

MARCH 8, 2012

FILE

AX

BRETT A HEFFNER  
3429 STEIN ROAD  
SHELBY, OHIO 44875  
419 632 3845

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

RE: CASE # 10-2865-EL-BGN  
RESPONSE TO THE MOTION TO STRIKE...  
AND MEMORANDUM CONTRA TO HIS  
REQUEST TO ENTER RECORDING OF  
9-9-11 PREHEARING TELECONFERENCE

RECEIVED-DOCKETING DIV  
MARCH-9 PM 3:44  
PUCO

GREETINGS,

I SAW NO NEED TO SERVE THE AUDIO DISC UPON ALL PARTIES OF RECORD AS ITS CONTENTS WERE "A FORMAL PROCEEDING OF THE OHIO POWER SITING BOARD (ATTACHMENT TO ENTRY OF SCOTT FARKAS OF SEPT. 12, 2011; TITLED CASE # 10-2865-EL-BGN PREHEARING CONFERENCE TOPICS, SERVED ON ALL PARTIES VIA E-MAIL OR REGULAR MAIL) AND AS SUCH SHOULD HAVE BEEN TRANSCRIBED, JOURNALIZED, OR OTHERWISE RECORDED BY THE BOARD AND SERVED ON ALL PARTIES OR POSTED ON THE DOCKET. AT THE CONCLUSION OF THE "TOPICS", ALJ FARKAS MADE NO INDICATION THAT WE WOULD GO OFF THE RECORD, BUT STATED AS INCLUDED IN THE REFERENCED <sup>DOCUMENT</sup> DOCKET "IF YOU HAVE ANY QUESTIONS, PLEASE IDENTIFY YOURSELF AND ASK YOUR QUESTION."

I DID NOT GIVE NOTICE THAT AN AUDIORECORDING WAS BEING MADE AS I DID NOT MAKE THE AUDIO RECORDING, AND A PRE-HEARING TELECONFERENCE WHERE THE COUNTY COMMISSIONERS ARE A PARTY AND NOT BEING IN EXECUTIVE SESSION IS PUBLIC RECORD; AND IT IS USUAL AND CUSTOMARY FOR THE CLERK TO MAKE A RECORDING OF PUBLIC RECORD AND TO MAKE IT AVAILABLE UPON REQUEST.

THE AUDIO RECORDING WAS NOT SUBMITTED UNTIL WELL AFTER THE CLOSE OF THE EVIDENTIARY HEARING BECAUSE AT THE TIME FOR SUBMISSION OF TESTIMONY AND EXHIBITS (SEPTEMBER 15, I BELIEVE) IT WAS MY EXPECTATION THAT MY INTERESTS WOULD BE PROPERLY CONSIDERED. I BASED THAT EXPECTATION ON THE ASSURANCES I WAS GIVEN IN THE TELECONFERENCE, AND HAD NO REASON TO DOUBT WHAT I HAD HEARD THAT DAY.

MARCH 8, 2012

I AM NOT CLAIMING THAT IT HAD RELEVANCE AT THAT EARLY DATE TO THE CONSIDERATION OF STIPULATION OR CERTIFICATION, IT ONLY BECOMES RELEVANT WHEN I MUST ARGUE THAT MY INTERESTS WERE NOT ADEQUATELY CONSIDERED IN THE COURSE OF HEARING.

AS FAR AS ESTABLISHING A PERSONAL KNOWLEDGE OF THE RECORDING, I WOULD HAVE TO HAVE A CLEAR DEFINITION OF WHAT THAT PHRASE MEANS, AND ITS ORIGIN; NEITHER OF WHICH WERE CITED, TO GIVE A PROPER ANSWER. AND AS FOR A CHAIN OF CUSTODY, I OWN NO SUITABLE RECORDING EQUIPMENT, NOR A COMPUTER OF ANY TYPE, AND THE BOARD OR ANYONE INTERESTED CAN GET A COPY DIRECTLY FOR THEMSELVES BY CONTACTING THE RICHLAND COUNTY COMMISSIONERS CLERK. BETTER WOULD HAVE BEEN TO MAKE THE BOARD'S OWN RECORDING, HAVE IT TRANSCRIBED, AND HAVE IT BECOME PART OF THE RECORD. THE RESPONSIBILITIES OF THE BOARD (4906-1-12(c)) CAN BE EVERYTHING OR NOTHING, DEPENDING ON THE CONSTANTLY SHIFTING DEFINITION OF "BOARD" TO SUIT THE PURPOSES OF "BOARD", "BOARD STAFF", "STAFF", "COUNSEL FOR BOARD STAFF", "COUNSEL FOR STAFF", AND SO ON.

DID ANY PARTY OF THE PREHEARING TELECONFERENCE HAVE THE EXPECTATION THAT A FORMAL PROCEEDING OF THE OPSB TO FOLLOW THE BOARD'S ADMINISTRATIVE RULES AND PROTOCOL AND ON THE RECORD WOULD NOT BE RECORDED, JOURNALIZED, OR TRANSCRIBED? TO WHAT PURPOSE? WITH WHAT INTENT?

IN THE MOTION TO STRIKE, EXHIBIT A, UN-NUMBERED PAGE ITEMS A AND B SHOULD NOT BE STRUCK BASED UPON THE ABOVE ARGUMENTS, AND ALSO BECAUSE THEY ARE CONTAINED IN THE PREHEARING CONFERENCE TOPICS ATTACHED TO ENTRY OF ALJ SCOTT FARKAS OF SEPT 12, 2012; AND G SHOULD NOT BE STRUCK SINCE IT CAN BE INDEPENDANTLY ASCERTAINED WITHOUT REFERENCE TO THE AUDIO ITSELF.

ALSO, EXHIBIT A PAGE ① THE FIRST SENTENCE OF PARAGRAPH ① SHOULD NOT BE STRUCK, AS IT IS CONTAINED IN THE ABOVE MENTIONED "TOPICS" AT ITEM 11,

②

CONT'D →

MARCH 8, 2012

I ASK THAT THE ENTIRE MOTION TO STRIKE BE DENIED. I WOULD FURTHER ASK THAT THE "AUDIO" CD, OR A TRANSCRIPTION BY THE BOARD OF THE 9-9-11 PRE HEARING TELECONFERENCE IN ITS ENTIRETY, OR A TRANSCRIPTION BY THE BOARD OF THE PUBLIC RECORD OF THE RICHLAND COUNTY COMMISSIONERS OF SEPTEMBER 9, 2011 BE ENTERED INTO EVIDENCE IN MY ARGUMENT THAT MY INTERESTS WERE NOT ADEQUATELY CONSIDERED IN THE HEARING. AT THE COMMENCEMENT OF THE STIPULATION OR CERTIFICATION HEARING, NO SUCH ARGUMENT WOULD HAVE BEEN CONCEIVED; IT IS ONLY BY SUBSEQUENT ACTION OF THE ALJ'S AND THE "BOARD" AS VARIOUSLY DEFINED THAT I COULD HAVE COME TO THAT CONCLUSION. THIS EVIDENCE IS NOT SUBMITTED FOR OR AGAINST CERTIFICATION; BUT FOR REHEARING, WHICH NATURALLY I WOULD NOT REQUEST BEFORE THE HEARING ITSELF.

BEST REGARDS,

BA Deffner 3-8-12

BRETT ✕

☐ VORYS, SATER, SEYMOUR, AND PEARCE LLP, M HOWARD PETRICOFF, STEPHEN M. HOWARD, MICHAEL J. SETTINGER 52 EAST GUY 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 SNITCHLER, 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 20<sup>TH</sup> FLOOR COLUMBUS OHIO 43215

SERVED UPON THE FOLLOWING PARTIES VIA

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 CATHERINE PRICE 7956 REMLINGER RD CRESTLINE OH 44827

☐ NICK AND MARGARET RIETSCHLIN 4240 BAKER RD CRESTLINE OH 44827

☐ BRADLEY AND DEBRA 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

SERVED VIA FAX TO DOCKETING DIVISION 614-466-0313  
AND BY REGULAR MAIL TO THE ABOVE LISTED PARTIES.

3-9-12 BA7/effm