

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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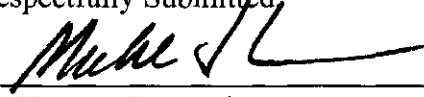
MOTION TO STRIKE GARY BIGLIN'S MARCH 5, 2012 REPLY TO THE
MEMORANDUM CONTRA OF BLACK FORK WIND ENERGY, LLC

Pursuant to Rule 4906-7-12 of the Ohio Administrative Code, Black Fork Wind Energy, LLC (the "Applicant") respectfully moves to strike Gary Biglin's March 9, 2012 reply brief, titled *In Reference to the Memorandum Contra of Black Fork Wind Energy, LLC to the Application for Rehearing by Gary J. Biglin*. The Board's rules provide for an application for rehearing and a memorandum contra. OAC Rule 4906-7-17(D), (E). The Board's rules do not authorize replies to a memorandum contra to an application for rehearing. Mr. Biglin's pleading is clearly a reply to the Applicant's memorandum contra to Mr. Biglin's application for rehearing. Such a pleading is not permissible absent a presentation for cause and authorization by the administrative law judge. Mr. Biglin, however, failed to seek leave to file his reply brief. Mr. Biglin has also used his reply brief to improperly present evidence regarding the Board's Facebook page. For these reasons, the Board should not consider Mr. Biglin's March 9, 2012 reply brief. Pursuant to Rule 4906-7-12, the Applicant seeks an expedited ruling on this motion.

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Mr. Biglin was contacted and did not consent to an expedited ruling.

Respectfully Submitted,



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MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

On March 9, 2012, Gary Biglin filed a pleading with the Board titled *In Reference to the Memorandum Contra of Black Fork Wind Energy, LLC to the Application for Rehearing by Gary J. Biglin*. Mr. Biglin's March 9, 2012 filing is clearly a reply to the Applicant's memorandum contra to Mr. Biglin's application for rehearing. In his reply, Mr. Biglin attempts to support an argument raised in his application for rehearing by referring to a document that he alleges is from the Board's Facebook website. Mr. Biglin also responds to a quotation from the Staff report in this proceeding that the Applicant included in its memorandum contra to Mr. Biglin's application for rehearing.¹

The Board should strike Mr. Biglin's pleading, including the Facebook page attachment, in its entirety. First, Mr. Biglin's reply brief is not permitted under the Board's rules and he did not seek leave to file the reply brief. See OAC Rule 4906-7-17. Second, Mr. Biglin relies on a Facebook page printout to bolster his argument that the Board improperly delegated its authority to the Administrative Law Judge. Not only is Mr. Biglin's use of this unsubstantiated document in his reply improper, he is wrong about the posting on the Board's Facebook page. Counsel for the Applicant accessed the Board's Facebook page on March 9, 2012 and that page clearly indicates that the Board's entry on this proceeding was made at 4:01 p.m. on January 23, 2012, and not at 1:01 p.m. as alleged by Mr. Biglin.

Accordingly, for all the foregoing reasons, the Board should not consider Mr. Biglin's

¹ The Applicant quoted a portion of page 18 of the Staff Report in its response to Mr. Biglin's application for rehearing. That quotation did contain a typographical error. The quotation should read: "Based on the largest turbine model, the statutory minimum setbacks equate to 543 feet from the non-participating property line and 914 feet from residences on non-participating property. In establishing minimum property line setbacks of 563 feet and resident setbacks of 1,250 feet the Applicant has designed the wind farm to exceed all statutory requirements."

pleading, including the Facebook page attachment.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "M. Howard", is written over a horizontal line.

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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 9th day of March, 2012 with the exception that Gary A. Biglin was served via overnight carrier:

| | |
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