

FILE

BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Black Fork Wind Energy, LLC)
For a Certificate to Site)
Wind Turbines for an)
Industrial Wind-Powered)
Generating Facility In)
Crawford and Richland Counties, Ohio)

Case No. 10-2865-EL-BGN

APPLICATION FOR REHEARING OF INTERVENOR
GARY J. BIGLIN

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Pursuant to Ohio Revised Code (ORC) 4903.10 and Ohio Administrative Code (OAC) 4906-7-17 (D), Intervenor Gary J. Biglin does respectfully apply for rehearing in this matter. The grounds being that Board's Opinion, Order, and Certificate issued January 23, 2012 is unlawful and erroneous for the following reasons:

- I. The Ohio Power Siting Board's failure to require Black Fork Wind Energy to maintain an adequate setback distance between the Project's wind turbines from non-participating property lines and public roadways, thus violating ORC. 4906.10 (A) (2) (3) and (6).
- II. The Ohio Power Siting Board's minimum safety setbacks established for wind turbines , in the Certificate for the Black Fork Wing Energy Project, are inadequate

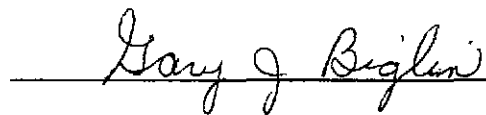
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to ensure the Rights of health, safety, and well-being of non-participating property owners and persons using the public roadways, thus violating their Rights under article# 1 in the Bill of Rights of the Ohio Constitution and ORC. 4939.02 (A) (1).

- III. The Ohio Power Siting Board improperly delegated too much authority to the Administrative Law Judges to issue a Certificate under ORC. 4906.10 .
- IV. The Administrative Law Judges procedural process, in the Black Fork Wind Energy case, toward the citizen intervenors was misleading and prejudicial.

The basis for this petition including additional information about the errors in the Board's opinion and procedural misgivings is set forth in more detail in the attached Memorandum in Support.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Gary J. Biglin", is written over a horizontal line.

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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING
INTERVENOR GARY J. BIGLIN

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I. **The Ohio Power Siting Board's failure to require Black Fork Wind Energy to maintain an adequate setback distance between the Project's wind turbines from non-participating property lines and public roadways, thus violating ORC. 4906.10 (A) (2) (3) and (6).**

- a) The safe setback provisions set forth by the OPSB relative to non-participating property owners of the Black Fork Wind Energy project shows disregard for the citizens of these rural areas. These safe setback distances are based from inhabited residences of adjacent properties, but should be based only from property lines and the public roadways. Ohio property owners use all of their property for their activities, they do not always stay indoors. They should be able to enjoy every inch of it without concern for the happiness and safety of themselves and their family. People should be able to farm, hunt, fish, cut-wood, hike, play, etc. anywhere on their property and feel safe. They also need to be able to develop their property now or in the future (like building a new home) how they wish without being close to neighboring wind turbines. The safety concerns regarding ice throw, blade shear, shadow flicker, noise, etc. are real. The happiness and safety rights of property owners should be foremost to that of wind farm developers. Wind turbine manufacturers safety manuals used by wind company employees and workmen should apply no less for the safety of non-participating property owners and persons using the public roadways. These property owners have not given their consent for the OPSB to use any part of their property in calculating wind turbine setbacks. When will these property owners and citizens be considered as part of the "public" referred to in ORC. 4906.10 (A) (2) (3) and (6), or their "property rights" be considered in the impact this industrial wind-powered electric generating facility will have on them? These property owners are not being respected with regard to their public interest, and many consider this project neither a convenience or a necessity.

II. The Ohio Power Siting Board's minimum safety setbacks established for wind turbines, in the Certificate for the Black Fork Wind Energy Project, are inadequate to ensure the Rights Of health, safety, and well-being of non-participating property owners and persons using the public roadways, thus violating their Rights under article#1 in the Bill of Rights of the Ohio Constitution and ORC. 4939.02 (A) (1).

- a) OPSB shows disregard for the health and safety concerns of non-participating property owners and persons using the public roadways by allowing wind turbines to be sited within 500 feet from property lines and public roadways.

Example: Project wind turbine #58 is to be located 500 feet east of Crawford county road Baker #47, and 500 feet north of State Highway Route 96.

- b) In the Opinion, Order, and Certificate on page 23, (h) Blade Shear and Ice Throw, mid paragraph one, states: " The turbines have the following safety features to address blade shear: two independent braking systems, a pitch control system, a lightning protection system, and turbine shut down at excessive wind speeds and at excess blade vibration or stress, and the use of setbacks. The Applicant has incorporated a wind turbine layout with a minimum residential setback distance of 1250 feet, and a property setback of 563 feet. Staff believes that installing these safety control mechanisms minimizes the potential for blade shear and associated impacts. (Staff Ex. 2 at 37). "

The " and the use of setbacks " as mentioned in the list of safety features would be the only error proof way to ensure the safety of persons on adjacent property or public roadways in a wind project area. As stated above the other safety control features only minimize the potential of unsafe associated impacts. OPSB should error on the side of 100% safety for the non-participating property owners and persons on public roadways in the project area.

- c) As referred to in the Opinion, Order, and Certificate pages 23-24, from the Staff Report pages 37-38 under "Ice Throw" paragraph 2 and 3.

" GE Energy is a manufacturer of one of the turbine models under consideration by the Applicant. This manufacturer has developed specific safety standards for ice throw and blade shear for all of their turbine models and has recommended the use of an ice detector and other measures if people or objects (e.g., occupied structures, roads) are within a distance of 150 percent of the sum of the hub height and rotor diameter. This recommendation is derived from an independent study performed by Seifert et al (25) and supported by the German Wind Energy Institute. Based on inputs into a formula used in this study, it has been determined that turbines of the similar dimensions as the GE models would need to be located a distance of approximately 301.5 meters (989 feet) from any structure or roads. Staff's evaluation of the turbine locations utilizing this study, determined that turbines 44 and 51 would need to be relocated or resized to meet this minimum setback distance. Staff recommends that public access be restricted with appropriately placed warning signs, that the Applicant would instruct workers of potential hazards of ice conditions, and that the Applicant would install ice detection software for the site and an ice detector/sensor alarm that triggers an automatic shutdown. Staff also recommends that the Applicant relocate and/or resize proposed turbines 44 and 51 to conform to a setback distance of 150 percent of the sum of the hub height and rotor diameter from roads and structures. Adhering to these safety measures would sufficiently address the issue of ice throw. "

Again the only 100% error proof safety measure for siting wind turbines from adjacent non-participating properties and public roadways is (at the very least) that of using the suggested formula of 150 percent of the sum of the hub height and rotor diameter as referred to in the Staff Report. These property owners and roadway users should be afforded the highest measure of safety. Are participating landowners, the wind developer, and OPSB willing to assume the liability for potential unsafe associated impacts.

In the safety manuals used by Vestas, a manufacturer of one of the models in the application and Certificate, the wind facility employees and workmen are instructed to STOP at a distance of 1000 feet from a operating turbine if ice hazard conditions exist, and

to use binoculars if necessary to look for ice on the turbine. If ice is indeed on the moving turbine the workmen are to shut the turbine down by way of a remote before proceeding any closer. While the industrial wind-powered generation facility workers are being instructed about these ice hazard precautions and safe operating procedures, the adjacent property owners and persons using the public roadways are totally unaware of unsafe conditions that may exist. Is this being done for the benefit of siting more wind turbines at the expense of the rights and safety of citizens in these rural project areas? This shows disregard for the rights of these citizens under Our Ohio Constitutions, Bill of Rights article#1, Inalienable Rights:

“All men are, by nature, free, independent, and have certain inalienable Rights, among which are those of enjoying and defending life and liberty, Acquiring, possessing, and protecting property, and seeking and obtaining Happiness and Safety. “

The Opinion, Order, and Certificate also deprives affected property owners of their Constitutional Rights to the protection of private property (U.S. Const. XIV Amend; Ohio Const. Sec 19 Art.I) and to procedural due process (U.S. Const. XIV Amend; Ohio Const. Sec. 16, Art.I).

III. The Ohio Power Siting Board improperly delegated too much authority to the Administrative Law Judges to issue a Certificate under ORC 4906.10.

- a) Instead of rendering an independent decision the Board adopted, without due consideration, an Opinion, Order, and Certificate that was pre-drafted by the ALJ's. The Opinion, Order, and Certificate (which was apparently prepared before the Board ever met on this matter)⁶ states: “ Upon review of the record, as a whole, we find that intervenors who were not parties to the Stipulation have not presented evidence sufficient to persuade the Board to reach a contrary finding. Any allegation presented in opposition to the Stipulation is hereby considered denied.” It appears that the Board relied upon the ALJ's to reach a final decision which was merely rubber-stamped by the Board.

This project will affect the lives and property rights of the citizens living in this project area. Therefore, the Board must meet its statutory obligation to carefully weigh the issues and evidence and to reach an independent determination whether the Project should be constructed as proposed.

IV. The Administrative Law Judges procedural process, in the Black Fork Wind Energy case, toward the citizen intervenors was misleading and prejudicial.

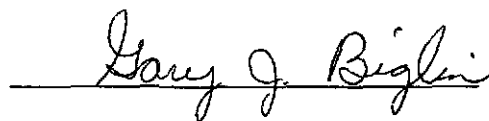
- a) The compressed schedule from the time the citizen intervenors were acknowledged (August 30, 2011) and the dates set for the public hearing (Sept. 15, 2011) and the adjudicatory hearing (Sept. 19, 2011). Other projects cases have had a window of about two weeks between the hearings.
- b) Citizen intervenors did not receive a copy of the Project's application in a timely manner under ORC. 4906.08 (A) (2). Myself Gary J. Biglin requested intervention in case# 10-2865-EL-BGN on (July 27, 2011), but did not receive a copy until (Oct. 11, 2011).
- c) In a teleconference (Sept. 9, 2011) the citizen intervenors were directed to move to a Settlement conference on (Sept. 19, 2011) even though the ruling was objected to by some parties, thus violating OAC. 4906-7-12 (C). Throughout the teleconference the ALJ's referred to the meeting as a settlement meeting and other times as a stipulation meeting this was very confusing.
- d) Fourteen (pro se.) citizen intervenors were not parties to the Stipulation. As of discussions in the (Sept. 9, 2011) teleconference non-stipulating parties were to be able to address all issues at the evidentiary hearing, but at the hearing OPSB staff witnesses that represented different areas of the Staff Report were removed from testifying, thus not affording the intervenors the right to cross-examine them. These non-stipulating parties were unjustly denied opportunity to cross-examine staff witnesses. After pulling all the previous staff witnesses the ALJ's allowed OPSB staff to appoint a Mr. Jon Pawley as the only available staff representative witness for cross-examination. He repeatedly

could not answer the questions asked of him by intervenors about specific areas of the Staff Report, thus the intervenors were not given adequate answers to questions by only this witness. All staff witnesses who filed testimony in this case should have been available for cross-examination by intervenors not party to the Stipulation.

6 (note reference for III page 4)

If the Board met in private, without notice, such a meeting would have violated the Ohio Open Meeting Act (ORC. 122.22).

Respectfully Submitted,

A handwritten signature in cursive script, reading "Gary J. Biglin", is written over a horizontal line.

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