLIN: There will be no
3 hearing on the 29th.

4 EXAMINER FARKAS: No hearing on the 29th.
5 The days will begin -- the 21st we will start at
6 1:00 o'clock, and then each of the other days we will
7 start at 9:00 o'clock.

8 And then, for the record, we had a
9 discussion as to confidential documents and
10 settlement discussions for the record, we discussed
11 that confidential documents, and in order for the
12 parties to view confidential documents, they have to
13 agree to a confidentiality agreement, which would
14 preclude them from divulging or telling anyone else
15 about that information and the discussions of
16 settlement that would take place at any time here
17 today or at any other time with respect to this case,
18 with respect to any parties. They are considered
19 confidential between those parties and discussions of
20 settlement are not admissible in the hearing.

21 I believe that was it. So to the extent
22 is there any other business that the parties have at
23 this time?

24 We will stand adjourned, and we will use
25 the remaining part of the day -- before we do that,

1 yes?

2 MR. BIGLIN: I have a question. Can I go
3 off the record with it?

4 EXAMINER FARKAS: Yes. Let's go off the
5 record.

6 (Discussion off record.)

7 EXAMINER FARKAS: Just for the record,
8 anything docketed in this case by any party as a
9 public document is considered public and there is no
10 restriction as to confidentiality on that document.

11 We will use the remainder of the day for
12 settlement discussions. Hopefully they will be
13 fruitful, and we will adjourn at this time.

14 Thank you.

15 (The hearing adjourned at 10:58 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, September 19, 2011, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson,
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires April 5, 2014.
(RFA-8678)

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/6/2011 9:39:26 AM

in

Case No(s). 10-2865-EL-BGN

Summary: Transcript Transcript of Black Fork Wind Energy, LLC hearing held on 09/19/11 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.