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IN THE SUPREME COURT OF OHIO

PUCO

In the Matter of the Application of )  
Black Fork Wind Energy, L.L.C. )  
for a Certificate to Site a Wind-Powered )  
Electric Generating Facility in )  
Crawford and Richland Counties, Ohio )

Case No. \_\_\_\_\_  
On Appeal from the Ohio Power Siting  
Board, Case No. 10-2865-EL-BGN

NOTICE OF APPEAL OF APPELLANTS INTERVENORS, GARY J. BIGLIN,  
BRETT A. HEFFNER, ALAN PRICE, CATHERINE PRICE,  
AND JOHN WARRINGTON

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Appellants Intervenors Gary J. Biglin, Brett A. Heffner, Alan Price, Catherine Price and John Warrington (collectively "Appellants") hereby give notice of their appeal pursuant to R.C. §4903.11, §4903.13, and R.C. §4906.12 to the Ohio Supreme Court from the following attached orders of the Ohio Power Siting Board in Case No. 10-2865-EL-BGN (hereinafter referred to as the "Orders"): (1) Opinion, Order and Certificate entered on January 23, 2012; and (2) Entry on Rehearing entered on March 26, 2012. Appellants are and were parties of record in Case No. 10-2865-EL-BGN and timely filed their Application for Rehearing of the Board's Opinion, Order and Certificate of January 23, 2012 pursuant to R.C. §4903.10. The Orders are unlawful and unreasonable in at least the following respects:

- I. The Board failed to comply with the requirements set forth in R.C. §4906.10 by not resolving the material issue of posting a decommissioning bond. The onus is on the Board to insure that adequate financial protection is available to protect the public interest in the event of decommission, prior to the issuance of the certificate. There is no evidence in the record as to the removal costs for each wind turbine from the proposed site and to the amount of bond to be posted by the Applicant for such removal. In fact, no bond is required at all for the decommissioning. Therefore, the Board's granting of the certificate to the Applicant and denial of rehearing on this issue is unreasonable and unlawful.
- II. The Board's ruling permits the Applicant to submit its final decommissioning plan to the Staff and County Engineers for review thirty (30) days prior to the preconstruction conference. Furthermore, the Applicant is to retain an independent, registered professional engineer, licensed to practice in Ohio, to estimate the total cost of decommissioning in current dollars, without regard to salvage value of the equipment seven (7) days prior to the preconstruction conference. This ruling constitutes an unlawful delegation of the Board's duties to the Applicant pursuant to R.C. §4906.02(C) and violates the Appellants due process rights to address the issue of financial security in a substantive way.
- III. The Board's decision to grant a certificate to the Applicant is not supported by the evidence. The "Joint" Stipulation and Recommendation was not entered into by all parties of record and was done in violation of the Board's own rules. Only two parties of record signed the agreed Stipulation, however, the Stipulation is not only Stipulations as to facts but also Stipulations as to post certificate conditions and conclusions of law which are not provided for pursuant to O.A.C. §4907-7-09. The Board's reliance on the facts, conditions, and conclusions of law contained in the Stipulations to arrive at its Order granting the certificate and judgment denying rehearing is unlawful and unreasonable.

- IV. The Board's acceptance of the facts, seventy-one (71) conditions subsequent and twelve (12) conclusions of law contained in the Stipulation violated the Appellants procedural and substantive due process rights as incorporated through the Fourteenth Amendment. The Board's unbridled adoption of the Stipulation denied all the Appellants and Intervenors their right to cross-examine the proponents of the Stipulation and the opportunity to present evidence on these issues at the hearing.
- V. The Board failed to follow the mandates set forth in R.C. §4906.02(C) thereby unlawfully granting a certificate to the Applicant in accordance with R.C. §4906.10. The Opinion, Order, and Certificate and judgment denying a rehearing were not approved by the Board but rather by unknown individuals. The Board's Order granting the Certificate and judgment denying rehearing were unlawful and unreasonable. Therefore, the Board's issuance of the certificate to the Applicant is void ab initio.

Accordingly, Appellants request that the Court remand the Orders to the Ohio Power Siting Board with instructions to correct the errors identified herein.

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that, on May 24, 2012, a copy of the foregoing Notice of Appeal was served upon the Chairman of the Public Utilities Commission and the Ohio Power Siting Board, Todd A. Snitchler, by leaving a copy at his office at 180 East Broad Street, Columbus, Ohio 43215, and upon the following counsel and parties of record by regular U.S. mail:

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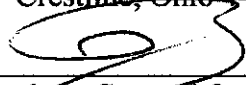
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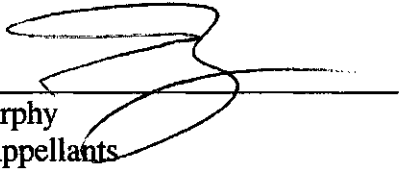
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**CERTIFICATE OF FILING**

I hereby certify that, on May 24, 2012, a copy of the foregoing Notice of Appeal was filed with the Docketing Division of the Public Utilities Commission and the Power Siting Board at 180 East Broad Street, Columbus, Ohio 43215 pursuant to R.C. §4903.13, O.A.C. §4901-1-02(A), O.A.C. §4901-1-36, and O.A.C. §4906-7-18.

  
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