

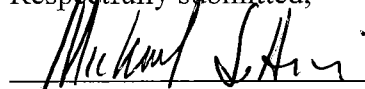
**BEFORE THE OHIO POWER SITING BOARD**

<b>In the Matter of the Application</b>	)	
<b>of Black Fork Wind Energy, LLC for</b>	)	
<b>a Certificate to Site a</b>	)	<b>Case No. 10-2865-EL-BGN</b>
<b>Wind-Powered Electric Generating Facility</b>	)	
<b>in Crawford and Richland Counties, Ohio</b>	)	

**MOTION FOR EXTENSION OF CERTIFICATE**

Black Fork Wind Energy, LLC ("Black Fork"), for good cause shown, respectfully requests that the Ohio Power Siting Board (the "Board") extend its Certificate of Environmental Compatibility and Public Need (the "Certificate") for the Black Fork Wind Energy Project from January 23, 2017, to January 23, 2019. Black Fork has good cause for seeking this extension, including a nearly two-year delay caused by intervenor appeals to the Supreme Court of Ohio and the recent energy market changes in Ohio. These issues, coupled with Black Fork's progress in continuing to develop this project, warrant an extension of its Certificate. The reasons supporting this motion are set forth in the accompanying Memorandum.

Respectfully submitted,



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## **MEMORANDUM IN SUPPORT OF MOTION FOR EXTENSION**

Through this motion, Black Fork Wind Energy, LLC (“Black Fork”) seeks to extend its Certificate of Environmental Compatibility and Public Need granted by the Ohio Power Siting Board (the “Board”) in Case No. 10-2865-EL-BGN (the “Certificate”) from January 23, 2017, to January 23, 2019. The Certificate authorized Black Fork to construct a wind-powered electric generation facility consisting in part of up to 91 wind turbines, access roads, an electric collection substation, and an underground electric collection system (the “Black Fork Wind Energy Project”) with a continuous course of construction to commence no later than January 23, 2017. Black Fork filed its application for a certificate on March 10, 2011, and the Certificate was issued on January 23, 2012.

Black Fork’s request for extension is reasonable and supported by good cause. A primary factor in the delay to this project was litigation at the Supreme Court of Ohio over the Board’s decision to issue the Certificate. After the Board granted the certificate and denied the rehearing applications, certain intervenors appealed the decision to the Court in May 2012. The Court did not issue a decision affirming the Board’s issuance of a certificate until December 18, 2013, nearly two years after the Certificate issuance. As a practical matter, Black Fork could not commence construction until the intervenors’ appeals were resolved. Any change to or reversal of the Board’s prior decision could have resulted in significant changes to the Certificate or the conditions attached thereto. This litigation hampered Black Fork’s ability to move forward with construction for nearly two years. Accordingly, extending the Certificate now is a reasonable allowance for Black Fork to recoup the time it had to delay construction in order to defend against the intervenors’ appeals.

Changes in the energy market have also delayed the Black Fork Wind Energy Project. The wholesale electricity market in Ohio dramatically changed with the advent of increasing supplies of natural gas from the Marcellus and Utica shale plays.<sup>1</sup> At the same time, there has been an overall, lower demand for electricity due to the general economic downturn. Together, those two factors resulted in lower prices that undercut Black Fork's ability to enter into an economic power purchase agreement for the Black Fork Wind Farm Project's energy and renewable energy credits at a price sufficient to support the construction and financing of the project. See e.g., *In re Hardin Wind Energy LLC*, Case No. 09-479-EL-BGN, Entry (August 25, 2014) (granting three-year extension of certificate to March 22, 2018, in part based on market conditions).

Even though Marcellus and Utica shale natural gas will continue to impact energy markets, other factors make it now more favorable for the Black Fork Wind Energy Project to succeed. Due to increased U.S. Environmental Protection Agency ("EPA") standards that require the reduction of emission levels of mercury and other air toxins from coal-burning power plants, a number of coal plants have closed or reduced production throughout the region. As energy companies continue to comply with EPA standards, the Black Fork Wind Farm Project will provide important replacement generation capacity in an environmentally friendly manner.

Despite the fact that Black Fork did not cause the delays in the project's development, Black Fork has continued its efforts to proceed with the Black Fork Wind Farm Project. Since receiving its Certificate, Black Fork has continued to expend resources to develop the project including payment for the land leases and significant expenditures to support the project's

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<sup>1</sup> In fact, the Ohio Department of Natural Resources recently announced that Ohio's natural gas production has nearly doubled from 2012 to 2013. Mark Bruce, *Ohio's Natural Gas Production Nearly Doubles from 2012 to 2013*, ODNR DIVISION OF OIL & GAS RESOURCES (July 2, 2014), <http://oilandgas.ohiodnr.gov/oil-gas-home/post/state-of-the-play>. "The percentage increase in natural gas production is the largest in Ohio history, and the total production is the fourth highest annual total in state history." *Id.*

interconnection to the PJM regional transmission organization. Contemporaneous with this motion, Black Fork is also filing an amendment application seeking to add additional turbine models to the project as well as presenting a revised project schedule that accounts for this extension request. Black Fork, as indicated above, also continues to maintain its efforts to complete the project's interconnection with PJM, having executed interconnection agreements with PJM which in turn require significant financial commitments. These steps show Black Fork's commitment to develop the Black Fork Wind Farm Project and support this extension request. Considering that the delays caused by litigation and market conditions are beyond Black Fork's control, good cause exists to extend Black Fork's Certificate for an additional 24-months, to January 23, 2019.

Recent Board precedent supports an extension of Black Fork's Certificate. As noted above, the Board recently granted a three-year certificate extension request for the Hardin Wind Energy LLC project, to March 22, 2018, based primarily on the same existing market conditions outside Hardin Wind Energy's control. *See In re Hardin Wind Energy LLC*, Case No. 09-479-EL-BGN, Entry dated 8/25/2014. The Board also recently granted Buckeye Wind, LLC's request for a three-year extension based primarily on delays to the project caused by litigation. *In the Matter of the Application of Buckeye Wind, LLC for a Certificate to Construct Wind-Powered Electric Generation Facilities in Champaign County, Ohio*, Case No. 08-666-EL-BGN, Entry (August 25, 2014) (approving a three-year extension because of delays outside of the developer's control).<sup>2</sup>

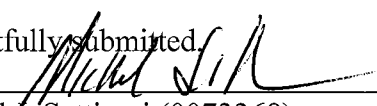
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<sup>2</sup> See, also, *In re Summit Energy Storage*, Case No. 89-1302-EL-BGN, Entry (November 23, 1998) (granting a certificate extension for two years following delays in finalizing utility participation agreements); *In re Lawrence County Energy Center, LLC*, Case No. 01-369-EL-BGN, Entry (November 20, 2006) (granting a 18-month extension so that technical configurations to enhance the project's future and market viability could be explored); *In re Norton Energy Storage, LLC*, Case No. 99-1626-EL-BGN (June 2, 2008) (approving applicant's second 30-month certificate extension because the applicant still needed to secure financing, select a generation equipment supplier, and make conceptual design changes).

Although Black Fork's Certificate does not expire until January 23, 2017, Black Fork's extension request is not premature. To commence a continuous course of construction by January 23, 2017, would require a change in market conditions sufficient to support project financing. In addition, after market conditions improve, Black Fork would need to complete project financing and then proceed to engineering design for the project. All of these events and steps would need to occur well before January 23, 2017 to ensure a continuous course of construction. Seeking the extension now ensures adequate time exists to develop this project. Moreover, it is very possible that litigation will take place over Black Fork's amendment to the project filed in Case No. 14-1591-EL-BGA. Delays caused by future litigation (*i.e.*, litigate the amendment and then litigate the extension at a later date) can be minimized by seeking the extension now rather than at a later date. Moreover, Black Fork's sought extension date is reasonable considering that the date (January 23, 2019) is less than a year after the new certificate dates for the Hardin Wind Energy and Buckeye Wind projects.

For all the foregoing reasons, good cause exists to extend the Black Fork Wind Farm Project's Certificate from January 23, 2017 to January 23, 2019.

Respectfully submitted,

  
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following parties of record via Federal Express, 2-Day Delivery on this 12th day of September 2014.

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**This foregoing document was electronically filed with the Public Utilities**

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Summary: Motion for Certificate Extension electronically filed by Mr. Michael J. Settineri on behalf of Black Fork Wind Energy LLC