

FILE  
FEBRUARY 20, 2012  
BRETT A HEFFNER  
3429 STEIN ROAD  
SHELBY OHIO 44875  
414 632 3845

RE: CASE # 10-2865-EL-BGN  
APPLICATION FOR REHEARING  
OPINION, ORDER, AND  
CERTIFICATE OF  
JANUARY 23, 2012

TO: CHAIRMAN  
OHIO POWER SITING BOARD  
PUBLIC UTILITIES COMMISSION  
180 EAST BROAD STREET  
COLUMBUS, OHIO 43215

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2012 FEB 21 PM 12: 04

PUCO

GREETINGS,

I, BRETT A HEFFNER, BEING A RECOGNIZED INTER-  
VENOR IN THE MATTER OF BLACK FORK WIND ENERGY, L.L.C.  
FOR A CERTIFICATE TO SITE A WIND-POWERED ELECTRIC  
GENERATING FACILITY IN CRAWFORD AND RICHLAND  
COUNTIES, OHIO; CASE NUMBER 10-2865-EL-BGN;  
RESPECTFULLY REQUEST AND APPLY FOR A REHEARING,  
STATING THAT MY INTERESTS WERE NOT ADEQUATELY CON-  
SIDERED IN THE HEARING, AND SETTING FORTH THE  
FOLLOWING GROUNDS, ALONG WITH MEMORANDUM IN  
SUPPORT ATTACHED THIS SAME DAY.

- ① THE FOCUS OF THE ADJUDICATORY HEARING WAS UN-  
REASONABLY AND UNLAWFULLY SHIFTED TO THE  
STIPULATION, WHICH WAS SIGNED BY A MINORITY OF  
THE PARTIES; AND SHIFTED AWAY FROM THE STAFF  
REPORT AND APPLICATION, WHICH IS THE PROPER  
FOCUS OF THE HEARING. THIS STIPULATION UN-  
REASONABLY AND UNLAWFULLY AFFECTED THE  
RIGHTS OF PARTIES THAT DID NOT SIGN.

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CONT'D

FEBRUARY 20, 2012

② IT IS UNREASONABLE AND UNLAWFUL TO CONDUCT A PROCEDURE CALLED A HEARING, PRESIDE OVER IT WITH PERSONS CALLED JUDGES, AND PRACTICE BEFORE THEM WITH ENTITIES CALLED ATTORNEYS AND PARTIES, AND UNDER THE RULES OF PROCEDURE INCLUDE AS A GENERAL PROVISION THE ABILITY FOR THE PRESIDING OFFICERS TO "WAIVE ANY REQUIREMENT, STANDARD, OR RULE SET FORTH IN THIS CHAPTER OR PRESCRIBE DIFFERENT PRACTICES OR PROCEDURES TO FOLLOW IN THIS CASE."

OAC 4906-7-19(B)

③ THE OPINION ORDER AND CERTIFICATE IS UNLAWFUL AS THE STAFF REPORT AND STAFF OPINION ARE USED EXTENSIVELY IN THE FORMATION OF FINDINGS OF FACT AND CONCLUSION OF LAW, BUT THE STAFF REPORT WAS NOT TREATED AS EVIDENCE IN THE ADJUDICATORY HEARING, AND CITIZEN INTERVENORS WERE NOT PERMITTED TO CROSS EXAMINE THE AUTHORS OF THE STAFF REPORT, NOR WERE INTERVENORS PERMITTED TO CROSS EXAMINE OTHER SIGNATORIES TO THE STIPULATION.

④ OPINION ORDER AND CERTIFICATE IS UNREASONABLE AND UNLAWFUL AS THE BOARD DID NOT REVIEW EVIDENCE AND TESTIMONY.

⑤ ADMINISTRATIVE LAW JUDGE UNREASONABLY AND UNLAWFULLY MADE A MOTION AND SUBSEQUENT EXPEDITED RULING WITHOUT SHOWING GOOD CAUSE.

⑥ ALLEGED MOTION DURING PREHEARING TELECONFERENCE BY JOHN JONES TO CALL AND CONTINUE IS INVALID, AND SUBSEQUENT RULING ON MOTION BY ADMINISTRATIVE LAW JUDGE IS THEREFORE INVALID.

CONT'D →

FEBRUARY 20, 2012

- ⑦ EXPEDITED RULING ON ALLEGED CALL AND CONTINUE MOTION WAS UNREASONABLE AND UNLAWFUL AS NO PARTY CALLED FOR AN EXPEDITED RULING, AND ALL PARTIES WERE NOT CONTACTED. 4906-7-12(c)
- ⑧ ALLEGED MOTION BY JOHN JONES, ATTORNEY FOR THE STAFF, IS INVALID AS THE STAFF IS NOT A PARTY TO THE PREHEARING TELECONFERENCE - 4906-7-03(c)
- ⑨ THE HEARING OF THE STIPULATION WAS UNREASONABLE AND UNLAWFUL AS WE HAD LESS THAN 3 DAYS TO REACT TO A COMPLETELY NOVEL AGREEMENT WITHOUT TIME TO SECURE WITNESSES TO TESTIFY CONCERNING SUCH AGREEMENT. ALL OUR PREFILED TESTIMONY BECAME INACTIVE, AND WE HAD TO START FROM FRESH SCRATCH ON TESTIMONY REGARDING THE STIPULATION.
- ⑩ BOARD STAFF AND COUNSEL FOR BOARD STAFF UNREASONABLY AND UNLAWFULLY CONDUCTED NUMEROUS EX-PARTE DISCUSSIONS WITH THE COMPANY.
- ⑪ THE APPLICATION WAS UNREASONABLY AND UNLAWFULLY DEEMED COMPLETE, AND BOTH WAS AND WAS NOT PART OF THE ADJUDICATORY HEARING.
- ⑫ RULING BY ALJ FARKAS TO CALL AND CONTINUE AND CONVERT THE ADJUDICATORY HEARING TO A SETTLEMENT AND STIPULATION CONFERENCE WAS UNLAWFUL AS IT WAS DONE IN AN UNTRANSCRIBED PREHEARING TELECONFERENCE (9-9-11) OVER THE OBJECTION OF VARIOUS PARTIES, WITHOUT GOOD CAUSE SHOWN.
- ⑬ THE OPINION ORDER AND CERTIFICATE OF JANUARY 23 WAS UNREASONABLE AND UNLAWFUL AS IT IMPROPERLY ALLOWED NON-EXPERT TESTIMONY AND OPINION, THE ENTRANCE OF HEARSAY AND STUDIES ON THE PART

CONT'D →

FEBRUARY 20, 2011

OF PROPONENTS OF THE STIPULATION, BUT RULED TO STRIKE OPINIONS, STUDIES, AND HEARSAY OF CITIZEN INTERVENORS.

- (14) THE ORDER OPINION AND CERTIFICATE (AS BASED UPON THE HEARING AND STIPULATION) IS UNREASONABLE AND UNLAWFUL AS IT DOES NOT ADEQUATELY ADDRESS THE BASIS OF NEED. ORC 4906.10(A)(1)
- (15) IT IS UNLAWFUL AND UNREASONABLE FOR THE LEGISLATURE TO CREATE A JURIDICAL BODY WITH POLICE POWERS IN WHICH THE SUBJECT PERSON'S ONLY RECOURSE IN THE EVENT OF MALEFACTION BY SAID BODY IS TO THE BODY ITSELF; AND FOR THAT BODY TO GRANT A CERTIFICATE THAT ALLOWS SUBSTANTIAL AND MATERIAL CHANGES TO THE PARTICULARS OF THE CERTIFICATE WITHOUT THE OPPORTUNITY OF A PUBLIC HEARING. (OPSB)
- (16) ORDER IS UNLAWFUL AS IT VIOLATES THE VALENTINE ANTI-TRUST ACT OF 1898, AS CODIFIED IN OHIO REVISED CODE 1331.

BEST REGARDS,

BRETT ~~BA~~

BA Huffer 2/20/11

FEBRUARY 20, 2012

PURSUANT TO ORC 4906.02(B) I BRETT A HEFFNER IN THE MATTER OF CASE # 10-2865-EL-BGN WOULD LIKE TO ENTER RECORDING OF 9-9-11 PREHEARING TELECONFERENCE AS PART OF MEMORANDUM IN SUPPORT, OR SEPERATELY IF NECESSARY, SUCH RECORDING HEREINAFTER REFERRED TO AS "AUDIO"

THE TELECONFERENCE WAS:

- A "FORMAL PROCEEDING OF OPSB"  
(AUDIO 5:01, ALJ FARKAS)
- B TO "FOLLOW BOARD'S ADMINISTRATIVE RULES AND PROTOCOL" (AUDIO 5:26, ALJ FARKAS)
- C "FOR THE RECORD" (AUDIO 58:55 ALJ FARKAS)
- D DID NOT GO OFF RECORD (AUDIO 0:00 - 101:50)
- E A TRANSCRIPTION WAS REQUESTED (AUDIO 18:16 B. HEFFNER, AUDIO 50:36 B. HEFFNER, AUDIO 55:50 M. RIETSCHLIN)
- F NO TRANSCRIPT WAS ISSUED (AUDIO 18:22 ALJ FARKAS, AUDIO 56:13 ALJ FARKAS)
- G RECORDED IN ITS ENTIRETY FROM OPEN TO CLOSE, WITHOUT EDIT, AND IS A PART OF PUBLIC RECORDS IN RICHLAND COUNTY, OHIO

RESPECTFULLY SUBMITTED,

Brett Heffner

TO: TODD A SNITCHLER, CHAIRMAN  
OHIO POWER SITING BOARD  
180 EAST BROAD STREET  
COLUMBUS OHIO 43215  
RE: CASE # 10-2865-EL-BGN

FEBRUARY 20, 2012  
B.A. HEFFNER  
3429 STEIN ROAD  
SHELBY OH 44875  
419 632 3845

GREETINGS,

PLEASE ACCEPT THE FOLLOWING MEMORANDUM IN SUPPORT OF THE FOREGOING AND ATTACHED REQUEST AND APPLICATION FOR REHEARING. NUMBERED ARGUMENTS IN SUPPORT CORRESPOND TO NUMBERED GROUNDS FOR REQUEST FOR REHEARING.

① "STIPULATION, OR SETTLEMENT AGREEMENT WILL NOT AFFECT ANY OTHER PARTY'S RIGHTS IN THIS CASE"

(AUDIO 12:30 ALJ FARKAS) ALSO TRANSCRIBED PORTION OF PRE HEARING TELECONFERENCE

AUDIO 47:29 • B. HEFFNER "CAN I ASK A PROCEDURAL QUESTION?"

- ALJ FARKAS: "YES"
- B. HEFFNER: "I ASSUME THAT ANY ISSUES NOT RESOLVED ON THE 19<sup>TH</sup> 20<sup>TH</sup> WILL REMAIN ON THE TESTIMONY AND WILL BE TAKEN UP AT THE ADJUDICATORY HEARING"
- ALJ FARKAS: "WHAT WILL HAPPEN IS THAT IF THERE IS NOT A COMPLETE STIPULATION OF THE CASE OR A SETTLEMENT OF THE CASE, THEN THE PARTIES THAT HAVE ENTERED INTO THE SETTLEMENT, PRESUMEABLY THE COMPANY AND WHOEVER ELSE ENTERS INTO A SETTLEMENT THE FOCUS OF THE CASE BECOMES THE STIPULATION OR SETTLEMENT. THERE WILL BE A HEARING AND WITNESSES WILL HAVE TO BE PRESENTED ON THE STIPULATION"
- B. HEFFNER 48:16: "WHAT RIGHT DO I HAVE AS FAR AS BEING A PARTY TO THAT STIPULATION. AM I

MEMORANDUM

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CONT'D →

FEBRUARY 20, 2012

DIMINISHED SOMEHOW BECAUSE I AM A SINGLE PRIVATE CITIZEN OR WILL THEY HAVE TO MAKE A STIPULATION BY WORKING OUT OUR DIFFERENCES?"

- ALJ FULLIN 54:38: "IF YOU ONLY HAVE AGREEMENT OF SOME AMONG THE PARTIES, BUT NOT ALL OF THEM ON A PARTICULAR ISSUE, IT DOESN'T MAKE THAT ISSUE GO AWAY, THERE STILL NEEDS TO BE A MEANS TO ADDRESS THAT ISSUE, BECAUSE THERE ARE CERTAIN PARTIES THAT HAVEN'T AGREED TO IT"

THE PUBLIC WAS NOT MADE AWARE OF THE SETTLEMENT CONFERENCE BEFORE THE PUBLIC MEETING. SIGNIFICANT AND MATERIAL CHANGES WERE MADE WITHOUT THE OPPORTUNITY OF PUBLIC INQUIRY.

THERE WAS WIDESPREAD MISINFORMATION ABOUT THE TERMS "SETTLEMENT", "PARTIAL STIPULATION", "STIPULATION". THE PORTION OF THE OAC THAT DEALS WITH HEARINGS MENTIONS ONLY "STIPULATION".

- ② IT IS UNREASONABLE AND UNLAWFUL TO HAVE AN UNTRANSCRIBED OR OFF THE RECORD CONVERSATION WITH THE ALJ'S WHEREIN RULES AND PROCEDURES ARE CLEARLY LAID DOWN IN FRONT OF ALL PARTIES, BUT IGNORED AND COUNTERMANDED IN SUBSEQUENT PROCESS.

IF THE BOARD PERSISTS WITH JURIDICAL WINDOW DRESSING, IT IS REASONABLE FOR THE CITIZEN TO EXPECT DUE PROCESS, THE RULE OF LAW, AND A COURT OF APPEAL, WITHOUT TYING UP THE SUPREME COURT.

③ OPINION ORDER AND CERTIFICATE OF 1-23-12, PAGES 5-52 ARE THE PRODUCT OF THE STAFF. THE STAFF WAS NOT MADE AVAILABLE FOR CROSS-EXAMINATION AS IS USUAL AND CUSTOMARY, AND ALSO PROMISED IN THE PRE HEARING TELECONFERENCE OF 9-9-11.

- AUDIO 54:58 MR. PETRICOFF: "I WOULD ASSUME THAT THERE MAYBE WOULD HAVE TO BE SUPPLEMENTAL TESTIMONY THAT WOULD SUPPORT THE STIPULATION, I GUESS NOW THAT WE'VE DISCUSSED IT, TOO, IT MAY MAKE MORE SENSE TO SEE WHAT WE GET ON THE 19<sup>TH</sup> AND BASICALLY ADDRESS IT AT THAT TIME, BUT I WOULD THINK THAT TO AGREE THAT NOTHING HAS CHANGED (55:29), AND THE ISSUES IN THE STIPULATION, IF WE DON'T COME TO A TO AN AGREEMENT ON THE STIPULATION THAT THE TESTIMONY THAT IS FILED AND WE WOULD GO WITH THE APPLICATION AND THE TESTIMONY WHICH HAS BEEN FILED WITH THE APPLICATION WOULD STAY IN PLACE AND WE WOULD START THE HEARINGS ON THOSE ISSUES AND MAYBE WRAP UP WITH ANYTHING THAT HAS CHANGED (55:54) THAT REQUIRED ADDITIONAL TESTIMONY "
- ALJ FARKAS " YES, THAT'S CORRECT "

MR PAWLEY, THE LONE STAFF MEMBER MADE AVAILABLE, WHO SPONSORED THE STAFF REPORT AND WAS STAFF PROJECT LEAD (PREFILED TESTIMONY OF JON C PAWLEY PAGE 3 LINES 1-3) AND WAS RESPONSIBLE FOR ANY ISSUES NOT COVERED BY OTHER STAFF WITNESSES IN THEIR TESTIMONY (PREFILED TESTIMONY OF JON C. PAWLEY PAGE 3 LINES 5-9) WAS NOT ABLE TO ANSWER MEANINGFUL AND GERMAINÉ QUESTIONS IN CROSS EXAMINATION (PROCEEDINGS PAGE 652 LINE 24 AND 25 PAGE 653 LINES 1-3; PROCEEDINGS PAGE 653 LINES 4-25 PAGE 654 LINES 1-12;



FEBRUARY 20, 2012

PAGE 655 LINES 17-25 PAGE 656 LINES 1-14; PAGE 657 LINES 12-20; PAGE 658 LINES 15-17; PAGE 658 LINES 18-25 PAGE 659 LINES 1-6) AND THE WRITERS OF THE PORTION OF THE STAFF REPORT IN QUESTION WERE NOT MADE AVAILABLE, THOUGH ASKED FOR IN INQUIRIES TO THE ALJ THAT WERE TAKEN OFF THE RECORD (PROCEEDINGS PAGE 652 LINES 10-16, WHICH REFER TO EARLIER OFF THE RECORD PROCEDURAL QUESTIONS CONCERNING ABSENCE OF STAFF, PAGE 652 LINES 19-23 WHERE THE ALJ TAKES US OFF THE RECORD WHILE I OBJECT TO THE NON-AVAILABILITY OF STAFF)

CRAWFORD COUNTY COMMISSIONERS AND ENGINEER, THOUGH HAVING FILED TESTIMONY, WERE NOT MADE AVAILABLE FOR CROSS-EXAMINATION.

④ 4906-1-01 (F) "BOARD" MEANS THE OHIO POWER SITING BOARD, AS ESTABLISHED BY DIVISION (A) OF SECTION 4906.02 OF THE REVISED CODE "

OPINION ORDER AND CERTIFICATE 10-2865-EL-BGA/ PAGE 1 " THE OHIO POWER SITING BOARD (BOARD) COMING NOW TO CONSIDER THE ABOVE ENTITLED MATTER, HAVING APPOINTED ADMINISTRATIVE LAW JUDGES TO CONDUCT THE HEARINGS, HAVING REVIEWED THE EXHIBITS AND TESTIMONY INTRODUCED INTO EVIDENCE IN THIS MATTER, AND BEING OTHERWISE FULLY ADVISED, HEREBY ISSUE ITS OPINION, ORDER, AND CERTIFICATE IN THIS CASE AS REQUIRED BY CHAPTER 4906, REVISED CODE.

FEBRUARY 20, 2012

AFTER NUMEROUS OFF THE RECORD ASSURANCES BY THE ALJ THAT INDEPENDANT PARTIES' EVIDENCE AND TESTIMONY WOULD BE CONSIDERED BY THE BOARD PROPER, NO EVIDENCE EXISTS THAT THERE IS ANY DIRECT OR INDIRECT FLOW OF INFORMATION BETWEEN THE CITIZEN INTERVENOR AND THE BOARD AS ABOVE DEFINED.

4906-1-01 (F) DEFINES THE BOARD

4906.02 (C) " THE CHAIRMAN OF THE PUBLIC UTILITIES COMMISSION MAY ASSIGN OR TRANSFER DUTIES AMONG THE COMMISSION'S STAFF. HOWEVER, THE BOARD'S AUTHORITY TO GRANT CERTIFICATES UNDER SECTION 4906.10 OF THE REVISED CODE SHALL NOT BE EXERCISED BY ANY OFFICER, EMPLOYEE, OR BODY OTHER THAN THE BOARD ITSELF "

4906.02 (A) SPECIFIES MEMBERS OF THE BOARD, AND WHAT DUTIES THEY MAY DELEGATE.

⑤ AUDIO 18:54 • B. HEFFNER: " ARE YOU GOING TO MAKE A RULING ON THAT - DO ALL PARTIES HAVE TO BE IN AGREEMENT, HOW DO WE RESOLVE THAT? "

• 19:04 ALJ FARKAS: " THAT IS WHAT THIS WOULD BE TODAY. "

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" ALSO, IN THE SEPTEMBER 9 PREHEARING TELECONFERENCE, THE MOTION - MEMORANDUM IN SUPPORT - MEMORANDUM CONTRA - FINDING PROCESS WAS IMPROPERLY SUSPENDED CONCERNING RECOMMENDATION OF MR. PETRICOFF THAT SEPTEMBER 19 ADJUDICATORY HEARING BE CONVERTED TO A SETTLEMENT HEARING - A RULING WAS MADE IN ADVANCE OF NOTIFYING ALL PARTIES " (PREFILED DIRECT TESTIMONY OF B. HEFFNER PAGES 7-8 ITEM 24)  
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MEMORANDUM

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CONT'D →

FEBRUARY 20, 2012

AUDIO 40:24 • ALJ FARKAS: " I BELIEVE THAT MR. JONES HAD ASKED THAT WE CONTINUE THE HEARING A COUPLE DAYS. WHAT WE'D LIKE TO DO IS EITHER HAVE THE HEARING, TURN THE HEARING, I MEAN WE AGREE WE HAD LISTENED TO THE PEOPLE THAT RAISED SOME CONCERN ABOUT INSUFFICIENT TIME TO DISCUSS THIS ISSUE, BUT WE ARE GOING TO ALLOW THE HEARING TO BE CONVERTED TO A SETTLEMENT CONFERENCE ON THE 19TH BUT WHAT WE WANT TO DO TODAY IS EITHER HAVE THE HEARING BEGIN, HE HAD INDICATED TWO DAYS, SO EITHER ON THE 21ST OR KICK IT OFF A WEEK TO THE 20" (41:24)

AUDIO 44:40 • ALJ FARKAS: " ON THE 19TH WE'LL OPEN THE HEARING BUT WE'LL CONVERT THE HEARING TO A SETTLEMENT CONFERENCE AND THEN THE ALJ WILL LEAVE THE ROOM AND THEN THE PARTIES THAT ARE PRESENT WILL DISCUSS SETTLEMENT."

⑥ 4906-7-12 (A) "ALL MOTIONS, UNLESS MADE AT A PUBLIC HEARING OR TRANSCRIBED PREHEARING CONFERENCE, OR UNLESS OTHERWISE ORDERED FOR GOOD CAUSE SHOWN, SHALL BE IN WRITING AND SHALL BE ACCOMPANIED BY A MEMORANDUM IN SUPPORT."

⑦ 4906-7-12 (C) "ANY MOTION MAY INCLUDE A SPECIFIC REQUEST FOR AN EXPEDITED RULING. THE GROUNDS FOR SUCH REQUEST SHALL BE SET FORTH IN THE MEMORANDUM IN SUPPORT ... IN ALL OTHER CASES, THE PARTY REQUESTING THE EXPEDITED RULING MUST FIRST CONTACT ALL OTHER PARTIES TO

MEMORANDUM

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CONT'D →

FEBRUARY 20, 2012

DETERMINE WHETHER ANY PARTY OBJECTS "

B. HEFFNER " IN THE SEPTEMBER 9 PREHEARING TELECONFERENCE, THE MOTION - MEMORANDUM IN SUPPORT - MEMORANDUM CONTRA - FINDING PROCESS WAS IMPROPERLY SUSPENDED ... A RULING WAS MADE IN ADVANCE OF NOTIFYING ALL PARTIES " (PREFILED DIRECT TESTIMONY OF B. HEFFNER, PAGES 7-B, ITEM 24 PARAGRAPH 2)

⑧ OAC 4906-7-03 PARTIES (C) " EXCEPT FOR PURPOSES OF RULES 4906-7-05, 4906-7-06, PARAGRAPH (C) OF RULE 4906-7-07, PARAGRAPH (I) OF RULE 4906-7-07, AND RULES 4906-7-09, 4906-7-11, 4906-7-12, 4906-7-14, 4906-7-15, AND 4906-7-16 OF THE ADMINISTRATIVE CODE, THE BOARD STAFF SHALL NOT BE CONSIDERED A PARTY TO ANY HEARING "

RULES FOR PREHEARING CONFERENCES ARE CONTAINED IN OAC 4906-7-10. THE MOTION ATTRIBUTED TO MR JONES ~~BY~~ BY ALI FARKAS OCCURRED DURING THE PREHEARING TELECONFERENCE, AND WAS THE BASIS FOR THE ALI RULING TO CONVERT ADJUDICATORY HEARING TO STIPULATION CONFERENCE. MR JONES IS COUNSEL FOR STAFF, AND WAS NOT A PARTY TO THAT HEARING.

MEMORANDUM

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CONT'D

FEBRUARY 20, 2012

AUDIO 16:43 • ALJ FARKAS: " JOHN JONES PROPOSED MOVING HEARING DATE... CONTINUE A COUPLE OF DAYS... HAVE A SETTLEMENT CONFERENCE "

AUDIO 18:54 • ALJ FARKAS: " MR JONES WILL ARGUE FOR A MOTION CALLING FOR A CONTINUANCE "

AUDIO 40:24 • ALJ FARKAS: " I BELIEVE THAT MR JONES HAD ASKED THAT WE CONTINUE THE HEARING "

THE RULING BY ALJ FARKAS IMMEDIATELY FOLLOWS

⑨ AUDIO 48:00 • ALJ FARKAS " THERE WILL BE A HEARING, AND WITNESSES WILL HAVE TO BE PRESENTED ON THE STIPULATION "

AUDIO 49:34 • ALJ FARKAS: " WHAT WOULD HAPPEN THEN IS THEN THE FOCUS BECOMES THE STIPULATION AND NOT THE APPLICATION... THE COMPANY WOULD HAVE WITNESSES IN SUPPORT OF THE STIPULATION, AND YOU WOULD BE ALLOWED TO CROSS EXAMINE THE WITNESSES IN TERMS OF THE STIPULATION THEY'VE ENTERED INTO. AND YOU WOULD GO ON TO TESTIFY WITH RESPECT TO THE STIPULATION

• B. HEFFNER: " SO THE PREPARED TESTIMONY THAT WAS DUE ON THE 15<sup>TH</sup>, IN THE EVENT THERE IS A PARTIAL OR A STIPULATION THE FOLLOWING WEEK BECOMES, UH, INACTIVE "

• ALJ FARKAS: " THAT'S CORRECT AND IF THERE'S A STIPULATION WE WILL PROBABLY HAVE TO RESCHEDULE AND RETHINK THE HEARING DATE BECAUSE WE WOULD HAVE TO HAVE TIME TO PREPARE TESTIMONY. "

MEMORANDUM

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CONT'D →

FEBRUARY 20, 2012

⑩ NO JOURNALIZED EVIDENCE IN SUPPORT, BUT JUST ASK ANY OF THE CITIZEN INTERVENORS WHAT THEY OBSERVED AT THE HEARING.

⑪ NO SPECIFIC TURBINE WAS CHOSEN IN CONTRAVENTION OF 4906-17(03) OAC

SITES ARE MOVEABLE AFTER THE CERTIFICATION, NO FINAL VERSION OF LAYOUT OR CONSTRUCTION IS AVAILABLE IN CONTRAVENTION TO 4906-17(03) OAC

APPLICATION DID NOT CONTAIN DESCRIPTION OF APPLICANTS PUBLIC INTERACTION PROGRAMS AS REQUIRED [STAFF REPORT PAGE 47 FOOTNOTED THERE- IN OAC 4906-17-08(E)(1)]

APPLICATION WAS NOT PART OF ADJUDICATORY HEARING:  
AUDIO 47:50 • ALJ FARKAS "THE FOCUS OF THE CASE BECOMES THE STIPULATION OR SETTLEMENT"

AUDIO 49:34 • ALJ FARKAS: "WHAT WOULD HAPPEN IS THEN THE FOCUS BECOMES THE STIPULATION AND NOT THE APPLICATION"

APPLICATION WAS PART OF THE ADJUDICATORY HEARING:  
AUDIO 54:38 • ALJ FULLIN: "IF YOU HAVE ANY PARTICULAR ISSUE, THE AGREEMENT OF ALL OF THE PARTIES, THEN IN THAT SITUATION, THE ISSUE MAY

MEMORANDUM

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CONT'D →

FEBRUARY 20, 2012

GO AWAY AND NOT BE ACTIVE, BUT IF YOU ONLY HAVE AGREEMENT OF SOME AMONG THE PARTIES BUT NOT ALL OF THEM ON A PARTICULAR ISSUE, IT DOESN'T MAKE THAT ISSUE GO AWAY, THERE STILL NEEDS TO BE A MEANS TO ADDRESS THAT ISSUE, BECAUSE THERE ARE CERTAIN PARTIES THAT HAVEN'T AGREED TO IT."

DOCKETED LETTER TO OPSB 3-31-11 FROM B. HEFFNER PAGES 1 AND 2. SEE LETTER IN ITS ENTIRETY ATTACHED AS APPENDIX 1.

⑫ AUDIO 55:56 • M RIETSCHLIN: "MR FARKAS, WOULD IT BE POSSIBLE FOR YOU TO PUT A SUMMARY IN THE E-MAIL REGARDING THE STIPULATION, THE PARTIAL STIPULATION BACK AND FORTH WE JUST LISTENED TO?"

AUDIO 57:12 • ALS FARKAS: "TO THE EXTENT THAT IT WOULD BE HARD FOR ME TO INDICATE WHAT WE'VE JUST BEEN DISCUSSING (57:27) BECAUSE ITS NOT REALLY ANYTHING IN PARTICULAR."

UNTRANSCRIBED

OBJECTION 5:

AUDIO 29:44 • B. HEFFNER "PROPER TO ASK... MEMORANDUM IN SUPPORT ... SERVE IT ON ALL PARTIES, GIVE US A CHANCE FOR A MEMORANDUM CONTRA?"

• ALS FARKAS: "WELL WE REALLY DONT HAVE TIME FOR THAT ... IF YOU HAVE AN OBJECTION... STATE YOUR OBJECTIONS TO IT RIGHT NOW."

MEMORANDUM

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CONT'D →

FEBRUARY 20, 2012

- B. HEFFNER: " I FEEL I JUST DID, I THINK THAT THAT WOULD BE SUFFICIENT."
- ALJ FARKAS: " THAT WHAT WOULD BE SUFFICIENT? "
- B. HEFFNER: " WHAT I JUST FINISHED WITH ... THERE OUGHTTA BE TIME ... SCHEDULE HAS BEEN COMPRESSED ... THIS IS AN IMPORTANT DECISION ... I'M NOT PREPARED TO MAKE IT TODAY ... I'M JUST RESPECTFULLY ASKING THAT PERHAPS I HAVE, YOU KNOW, TIME TO LET ALL THE PARTIES KNOW WHAT THE REQUEST IS, TO MAKE A DETERMINATION IN THE NORMAL COURSE OF DUE PROCESS. IF THEY HAVE OBJECTIONS, PERHAPS THEY COULD SEND THEM IN, AS FAR AS YOUR SCHEDULE GOES, WHY, WE DIDN'T SET THAT SCHEDULE ... I DO THINK THIS IS A FAIR REPRESENTATION OF MY OBJECTION ... I AM WILLING TO GO WITH THE GENERAL ATTITUDE ABOUT THIS. IF THIS IS WHAT WE HAVE TO DO I SUPPOSE UH, THIS IS WHAT WE HAVE TO DO. YES, I GUESS I DO OBJECT ON THOSE GROUNDS, WE'VE BEEN COMPRESSED, WE'VE BEEN ASKED TO ABSORB DOCUMENTS IN REALLY SHORT TIMES ... I THINK WE SHOULD DO THIS IN A CAREFUL AND DUE PROCESS MANNER"
- AUDIO 31:30 • ALJ FARKAS: " DO THE PRICES HAVE ANY OBJECTION? "
- C. PRICE: " YES WE DO."
- ALJ FARKAS: " WHAT IS YOUR OBJECTION? "
- C. PRICE: " ... AGREE WITH MR HEFFNER THAT EVERYTHING HAS BEEN PUSHED AND SHORTENED TO WHERE WE HAVE TO SCRAMBLE TO GET



FEBRUARY 20, 2012

OUR INFORMATION TOGETHER, AND AT THE BEGINNING OF THIS CONVERSATION YOU STATED THAT A SETTLEMENT PHASE IS NORMAL FOR HEARINGS LIKE THIS, SO IF IT WAS NORMAL IT SHOULD HAVE BEEN BROUGHT UP BEFORE NOW."

OAC 4906-7-01 (D) " FORMAL EXCEPTIONS TO RULINGS OR ORDERS OF THE ADMINISTRATIVE LAW JUDGE ARE UNNECESSARY IF, AT THE TIME OF ANY RULING OR ORDER IS MADE, THE PARTY MAKES KNOWN THE ACTION WHICH HE OR SHE DESIRES THE PRESIDING HEARING OFFICER TO TAKE, OR HIS OR HER OBJECTION TO ACTION WHICH HAS BEEN TAKEN AND THE BASIS FOR THAT OBJECTION "

THE PRE HEARING TELECONFERENCE OF 9-9-11 SHOULD HAVE BEEN TRANSCRIBED (ORC 4906-02(B) "THE CHAIRMAN SHALL KEEP A COMPLETE RECORD OF ALL PROCEEDINGS OF THE BOARD")

AUDIO 5:01 - ALJ FARKAS: " FORMAL PROCEEDINGS OF OPSB . . . ALL PARTIES ARE REQUIRED TO FOLLOW BOARD'S ADMINISTRATIVE RULES AND THE BOARD'S PROTOCOL "

(13) PROCEEDINGS, PAGE 68 B HEFFNER: " I WANT TO GO ON TO QUESTION 16. I'D LIKE TO MAKE AN OBJECTION BECAUSE MR. STONER IS NOT AN EXPERT IN THE EVALUATION OF THESE

MEMORANDUM

(12)

CONT'D →

FEBRUARY 20, 2012

STUDIES" EXAMINER FARKAS: "YOU'RE OBJECTING TO WHAT?" B. HEFFNER: "TO THE ANSWER TO QUESTION 10. HE IS MAKING AN ASSESSMENT OF A STUDY HE DOESN'T SHOW A UNIQUE QUALIFICATION TO ADDRESS"

EXAMINER FARKAS: "DO YOU WANT TO ADDRESS THIS?"

MR. PETRICOFF: YOUR HONOR, WE WILL TREAT THIS AS A MOTION TO STRIKE, AND WE OBJECT TO THAT, NOTING THAT MR. STONER IS AN EXPERT. HE HAS 25 YEARS IN THE INDUSTRY. HE HAS BUILT NUMEROUS PROJECTS, AND THE ANSWER TO QUESTION 3 BASICALLY LISTS ALL OF HIS EXPERIENCE AND HIS ENGINEERING BACKGROUND. FOR THOSE REASONS, I THINK HE QUALIFIES AS AN EXPERT WITNESS, AND AS AN EXPERT WITNESS HE MAY GIVE OPINION TESTIMONY."

EXAMINER FARKAS: AND IS THIS -- DO YOU WANT TO RESPOND TO THAT?"

B. HEFFNER: "YES I DO. HE IS MAKING AN "EXPERT" OPINION FROM THE POINT OF VIEW OR PERSPECTIVE OF A PROJECT DEVELOPER BUT NOT AN EXPERT IN REAL ESTATE."

EXAMINER FARKAS: "ARE YOU OBJECTING TO THE STUDY ITSELF?"

B. HEFFNER: "I'M NOT OBJECTING TO THE STUDY, I'M OBJECTING TO HIS ENTRANCE AND EVALUATION OF THE STUDY."

EXAMINER FARKAS: "WITH RESPECT TO YOUR OBJECTION, I'M GOING TO OVERRULE YOUR OBJECTION, THAT MEANS I'M ALLOWING HIS TESTIMONY WITH RESPECT TO

OPINION ORDER AND CERTIFICATE PAGE 53 LINE 4

"MR. STONER IS A SENIOR VICE PRESIDENT FOR ELEMENT POWER LLC AND AS SUCH IS RESPONSIBLE FOR THE DEVELOPMENT OF THE COMPANY'S RENEWABLE ENERGY PROJECTS... HE HAS 25 YEARS EXPERIENCE IN THE ELECTRIC UTILITY AND INDEPENDANT POWER BUSINESS, PRIMARILY IN PROJECT DEVELOPMENT, INCLUDING SPECIFICALLY OVERSEEING THE DEVELOPMENT OF WIND ENERGY PROJECTS FOR THE LAST 8 YEARS."

NOTE THAT NO MENTION IS MADE OF REAL ESTATE EXPERIENCE, ALSO, A PERSON ALWAYS IN CHARGE OF DEVELOPMENT IS NEVER AROUND FOR THE POST-OPERATION CHANGE IN PROPERTY VALUES. BA

OPINION, ORDER AND CERTIFICATE PAGE 52 VII A (1)

"SEVERAL OF THE INTERVIEWEES RAISED CONCERNS ABOUT THE POTENTIAL FOR THE PROJECT TO NEGATIVELY IMPACT THE PROPERTY VALUES OF THE COMMUNITY (RIETSCHLIN EX 1, AT 2; WARRINGTON EX 1 AT 1-2, 5)

SEVERAL ALSO HAD THEIR TESTIMONY AND SUBMITTED STUDIES STRICKEN FROM THE RECORD (STRUCK?)

THE ALTS DID NO RESEARCH INTO THE ACTUAL WORK HISTORIES OF THE WIND INDUSTRY EMPLOYEES,

FEBRUARY 20, 2012

HOW CAN ONE BE A SENIOR ANYTHING IN A COMPANY THAT HAS EXISTED FOR LESS THAN TWO YEARS AT THE TIME OF THE APPLICATION?

- ⑭ SECTIONS 4906 OF THE ORC AND OAC ARE NOT SOMEHOW A LESSER LAW THAN THE RENEWABLE PORTFOLIO STANDARD.

NO DEMONSTRATION HAS BEEN MADE BY THE COMPANY OR THE STAFF THAT THE POWER GENERATED BY THE PROPOSED FACILITY MAY OR MUST BE SOLD TO OHIO UTILITIES IN SATISFACTION OF THE MANDATES.

THE BASIS OF NEED CAN ONLY BE DETERMINED AFTER A POWER PURCHASE AGREEMENT HAS BEEN CONSUMMATED. THERE IS NO REQUIREMENT IN THE CERTIFICATE THAT POWER FROM THE PROJECT BE SOLD TO ENTITIES STATUTORILY REQUIRED TO PURCHASE SUCH POWER.

THE RENEWABLE PORTFOLIO STANDARD SQUARELY POSITS THE BASIS FOR NEED FOR RENEWABLE ENERGY ON THE WHOLESALE PURCHASER AND RETAIL DISTRIBUTOR OF ELECTRICITY, AND GIVES THEM MANY AND DIVERSE OPTIONS IN THE FULFILLMENT OF THAT MANDATE OF WHICH WIND IS ONLY ONE. THE BASIS FOR DETERMINATION OF NEED DOES NOT REST UPON AN LLC THAT IS NOT A PUBLIC UTILITY.

- ⑮ OAC 4906-7-09 (C) THE BOARD IS NOT BOUND BY THE STIPULATION, MAKING MANY SUBSTANTIAL

FEBRUARY 20, 2012  
AND MATERIAL CHANGES TO THE CERTIFICATE POSSIBLE  
WITHOUT THE OPPORTUNITY FOR PUBLIC REVIEW AND  
INVOLVEMENT.

SUBSTANTIAL AND MATERIAL CHANGES WERE CREATED  
BY THE STIPULATION SUBSEQUENT TO THE PUBLIC HEARING,  
WITH OUT REVIEW OF THE PUBLIC OR THE OPPORTUNITY  
TO ADDRESS SUCH CHANGES AT PUBLIC HEARING.

NO LEGAL GOVERNING AUTHORITY EXISTS TO WHICH  
AFFECTED NON-PARTICIPATING LANDOWNERS MAY SEEK  
MITIGATION OF INJURY. THE COMPANY AND BOARD  
STAFF ARE THEIR ONLY RECOURSE. IMPRECISE LANGUAGE  
WILL RESULT IN FREQUENT LITIGATION. (PREFILED  
TESTIMONY OF B. HEFFNER 9-15-11 PAGE 3 ITEM 5, PAGE  
7 ITEM 20, PAGE 6 ITEM 17)

- (16) PREFILED TESTIMONY OF B. HEFFNER 9-15-11 PAGE  
8 ITEM 26 " VALENTINE ANTITRUST ACT OF 1898  
CODIFIED IN ORC 1331 WILL INVALIDATE MANY CONTRACTS,  
MAKING THE PROJECT AS PROPOSED UNWORKABLE.  
LANDOWNERS SHOULD HAVE HAD ACCESS TO CONTRACTS  
FROM COMPETING COMPANIES BEFORE THE PROJECT  
BOUNDARIES WERE DRAWN. THERE IS NO EVIDENCE  
THAT ANY OR ALL LANDOWNERS WERE OFFERED  
A CONTRACT BY MORE THAN ONE COMPANY FOR  
ANY PARCEL. THE UNIQUE QUALITY OF A PUBLIC  
UTILITY CANNOT BE USED AS JUSTIFICATION, AS THE  
APPLICANT MAINTAINS THAT IT IS NOT A PUBLIC  
UTILITY."

ORC 1331.01 (B) (1)(5)(6)

(B) "TRUST" IS A COMBINATION OF CAPITAL, SKILL, OR ACTS BY TWO OR MORE PERSONS FOR ANY OF THE FOLLOWING PURPOSES:

(1) TO CREATE OR CARRY OUT RESTRICTIONS IN TRADE OR COMMERCE

(5) TO MAKE, ENTER INTO, EXECUTE, OR CARRY OUT CONTRACTS, OBLIGATIONS, OR AGREEMENTS OF ANY KIND BY WHICH THEY BIND OR HAVE BOUND THEMSELVES NOT TO SELL, DISPOSE OF, OR TRANSPORT AN ARTICLE OR COMMODITY, OR AN ARTICLE OF TRADE, USE, MERCHANDISE, COMMERCE, OR CONSUMPTION BELOW A COMMON STANDARD FIGURE OR FIXED VALUE, OR BY WHICH THEY AGREE IN ANY MANNER TO KEEP THE PRICE OF SUCH ARTICLE, COMMODITY, OR TRANSPORTATION AT A FIXED OR GRADUATED FIGURE, OR BY WHICH THEY SHALL IN ANY MANNER ESTABLISH OR SETTLE THE PRICE OF AN ARTICLE, COMMODITY, OR TRANSPORTATION BETWEEN THEM OR THEMSELVES AND OTHERS, SO AS DIRECTLY OR INDIRECTLY TO PRECLUDE A FREE AND UNRESTRICTED COMPETITION AMONG THEMSELVES, PURCHASERS, OR CONSUMERS IN THE SALE OR TRANSPORTATION OF SUCH ARTICLE OR COMMODITY, OR BY WHICH THEY AGREE TO POOL, COMBINE, OR DIRECTLY OR INDIRECTLY UNITE ANY INTERESTS WHICH THEY HAVE CONNECTED WITH THE SALE OR TRANSPORTATION OF SUCH ARTICLE OR COMMODITY, THAT ITS PRICE MIGHT IN ANY MANNER BE AFFECTED;



FEBRUARY 20, 2012

(6) TO REFUSE TO BUY FROM, SELL TO, OR TRADE WITH ANY PERSON BECAUSE SUCH PERSON APPEARS ON A BLACKLIST ISSUED BY, OR IS BEING BOYCOTTED BY, ANY FOREIGN CORPORATE OR GOVERNMENTAL ENTITY.

A TRUST AS DEFINED IN DIVISION (B) OF THIS SECTION IS UNLAWFUL AND VOID.

### 1331.04 CONSPIRACY AGAINST TRADE PROHIBITED

A VIOLATION OF SECTIONS 1331.01 TO 1331.14 INCLUSIVE OF THE REVISED CODE, IS A CONSPIRACY AGAINST TRADE. NO PERSON SHALL ENGAGE IN SUCH CONSPIRACY OR TAKE PART THEREIN. . .

### 1331.06 ILLEGAL CONTRACT

A CONTRACT, OR AGREEMENT IN VIOLATION OF SECTIONS 1331.01 TO 1331.14, INCLUSIVE, OF THE REVISED CODE, IS VOID.

### 1331.10 EVIDENCE

IN PROSECUTIONS UNDER SECTIONS 1331.01 TO 1331.04 OF THE REVISED CODE, IT IS SUFFICIENT TO PROVE THAT A TRUST OR COMBINATION EXISTS, AND THAT THE DEFENDANT BELONGED TO IT, ~~AND~~ OR ACTED FOR OR IN CONNECTION WITH IT, WITHOUT PROVING ALL THE MEMBERS BELONGING TO IT, OR PROVING OR PRODUCING AN ARTICLE OF AGREEMENT, OR A WRITTEN INSTRUMENT ON WHICH IT MAY HAVE BEEN BASED; OR THAT IT WAS EVIDENCED BY A WRITTEN INSTRUMENT.

---

THIS CONCLUDES MY MEMORANDUM IN SUPPORT, TO BE FOLLOWED BY CLOSING THOUGHTS AND APPENDIX I.

MEMORANDUM

Bayleffer 2/20/12  
(18)

TO THE EXTENT THAT EXPERT TESTIMONY HAS ANY VALUE SUPERIOR TO CITIZEN TESTIMONY IN THE PRESENTATION OF A STUDY, IT CAN BE EVALUATED ONLY ON DISPUTABLE, TECHNICAL VALIDITY WHICH ADMINISTRATIVE LAW JUDGES, AS JUDGES, CAN BRING NO SPECIAL INTERPRETING SKILLS. BUT THE ALLOWANCE OF EXPERT TESTIMONY ONLY IN FAVOR OF WIND INSTALLATIONS AND THE EXCLUSION OF ALL EVIDENCE AVAILABLE CONTRARY CAUSES SERIOUS PREJUDICE TO THE PARTIES ARGUING AGAINST INDUSTRIAL WIND INSTALLATIONS. BY GILDING THE TURD OF STATISTICAL, ACTUARIAL, AND MODELED DATA WITH AN "EXPERT" OPINION, THE EXPERT'S TESTIMONY IS LIKELY TO RECEIVE UNDOE WEIGHT. IT CREATES A FALSE SENSE OF CERTAINTY ON THE PART OF THE JUDGES, WHO ACT AS THE ONLY MEDIATOR BETWEEN BOARD AND CITIZEN. NONE OF THE CREDIBLE, DOCUMENTED, AND THOROUGHLY RESEARCHED DATA PRESENTED BY THE CITIZEN INTERVENORS SURVIVED THE CHASM BETWEEN LEGITIMATE CITIZEN INTERVENOR AND BOARD. ON THREE OCCASIONS, OFF THE RECORD BUT OBSERVED BY ALL PARTIES (AS MUCH OF THE MEANINGFUL DISCUSSIONS WERE) WE WERE ASSURED BY THE ADJUDICATORY LAW JUDGES THAT OUR VIEWS WOULD TRANSCEND THE VOID, THOUGH THERE IS NO PROCESS, RULE, OR PROMISE THAT ANY OF OUR HARD WORK WOULD EVEN BE VIEWED BY THE BOARD.

THE JUDGES VIEWED CITIZEN INPUT AS UNIMPORTANT; THE BOARD CONSEQUENTLY VIEWED IT NOT AT ALL. THE DECISION WAS IN FACT MADE BY THE ALJs, BY THE CONSCIOUS AND UNCONSCIOUS WITHHOLDING OF CITIZEN INPUT EVIDENT IN THE FINDING HEREIN CONTESTED. WE WERE GIVEN UNRELIABLE

CONT'D →



DESCRIPTIONS OF PROCESS AND PROTOCOL BY PERFIDIOUS DESIGN, OR NOVITIATE NON-CONVERSANCE WITH A FLEDGELING PROCESS; IT MATTERS NOT WHICH; THE RESULT WAS THE SAME, BEWILDERED CITIZENS AIMING AT A MOVING TARGET WHILE STANDING ON A SHIFTING LANDSCAPE WITH WHATEVER NEW OR RECYCLED ARTIFICE WAS HANDED TO OR TAKEN FROM US BASED ON A FLIP OF A COIN. STILL, A COIN HAS BUT TWO SIDES, AND WE RECOGNIZE BOTH, A COIN TOSS IS MORE COMFORTABLE. BETTER TO COMPARE IT TO THE WHIM OF AN UNKNOWABLE MASTER.

LET'S HAVE STABLE, KNOWABLE RULES; DUE PROCESS WITH PROPER TIME FOR STUDY AND RESPONSE, A PROPER RESPECT FOR THE TRUE STAKEHOLDERS, THOSE THAT WILL PAY THE BILL FOR AND LIVE BETWEEN THIS INDUSTRIAL INTRUSION; LESS DEFERENCE TO THE EXPERT FROM AFAR.

APPENDIX 1

MARCH 31, 2011

BRETT A HEFFNER

3429 STEIN ROAD

SHELBY OHIO 44875

419-632-3845

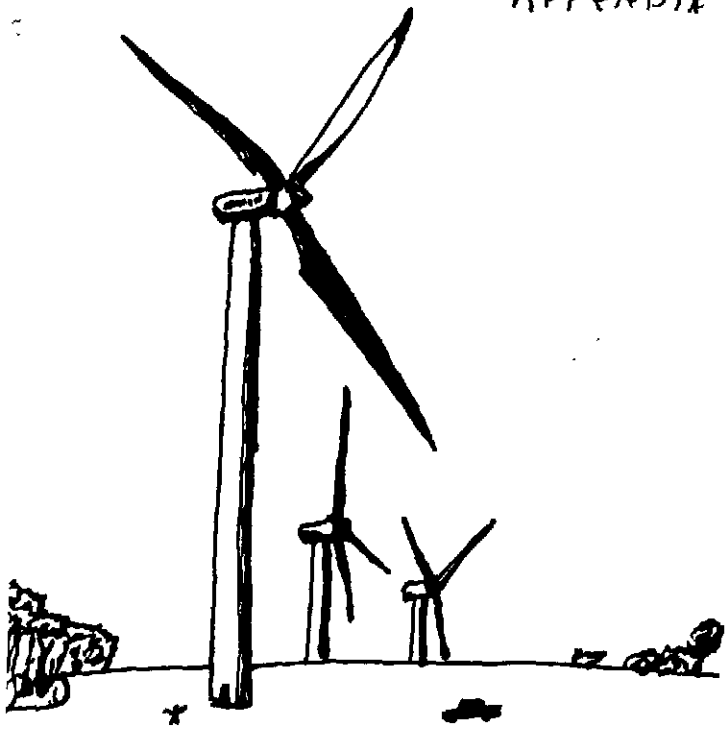
TO: DOCKETING DIVISION

PUCD-DPSB

180 EAST BROAD STREET

COLUMBUS, OHIO 43215

RE: CASE # 10-2865-EL-BG14



GREETINGS,

I WOULD EXPECT THAT A COMPANY THAT TOUTS ITS' EXPERIENCE IN THE WIND INDUSTRY WOULD BY NOW HAVE DEVELOPED A LOYAL RELATIONSHIP WITH A REGULAR SUPPLIER OF WIND TURBINES. ALSO, IN OUR AREA WITH OUR WIND CONDITIONS, YOU WOULD PROPERLY ASSUME THAT A SPECIFIC MODEL WOULD PROVE MORE SUITABLE THAN OTHERS.

IT IS REASONABLE THAT THE POWER SITING BOARD WOULD REQUIRE THAT THE COMPANY USE BEST AVAILABLE TECHNOLOGY BOTH FOR THE BENEFIT OF THOSE LIVING IN THE WIND DEVELOPMENT AND FOR THOSE THAT ULTIMATELY PAY FOR IT.

IT SEEMS THAT THE TURBINE MODEL IS A NECESSARY STARTING POINT FOR THE DETERMINATION OF PROJECT LAYOUT, ENVIRONMENTAL IMPACT,

(1)

CONT'D →

MARCH 31, 2011

GEOLOGY RELATED CONSTRUCTION ENGINEERING, COST PROJECTIONS, TAX BENEFIT, LABOR AGREEMENTS, TRANSPORTATION ROUTES, AND DARN NEAR EVERYTHING ELSE IN THE APPLICATION.


AND YET, RATHER THAN USING BEST AVAILABLE TECHNOLOGY, OR WORKING WITH MANUFACTURERS THAT SHARE A LONG-STANDING WORKING PARTNERSHIP WITH THE DEVELOPER, THE COMPANY'S STATED PLAN IS TO PURCHASE WHATEVER HAPPENS TO BE AVAILABLE ON THE SPOT MARKET AT THE TIME OF APPLICATION APPROVAL, AND AVAILABLE WITHIN THE ARBITRARY AND, IF PAST EXPERIENCE IS TRUSTWORTHY, EXTENDABLE DEADLINES OF FEDERAL GRANTS AND STATE MANDATES.

I DON'T SEE HOW AN APPLICATION CAN BE SUBMITTED OR ACCEPTED WITHOUT A SINGLE FIRM COMMITMENT ON THE MOST BASIC COMPONENT, THE TURBINE.

AS TRADESMEN, WE DO NOT CONSTRUCT A BUILDING FROM THE ROOF AND WORK OUR WAY DOWN. WE START WITH A FOUNDATION, AND A CORNERSTONE.

WE NEED SOME SOLID GROUND SOMEWHERE SO THE COMPANY CAN PLAN, ORGANIZE, AND MANAGE THE PROJECT, WITHOUT THIS, WE WILL HAVE REACTION, MITIGATION, AND LITIGATION.

PLEASE SPECIFY A TURBINE, PREFERABLY OF U.S. MANUFACTURE, WITH COMPONENTS OF U.S. ORIGIN. IF UNITED STATES TAXPAYERS MUST FOOT THE BILL, U.S. COMPANIES AND WORKERS SHOULD GET THE JOBS.

BEST REGARDS,  
BRETT 

BAT/effm 3/31/11

SERVED UPON THE FOLLOWING PARTIES VIA HAND DELIVERY:

☐ VORYS, SATER, SEYMOUR, AND PENSELLP, M HOWARD PETRICOFF, STEPHEN M. HOWARD, MICHAEL J. SETTINGER 52 EAST GAY STREET COLUMBUS OHIO 43216 ON BEHALF OF APPLICANT

☐ MIKE DEWINE, OHIO ATTORNEY GENERAL, JOHN J JONES, ASSISTANT SECTION CHIEF, STEPHEN A REILLY, DEVIN D PARRAM, ASSISTANT ATTORNEYS GENERAL, PUBLIC UTILITIES SECTION 180 EAST BROAD STREET COLUMBUS OHIO 43215

☐ CHRISTINA E GRASS ESCHI, SUMMER J KOLADIN PLANTZ, ASSISTANT ATTORNEYS GENERAL, ENVIRONMENTAL ENFORCEMENT SECTION, 30 EAST BROAD STREET, 25<sup>TH</sup> FLOOR COLUMBUS OHIO 43215

☐ CHAD A ENDSLEY, OHIO FARM BUREAU FEDERATION, 280 NORTH HIGH STREET, PO BOX 18238 COLUMBUS, OHIO 43218

☐ CHAIRMAN TODD A SNITTLER, PUBLIC UTILITIES COMMISSION OF OHIO, OHIO POWER SITING BOARD 180 EAST BROAD STREET COLUMBUS OHIO 43215

☐ BENESCH FRIEDLANDER COPLAN AND ARONOFF LLP ORLA COLLIER III 41 SOUTH HIGH STREET 26<sup>TH</sup> FLOOR COLUMBUS OHIO 43215

SERVED UPON THE FOLLOWING PARTIES VIA HAND DELIVERY OR US. MAIL

☐ JOHN WARRINGTON 7040 SR 96 TIRO OH 44887

☐ CAROL AND LOREN GLEDHILL 7256 REMLINGER RD CRESTLINE OH 44827

☐ MARY STUDER 6716 REMLINGER RD CRESTLINE OH 44827

☐ ALAN AND CATHARINE PRICE 7956 REMLINGER RD CRESTLINE OH 44827

☐ NICK AND MARGARET RIETSCHLIN 4240 BOWER RD CRESTLINE OH 44827

☐ BRADLEY AND DEARA BAUER 7298 REMLINGER RD CRESTLINE OH 44827

☐ GROVER REYNOLDS 7179 REMLINGER ROAD CRESTLINE OH 44827

☐ GARY BIGLIN 5331 SR 61 SOUTH SHELBY OH 44875

☐ KAREL DAVIS 6675 CHAMPION RD SHELBY OH 44875

VIA HAND DELIVERY ON THIS DAY TO ALL LISTED ABOVE  
OR HAND DELIVERY OR US MAIL TO ALL LISTED BELOW  
FEBRUARY 21, 2012

419 632 3845


Bryan Neffner

I HEARD A SPIDER AND A FLY ARGUING WAIT SAID THE FLY  
DO NOT EAT ME I SERVE A GREAT PURPOSE IN THE WORLD

YOU WILL HAVE TO SHOW ME SAID THE SPIDER

I SCURRY AROUND GUTTERS AND SEWERS AND GARBAGE CANS  
SAID THE FLY AND GATHER UP THE GERMS OF TYPHOID INFLUENZA  
AND PNEUMONIA ON MY FEET AND WINGS THEN I CARRY  
THESE GERMS INTO THE HOUSEHOLDS OF MEN AND GIVE THEM  
DISEASES ALL THE PEOPLE THAT HAVE LIVED THE RIGHT SORT  
OF LIFE RECOVER FROM THE DISEASES AND THE OLD SOAKS  
WHO HAVE WEAKENED THEIR SYSTEMS WITH LIQUOR AND  
INIQUITY SUCCOMB IT IS MY MISSION TO HELP RID THE  
WORLD OF THESE WICKED PERSONS I AM A VESSEL OF  
RIGHTEDOUSNESS SCATTERING SEEDS OF JUSTICE AND  
SERVING THE NOBLEST USES

IT IS TRUE SAID THE SPIDER THAT YOU ARE MORE USEFUL  
IN A PLODDING MATERIAL SORT OF WAY THAN I AM BUT  
I DO NOT SERVE THE 'UTILITARIAN DEITIES I SERVE THE  
GODS OF BEAUTY LOOK AT THE GOSSAMER WEBS I WEAVE  
THEY FLOAT IN THE SUN LIKE FILAMENTS OF SONG IF YOU  
GET WHAT I MEAN I DO NOT WORK AT ANYTHING I PLAY  
ALL THE TIME I AM BUSY WITH THE STUFF OF ENCHANTMENT  
AND THE MATERIALS OF FAIRYLAND MY WORKS TRANSCEND  
UTILITY I AM THE ARTIST THE CREATOR AND A DEMI GOD  
IT IS RIDICULOUS TO SUPPOSE THAT I SHOULD BE  
DENIED THE FOOD I NEED IN ORDER TO CONTINUE TO  
CREATE BEAUTY I TELL YOU PLAINLY MR FLY IT IS ALL  
DAMNED NONSENSE FOR THAT FOOD TO REAR UP ON  
ITS HIND LEGS AND SAY IT SHOULD NOT BE EATEN

CONT'D 

YOU HAVE CONVINCED ME SAID THE FLY SAY NO MORE  
AND SHUTTING ALL HIS EYES HE PREPARED HIMSELF FOR  
DINNER AND YET HE SAID I COULD HAVE MADE OUT A CASE  
FOR MYSELF TOO IF I HAD HAD A BETTER LINE OF TALK

OF COURSE YOU COULD SAID THE SPIDER CLUTCHING A  
SIRLOIN FROM HIM BUT THE END WOULD HAVE BEEN  
JUST THE SAME IF NEITHER OF US HAD SPOKEN  
AT ALL

DON MARQUIS