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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

REPLY OF BLACK FORK WIND ENERGY, LLC TO
BRETT A. HEFFNER'S MARCH 9, 2012 RESPONSE TO
BLACK FORK WIND ENERGY, LLC'S MOTION TO STRIKE

Pursuant to Rule 4906-7-12 of the Ohio Administrative Code, Black Fork Wind Energy, LLC (the "Applicant") respectfully submits this reply in support of its March 2, 2012 motion 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. Brett Heffner filed a response to the Applicant's motion to strike on March 9, 2012.

The Applicant reaffirms its positions and arguments set forth in its March 2, 2012 motion to strike. Mr. Heffner fails to justify why he did not comply with the Board's rules and serve a copy of the compact disc containing the audio recording on all parties of record. He also fails to establish that the recording is relevant to the Board's decision in this matter and, at page 2 of his response, agrees that the recording had no relevance to the "consideration of the stipulation or certification[.]" Mr. Heffner also claims at page 2 of his response that the recording is a publicly available record, but has not made any effort to authenticate the unlabeled compact disc other than to claim that "anyone interested can get a copy directly for themselves by contacting the Richland County Commissioners Clerk."

Mr. Heffner implies at page 2 of his response that the March 9, 2012 prehearing conference should have been transcribed. Prehearing conferences are not formal proceedings of the Board and are not generally transcribed or taped. This is because there is no testimony or

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exhibits entered into evidence at prehearing conferences. A prehearing conference is primarily intended to establish a procedural schedule. Moreover, Mr. Heffner never asked on or before September 9 that the prehearing telephonic conference be recorded or transcribed. He also does not cite to any legal authority requiring the administrative law judge to transcribe prehearing conferences.

Mr. Heffner also states at page one of his response that he did not submit the audio recording until “well after the close of the evidentiary hearing” because at that time he expected his interests to be “properly considered.” He claims at page 2 of his response that the recording is relevant because he must now argue that his interests were not “adequately considered in the course of hearing.” These broad statements are not sufficient to show that the audio recording is relevant to the Board’s decision in this matter. He even admits at page 2 of his response that the recording had no relevance to the “consideration of the stipulation or certification[.]”

Mr. Heffner is clearly confused about the concepts of having his interest “adequately considered” and “having his position adopted.” The record establishes that Mr. Heffner fully participated in the evidentiary hearing as he testified, cross-examined witnesses and made closing arguments. The Board specifically cited Mr. Heffner’s testimony at pages 55, 64 and 66 of its January 23, 2012 Opinion, Order and Certificate but disagreed with Mr. Heffner’s positions. The Board’s refusal to adopt Mr. Heffner’s position, however, does not mean that his interests were not “properly” or “adequately” considered.

Finally, Mr. Heffner never explains why he did not avail himself of Rule 4906-7-17(C) to file an application for reopening a proceeding after the final submission but before a final order has been issued. He should not be allowed to wait until after the record was closed to now attempt to introduce an unlabeled compact disc with an audio recording into evidence. The

administrative law judge should refuse to allow the admission of the compact disc into the record and should strike those portions of the application for rehearing of Mr. Brett Heffner which was marked as Exhibit A to the March 2, 2012 motion to strike.

Respectfully Submitted,



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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 12th day of March, 2012:

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