

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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**MOTION TO STRIKE PORTIONS OF THE APPLICATION FOR REHEARING
 FILED BY MR. BRETT HEFFNER AND MEMORANDUM CONTRA TO HIS
 REQUEST TO ENTER RECORDING OF 9-9-11 PRE-HEARING TELEPHONE
 CONFERENCE AS PART OF THE RECORD**

Pursuant to Rule 4906-7-12 of the Ohio Administrative Code, Black Fork Wind Energy, LLC (the "Applicant") respectfully moves to strike all citations and references to an audio recording Mr. Heffner alleges is of the September 9, 2011 prehearing conference in this matter. Mr. Heffner quoted from the audio recording in his memorandum in support. He also filed a compact disc of the audio recording with the Board as discovered by the Applicant's counsel on March 1, 2012 (See Affidavit of Michael J. Settineri, attached as Exhibit B and hereinafter referred to as "Aff. Settineri.") The basis for the motion to strike is that a copy of the compact disc containing the audio recording was not served on all parties of record and was never part of the record in this proceeding. The portions of the February 21, 2012 application for rehearing of Mr. Brett A. Heffner that should be struck from his memorandum in support are identified on Exhibit A to this motion and memorandum in support.

In addition, to the extent Mr. Heffner is requesting leave to enter the compact disc into evidence, the Applicant objects. First, any audio recording of the September 9, 2011 prehearing conference has no relevancy to the Board's decision to issue the Certificate. Second, no notice was given by any party during the September 9, 2011 prehearing conference that an audio recording was being made. Mr. Heffner now attempts to submit an audio recording well after the

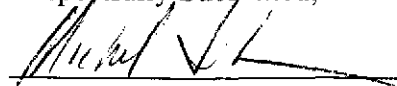
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close of the evidentiary hearing. Mr. Heffner had ample opportunity to introduce the recording at the evidentiary hearing, and would have been required to establish his personal knowledge of the recording, establish a chain of custody and verify the authenticity of the recording. Mr. Heffner also failed to serve a copy of the compact disc on all parties of record as is required by Rule 4906-7-06 of the Ohio Administrative Code, another reason why the Board should not consider his request to admit the recording into the record.

The reasons supporting this motion to strike and objection to any introduction into evidence of the compact disc are set forth in the accompanying memorandum in support.

WHEREFORE, the applicant respectfully moves that the Administrative Law Judge refuse to allow the admission of the compact disc into the record and strike those portions of the application for rehearing of Mr. Brett Heffner as marked on Exhibit A, attached hereto.

Respectfully Submitted,



M. Howard Petricoff
Stephen M. Howard
Michael J. Settineri
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
614-464-5414
614-464-5462

Attorneys for Black Fork Wind Energy, LLC

**MEMORANDUM IN SUPPORT AND MEMORANDUM OPPOSING THE
INTRODUCTION OF THE AUDIO RECORDING INTO EVIDENCE**

At no point in this proceeding did any party notify the other parties that a tape recording was made of the September 9, 2011 prehearing teleconference. Yet, in his February 21, 2012 application for rehearing and on an unnumbered page between page 4 of his application for rehearing and page 1 of his memorandum in support, Mr. Brett Heffner stated the following:

Pursuant to ORC 4906.02(B) I Brett A. Heffner in the matter of case #10-2865-EL-BGN would like to enter a recording of 9-9-11 prehearing telephone conference as part of memorandum in support, or separately, if necessary, such recording hereinafter referred to as "audio".

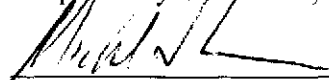
Mr. Heffner's request that the Board accept the recording into evidence and/or consider it as part of his memorandum in support should be denied in full. First, Mr. Heffner failed to serve copy of the compact disc on all parties of record. (Settineri Aff. at ¶3.) This is in violation of Rule 4906-7-06(A) of the Ohio Administrative Code. Second, the audio recording and any references or citations to the audio recording were never a part of the record in this proceeding. Mr. Heffner had the opportunity at the hearing to submit any audio recordings, but only introduced Heffner Exhibits 1 and 2. (Tr. 742). He never asked for leave to introduce the audio recording at the hearing, never established the authenticity of the recording and never established a proper chain of custody of the recording. Indeed, any audio recording of the September 9, 2011 prehearing conference is irrelevant to the Board's decision to issue the Certificate.

Mr. Heffner also never availed himself of Rule 4906-7-17(C) to file an application for reopening a proceeding after the final submission but before a final order had been issued. Instead, he has waited until after the record was closed and now attempts to introduce a compact disc with an audio recording into evidence and/or as part of his application for rehearing. (See

Settineri Aff. at ¶2, noting the Applicant's March 1, 2012 discovery that Mr. Heffner filed the audio disc with the Board.)

The Board must issue a final decision based only on the record. See Rule 4906-7-17(A) of the Ohio Administrative Code. The audio tape was not part of the record and therefore Mr. Heffner's reliance on the audio tape and the references and citations made to it should be stricken from his memorandum in support. As well, the Board should deny his request to enter the recording into the record.

Respectfully Submitted,



M. Howard Petricoff
Stephen M. Howard
Michael J. Settineri
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52 E. Gay Street
Columbus, OH 43215
614-464-5414
614-464-5462

Attorneys for Black Fork Wind Energy, LLC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via U.S. Mail, postage prepaid, upon the following persons this 2nd day of March, 2012 with the exception that Brett A. Heffner was served via overnight carrier:

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Michael J. Settineri

BEFORE THE OHIO POWER SITING BOARD

**In the Matter of the Application)
of Black Fork Wind Energy, LLC for)
a Certificate to Install Numerous) Case No. 10-2865-EL-BGN
Electricity Generating Wind Turbines in)
Crawford and Richland Counties, Ohio)**

EXHIBIT A TO THE
MOTION TO STRIKE PORTIONS OF THE APPLICATION FOR REHEARING
FILED BY MR. BRETT HEFFNER AND MEMORANDUM CONTRA TO HIS
REQUEST TO ENTER RECORDING OF 9-9-11 PRE-HEARING TELEPHONE
CONFERENCE AS PART OF THE RECORD

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 A "FORMAL PROCEEDING OF OPSB"
(AUDIO 5:01, ALJ FARKAS)~~

~~B TO "FOLLOW BOARD'S ADMINISTRATIVE RULES
AND PROTOCOL" (AUDIO 5:20, 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 A. 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 19TH 20TH 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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~~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.

THEIR 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.

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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 19TH 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 GERMAINE 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;

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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."~~

~~"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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AUDIO 40:24 • ALT 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 • ALT FARKAS: " ON THE 19TH WE'LL OPEN THE HEARING BUT WE'LL CONVERT THE HEARING TO A SETTLEMENT CONFERENCE AND THEN THE ALT 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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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. HEEFNER: "SO THE PREPARED TESTIMONY THAT WAS DUE ON THE 15TH, IN THE EVENT THERE IS A PARTIAL OR A STIPULATION THE FOLLOWING WEEK BECOMES, OH, 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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- 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 THEREIN 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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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.

102 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 • ALI 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?"

• ALI FARKAS: "WELL WE REALLY DON'T HAVE TIME FOR THAT... IF YOU HAVE AN OBJECTION... STATE YOUR OBJECTIONS TO IT RIGHT NOW."

MEMORANDUM

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- 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

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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 BOARDS ADMINISTRATIVE RULES AND THE BOARDS 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

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EXHIBIT B TO THE
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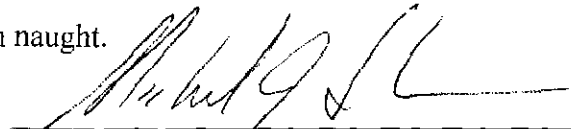
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1. I am an attorney at the law firm of Vorys, Sater, Seymour and Pease LLP and along with M. Howard Petricoff and Stephen M. Howard represent Black Fork Wind Energy, LLC in the above-captioned matter, in re Black Fork Wind Energy, LLC, Case No. 10-2865-EL-BGN.

3. As of this date, I have not received a service copy from Mr. Heffner of the compact disc referenced in Mr. Heffner's February 21, 2012 application for rehearing. I have

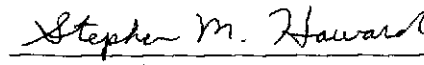
also confirmed that neither Mr. Petricoff nor Mr. Howard has received a service copy of the compact disc from Mr. Heffner as of this date.

Further Affiant sayeth naught.



Michael J. Settineri

Sworn to before me and subscribed in my presence this 2nd day of March 2012.



Notary Public

STEPHEN M. HOWARD
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SECTION 147.03 R. D.