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FROM: BRETT HEFFNER
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MARCH 9, 2012

BRETT A HEFFNER
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TO: CHAIRMAN

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

RE: CASE NO. 10-2865-EL-BGN
RESPONSE TO THE MEMORANDUM
CONTRA OF BLACK FORK WIND
ENERGY, LLC TO THE APPLICATION
FOR REHEARING OF MR. BRETT
A. HEFFNER

GREETINGS,

REGRETTABLY, I HAVE BUT SEVEN DAYS TO ADDRESS THE MANY ERRORS IN THE ABOVE NAMED MEMORANDUM. WHEN OAC RULE MAKING TIME COMES AROUND AGAIN, PERHAPS THE BODY COULD ADDRESS SUCH ISSUES AS THE TEN DAYS AVAILABLE TO FILE A MEMORANDUM CONTRA, AND ONLY SEVEN DAYS TO RESPOND. PLEASE TOLERATE MY DIGRESSION, AS I AM BEGINNING THIS COMPILATION OF NOTES AND REFERENCES OF THE LAST WEEK AT 4:42 AM, AND AM QUITE SENSITIVE TO THE TROUBLESOME FACT THAT THE "BOARD" HOWEVER VARIOUSLY DEFINED, AND THE "COMPANY" WHICH ALSO CAN MEAN ANY NUMBER OF ENTITIES, GRANTS ITSELF AS MUCH TIME AS IS SERVICEABLE TO THEIR PURPOSE, AND LIMITS THE CITIZEN INTERVENORS' TIME BY RULE AND FIAT. "TIME, THE SPHINX SAID TO KING TUT, IS SOMETHING I HAVE NOTHING BUT." DON MARQUIS

LETS BEGIN WITH ITEM 1 PAGE 3 OF THE MEMORANDUM CONTRA. LINES 14 AND 15 DESCRIBE AN ACTION THAT OCCURRED WITHIN THE SETTLEMENT CONFERENCE OR STIPULATIONAL CONFERENCE THAT TO US WAS EXPLAINED AS CONFIDENTIAL. NO RECORD OF THE PROCEEDINGS TO THE CONFIDENTIAL SETTLEMENT CONFERENCE EXISTS, IT MAY OR MAY NOT HAVE BEEN THE UNDEFINED "PARTIES" THAT REQUESTED ADDITIONAL TIME, THAT WAS A CHARACTERIZATION OF MR PETRICOFF TO ALJ FARKAS ABOUT A SETTLEMENT CONFERENCE TO WHICH THE ALJ WAS

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NOT A PARTY, AND NOT PRESENT. ALSO, WHY WOULD I OBJECT TO THE ENTRANCE OF THE APPLICATION AND STIPULATION, RECALL THAT I HAD HIGH HOPES THAT MY INTERESTS WOULD BE PROPERLY CONSIDERED BY THE BOARD; AND IF THEY WERE NOT, THE INTRODUCTION OF THE APPLICATION AND STIPULATION WOULD SUPPORT MY ARGUMENT FOR REHEARING, NOT DIMINISH IT.

ON TO NUMBER 2 PAGE 4, I DEFY ANYONE TO CONCRETELY, DEFINITELY SAY WHETHER THE BOARD FOLLOWED PROCEDURES LAID OUT IN THE OAC. JUST THE IMPRECISE AND FLEXIBLE DEFINITION OF THE WORD "BOARD" HAS CAUSED SIMILAR MAYHEM TO THE VARIOUS INTERPRETATIONS OF THE WORD "NEIGHBOR" BY READERS OF THE BIBLE. REREAD ITEM 2 ON PAGE 2 OF MY REQUEST FOR REHEARING. IT IS ON ITS FACE QUITE SENSIBLE.

MEMORANDUM CONTRA ITEM 3 PAGE 5 IS SIMPLY IN ERROR, THE RECORD OF THE PROCEEDINGS SUPPORT MY REQUEST.

ITEM 4 PAGE 6 OF MEMORANDUM CONTRA, THE ARGUMENTS AGAINST MY REQUEST ITEM 4 PAGE 2 ARE INVALID. OAC 4906-1-12(A) "ALL MEETINGS OF THE BOARD AT WHICH OFFICIAL ACTION IS TAKEN AND DELIBERATION UPON OFFICIAL BUSINESS IS CONDUCTED SHALL BE OPEN TO THE PUBLIC". NO NOTICE OF DELIBERATION OF OFFICIAL BUSINESS PERTAINING TO BLACK FORK WIND ENERGY LLC APPEARED ON THE OFFICIAL WEBSITE (REFER TO REQUIREMENT OF 4906-1-12(E)(1)(c)) THEREFORE NO DELIBERATION MUST HAVE OCCURRED. CLEVER REDEFINITION OF THE WORD "BOARD" MAKES MUCH OF OAC 4906 UN-NAVIGABLE.

ITEM 5 PAGE 7 OF MEMO CONTRA, I DO NOT ARGUE THAT STAFF MAY NOT BE PRESENT, BUT THAT STAFF BY OAC RULE IS NOT A PARTY, AND CANNOT PUT FORTH A MOTION OR SUBMIT A REQUEST FOR A RULING ON A PROCEDURAL MATTER. THE RULES ALLOWING DISCRETION ON THE PART OF THE ALJ'S ARE SO BROAD AS TO BE MEANINGLESS TO THE CITIZENS AS PARTIES, THAT WOULD LIKE THERE TO BE SOME

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DISCERNABLE AND REPEATABLE BOUNDARIES TO THE ADJUDICATORY LAW JUDGES' AUTHORITY. PLEASE ALLOW MY ARGUMENT.

ITEM 6 PAGES 7-8 ARE REFUTED BY THE ABOVE RESPONSE TO ITEM 5, AND ARE ADEQUATELY ADDRESSED IN MY REQUEST FOR REHEARING.

CONCERNING ITEM 7 PAGE 8 OF MEMO CONTRA, IT IS ADEQUATELY ADDRESSED IN MY REQUEST FOR REHEARING, IN THE EVENT THAT THAT REFERENCES TO THE PREHEARING TELECONFERENCE ARE STRUCK, I ASK THAT I BE ALLOWED TIME TO ASK OTHER PARTIES IF THAT IS THEIR RECOLLECTION OF THE DISCUSSION IN THE UNTRANSCRIBED TELECONFERENCE.

ITEM 8 PAGE 9 MEMO CONTRA, IT IS THE COMPANY THAT MIS-INTERPRETS THE OAC CITED. IT DOES IN FACT PRECLUDE STAFF COUNSEL FROM PARTICIPATING IN THE PREHEARING TELECONFERENCE. I DID NOT CITE PREJUDICE, AS IT DOES NOT APPLY WHEN CONSIDERING MY ITEM 8, WHICH STATES THAT STAFF IS NOT A PARTY TO THE PREHEARING TELECONFERENCE. MY EIGHTH GROUND FOR REHEARING SHOULD BE UPHOLD.

ITEM 9 PAGE 10 OF MEMO CONTRA REFERENCE TO (TR679). IN THE DISCUSSION OF RECORD (TR678); THAT WAS THE MOMENT OF MY EPIPHANY, WHEN I REALIZED THAT WE CITIZEN INTERVENORS WERE NOT A MEANINGFUL AND GENUINE PART OF THE PROCESS. "ITS CLEAR NOW" (TR679, LINE 23) WAS A STATEMENT OF REALIZATION TO MYSELF. "NO I DONT, I HAVE NOTHING TO SAY ABOUT IT" WAS A RESIGNATION IN FRUSTRATION, SPOKEN ALOUD BUT TO MYSELF, AS I SAW THAT ALL OUR HARD WORK WOULD NEVER BE SEEN BY THE "BOARD" PROPER, AND WE HAD JUST BEEN STRUNG ALONG FOR SHOW. THAT WAS THE EXACT MOMENT I REALIZED THAT I WOULD NEED TO CONSIDER A REQUEST FOR REHEARING, AS THE "BOARD" AS VARIOUSLY DEFINED WAS NOT IN GOOD FAITH CONSIDERING CITIZEN INTERVENORS.

ITEM 10, PAGE 10 MEMO CONTRA, THE "BOARD" CAN SPEAK BACK AND FORTH WITH THE ALJ'S, THE ALJ'S CAN COMMUNE WITH THE COUNSEL FOR STAFF AND STAFF, THE STAFF CAN

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CALL OR CHAT DAY OR NIGHT WITH THE COMPANY, BUT IF I CONTACT THE "BOARD" DIRECTLY, IT IS "EX PARTE". THERE IS NO DIRECT, INDIRECT, EMPATHETIC, OR PSYCHIC COMMUNICATION BETWEEN THE CITIZEN INTERVENOR AND "BOARD" PROPER.

ITEM 11, PAGE 11, LINE 4, THE WORD "AKIN" PRESUPPOSES BROAD CORRELATION. IT DOES NOT PERTAIN TO MY ARGUMENT, A GOLDEN RETRIEVER IS "AKIN" TO A COYOTE, BUT WHICH WILL YOU ALLOW IN YOUR HOME WITH THE KIDS. LINES 7-9, WHY WOULD I OBJECT TO THE APPLICATIONS ADMISSION, AS IT CONTAINED THE PROOFS OF ITS INCOMPLETENESS. CONCERNING FIRST FULL PARAGRAPH, PAGE 12 OF MEMORANDUM CONTRA, MY CLAIM IS NOT THAT STAFF WILL NOT SEE DETAILED FINAL ENGINEERING DRAWINGS, BUT THAT THIS WILL OCCUR AFTER THE OPPORTUNITY FOR PUBLIC HEARING, AND AFTER CERTIFICATION. BY THE WAY, IF WE ARE REALLY DISCUSSING WHITE OR GREY SCREWS ON THE PANELS IN THE CONTROL ROOM, I MUCH PREFER GREY. LACK OF DEFINITION OF "MATERIAL" AND "SUBSTANTIAL" IS GOING TO RESULT IN HEADACHES FOR THE BOARD. MY REASON 11 SHOULD BE UPHELD.

ITEM 12, PAGE 13. 4906-7-01(D), OF THE OAC AND 4906.02(B) OF THE ORC SUPPORT MY REQUEST, WHICH SHOULD BE UPHELD.

ITEM 13 PAGE 16, THE EVIDENCE RULES CITED SUPPORT MY ARGUMENT AS EVERYONE IN THE NEIGHBORHOOD HAS MORE EXPERIENCE THAN MR. STONER ON WHAT AFFECTS LOCAL PROPERTY VALUES, AS THEY WOULD NOT UNDER ANY CIRCUMSTANCES (THEY BEING THE PARTIES WHOSE SUBMITTED STUDIES WERE REJECTED) PURCHASE ANY PROPERTY WITHIN THE PROJECT BOUNDARIES, AND THEY KNOW WHAT THEIR PROPERTY IS WORTH. (REF, RULES OF EVIDENCE 702(A)) ALSO, THE WITNESS' TESTIMONY DOES NOT DISPEL A MISCONCEPTION COMMON AMONG LAY PERSONS, BUT PROMOTES A MISCONCEPTION COMMON AMONG INDUSTRY DEVELOPERS. MR. STONER'S TESTIMONY ON PROPERTY VALUES ARGUABLY DOES NOT RELATE TO MATTERS BEYOND THE KEN OF LAY PERSONS, HE HAS NO EXPERIENCE OR EXPERTISE

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IN REAL ESTATE, WHICH WAS THE TOPIC AT HAND. PLEASE DON'T FORGET THE SECOND PART OF MY ARGUMENT, THAT CITIZEN INTERVENORS COULD NOT SUBMIT THEIR TESTIMONY AS TO THE DIFFERENCE BETWEEN A POUND, A TON, AND A HUNDRED TONS; THE DIFFERENCE BETWEEN FIFTY FEET AND A HUNDRED AND FIFTY FEET, AND THE EASILY UNDERSTOOD RECOMMENDATION OF A TURBINE MANUFACTURERS MANUAL BECAUSE THEY WERE NOT "ENGINEERS".

ITEM 14 PAGE 16 OF THE MEMO CONTRA, IN THIS I MUST PERSIST THAT THIS IS A TRANSMISSION LINE, IT CONTAINS TRANSMISSION LINES, AND THAT TRANSMISSION LINES MUST BE BUILT WHOSE ONLY BASIS OF NEED IS PREDICATED ON THE CONSTRUCTION OF THIS WIND FACILITY. BOOK 2114 PAGE 441-447 CONTAINS "MEMORANDUM OF TRANSMISSION FACILITIES EASEMENTS" PREPARED BY TOMKON TORP LLP WITH GRANTOR EDWARD P. COBB AND GRANTEE BLACK FORK WIND ENERGY LLC FOR A THIRTY FOOT WIDE TRANSMISSION "FACILITIES" EASEMENT. (I AM REFERRING TO THE BOOK AT THE RICHLAND COUNTY RECORDERS OFFICE) IT IS SIGNED BY CHRIS TAYLOR, CHIEF DEVELOPMENT OFFICER OF ELEMENT POWER US, LLC, IN ITS CAPACITY AS MANAGER OF BLACK FORK WIND ENERGY LLC. THE PORTION OF THE ORC CITED AND HIGHLIGHTED PAGE 16 MEMO CONTRA "IF THE FACILITY IS AN ELECTRIC TRANSMISSION LINE". WE MAY BE ARGUING WHAT THE MEANING OF THE WORD "IS" IS. I SUSPECT THE TRANSMISSION "FACILITY" IS MADE UP OF LONG ROUND THINGS FULL OF CONDUCTORS, VERY SIMILAR TO WHAT WE LAY PERSONS CALL "LINES". MY REQUEST SHOULD BE UPHOLD.

ITEM 15 PAGE 17 OF MEMORANDUM CONTRA. HERE AGAIN IS FURTHER CONFUSION ABOUT WHAT THE TERM "BOARD" MEANS. THE BOARD IS COMPRISED OF DEPARTMENT HEADS WITH OR WITHOUT JURIDICAL CREDENTIALS. AS EXPLAINED TO ME BY ALJ FARKAS, THE ALJ'S ACT MOSTLY AS A

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REFEREE, TO ASSURE THAT BOARD PROCEDURE AND PROTOCOL IS FOLLOWED. THIS IS ALSO FOUND IN THE TRANSCRIBED PORTION OF THE PREHEARING TELCONFERENCE. CONCERNING THE LAST TWO LINES OF PAGE 17 "INDGEE, REQUIRING THE BOARD TO SIGN A STIPULATION IS AKIN TO ASKING A JUDGE TO SIGN A CLASS ACTION SETTLEMENT..." "THAT MAKES NO SENSE". THE BOARD IS NOT "AKIN" TO A JUDGE IN A CLASS ACTION SUIT IN ANY MANNER. THE COMPANY AND "BOARD" SLIP IN AND OUT OF EQUIVALENCY ("AKIN"-NESS) OF THE "BOARD" AND COURTS OF REGULAR JURISDICTION TO SUIT THEIR NEEDS OF THE MOMENT. AS FAR AS "THAT MAKES NO SENSE", WE ARE ARGUING RULES AND LAW, NOT SENSIBILITY. LINES 11 AND 12 OF PAGE 18 MEMO CONTRA "PROPOSED PROJECT" IS NOT THE AMENDED, STIPULATED PROJECT. MY OBJECTION SHOULD BE UPHOLD.

NUMBER 10, PAGE 18 OF MEMORANDUM CONTRA, MY FAVORITE, ONLY BECAUSE IT IS THE LAST, BRINGS UP A VERY GOOD POINT, WHICH IS THAT THE COURTS OF COMMON PLEAS WILL BE THE ARENA FOR CORRECTION OF ALL THE IMPRECISE LANGUAGE OF THE STAFF, WEASEL WORDS OF THE COMPANY, AND IN CONGRUITY OF THE OAC AND ORC. I BRING THIS TOPIC UP AS THE OHIO SUPREME COURT ULTIMATELY IS THE COURT OF JURISDICTION ON THIS MATTER, AND I MAY NOT PRESENT ANYTHING IN SUBSEQUENT APPEAL TO THE SUPREME COURT THAT WAS NOT PART OF MY REQUEST FOR REHEARING. THE COMPANY, NOT ENJOYING THE SPECIAL STATUS GIVEN PUBLIC UTILITIES WHEN CONSIDERING ANTI-TRUST, IS CLEARLY VIOLATING THIS ACT. THE "BOARD" IS CERTIFYING AN UNLAWFUL ACT.

BEST REGARDS,

BRETT ✗

BA Jeffrey 3-9-12

□ VORYS, SATER, SEYMOUR, AND PASELLI, 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, 25TH 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 26TH FLOOR COLUMBUS OHIO 43215

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BA Jeffrey 3-9-12