

FILE
FAX

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application)
of Black Fork Wind Energy,LLC FOR)
a Certificate to Site a)
Wind Powered Electric Generating Facility)
in Crawford and Richland Counties, Ohio)

Case No. 10-2865-EL-BGN

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MEMORANDUM CONTRA TO BLACK FORK WIND ENERGY
MOTION FOR EXTENSION OF CERTIFICATE

Contra to Black Fork Wind Energy,LLC's Motion for Extension of its Certificate is timely filed in accordance with OAC 4906-1-04. Black Fork has not demonstrated good cause to extend its Certificate of Environmental Compatibility and Public Need for the Black Fork Wind Energy Project. The reasons to deny Black Fork's Motion to Extend the Project Certificate are set forth in the pages that follow.

Respectfully Submitted

Gary J. Biglin

Gary J. Biglin
5331 State Route 61 South
Shelby, Ohio 44875
(419) 347-7573

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I. Blaming intervenors and two year Ohio Supreme Court litigation time frame is without merit and an attempt to circumvent the two year freeze of S.B. 310 and set-back changes with the passage of H.B. 483.

While intervenors and the Ohio Supreme Court process did take almost two years, the denial of a rehearing by the OPSB and Black Fork triggered the only recourse by Ohio Law, an appeal to the Ohio Supreme Court, which can be a lengthy process. Black Fork although has from Dec. 18, 2013 through Jan. 23, 2017 to exercise any continuing development process on the project. Black Fork does not show good cause for the extension of the Certificate especially condition 70 which states: "The certificate shall become invalid if the applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate." By blaming intervenors for for a two year delay, or argueing a possible future two year delay by litigation, could this not rather be an attempt to skirt the two year freeze of S.B. 310 and the set-back changes of H.B. 483. This request is premature considering the remaining time in the certificate.

II. Changes in the energy market and no power purchase agreements.

Since industrial wind generated power in Ohio is not economically viable (being higher priced than other sources like nuclear, coal, or gas) and therefore can not procure power purchase agreements without a statutory mandate that public utilities purchase it, is not good cause for an extension of the certificate. Just because of the un-marketable need for a company's product is not good cause to limit efficient land use of property for years to come.

III. Black Fork alleges a continuation of expenditures and resources to develop the project , however, it provides no evidence that establishes this statement.

While project expenditures for land use leases and significant expenditures to support PJM interconnection are claimed no evidence to these claims seem to be exhibited. These statements are all form without any substance. If Black Fork is truly still developing the project it should be required to provide an itemized listing of such resource expenditures to support the these claims. The burden is on Black Fork to prove the legitimacy of its statements.

IV. Since the Board has failed to satisfy the statutory requirements that must be satisfied to effectuate new rules.

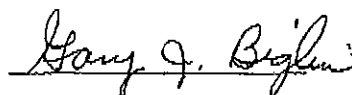
The current OAC rule changes and review process for the OPSB brings into question which OPSB rules even apply at the present time. Therefore present proceedings should not concur until the rule has been properly reviewed by the process set forth by the legislature. (see attachment exhibit A Errors Necessitating Rehearing (A) on page 1 in the Application for rehearing of Omega Crop Co. LLC of Case #13-990-EL-BGN Greenwich Windpark,LLC. By Samuel C. Randazzo.)

V. There are compelling reasons why the Board should conduct a full investigation and consider the need for a public hearing before deciding whether to extend the Certificate.

It is "the long-standing policy of the Board" to include in each certificate a condition requiring the applicant to begin a continuous course of construction within a specified time period. According to the Board, the propose of this provision is (1) to encourage the efficient use of the land and limit the applicant's ability to hold the rights to construct on the property indefinitely, and (2) to ensure that the information upon which the Board initially relied in granting the certificate is still valid and accurate. A public hearing needs to be held pursuant to ORC 4906.07(B) on the motion for the extension of the certificate of Case# 10-2865-EL-BGN because BlackFork's proposed amendment application Case# 14-1591-EL-BGA materially alters the original application.

For the following reasons, the rush to pursue a motion for the extension of time of the Certificate by BlackFork at this time does not show good cause.

Respectfully Submitted,



Gary J. Biglin
5331 State Route 61 South
Shelby, Ohio 44875
(419) 347-7573

Certificate of Service

Copies of the forgoing document sent to the following parties of record on September 29, 2014.

Debra Bauer and Bradley Bauer
7798 Remlinger Road
Crestline, Ohio 44827-9775

Karel A. Davis
6675 Champion Road
Shelby, Ohio 44875

Carol and Loran Gledhill
7256 Remlinger Road
Crestline, Ohio 44827-9775

Brett A. Heffner
3429 Stein Road
Shelby, Ohio 44875

John Warrington
7040 SR 96
Tiro, Ohio 44887

Chad A. Endsley
Ohio Farm Bureau Federation
280 North High Street
PO Box 182383
Columbus, Ohio 43218

John Jones
Assistant Attorneys General
Public Utilities Section
180 E. Broad Street, 6th Floor
Columbus, Ohio 43215

Margaret and Nick Rietschlin
4240 Baker Road
Crestline, Ohio 44827-9775

Mary Studer
6716 Remlinger Road
Crestline, Ohio 44827-9775

Orla Collier III
Benesch, Friedlander, Coplan &
Arnoff LLP
41 South High Street, 26th Floor
Columbus, Ohio 43215

Grover Reynolds
7179 Remlinger Road
Crestline, Ohio 44827-9775

Alan and Catherine Price
7956 Remlinger Road
Crestline, Ohio 44827-9775

Ms. Barcy F. McNeal, Secretary
Public Utilities Commission of Ohio
180 E. Broad Street, 11th Floor
Columbus, Ohio 43215

Michael J. Settineri
Vorys, Sater, Seymour, & Pease LLP
52 East Gay Street
Columbus, Ohio 43215

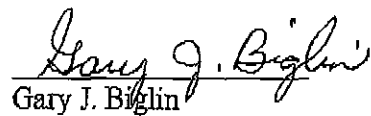

Gary J. Biglin

Exhibit A

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)
6011 Greenwich Windpark, LLC for a)
Certificate to Construct a Wind-Powered) Case No. 13-990-EL-BGN
Electric Generation Facility in)
Huron County, Ohio.)

**APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT
OF OMEGA CROP CO., LLC, AN OWNER OF PROPERTY
ADJACENT TO THE WIND FARM PROPERTY**

Samuel C. Randazzo (Reg. No. 0016386)
(Counsel of Record)
Scott E. Ellsar (Reg. No. 0081877)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
(willing to accept service by e-mail)
selisar@mwncmh.com
(willing to accept service by e-mail)

September 23, 2014

Attorneys for Omega Crop Co., LLC

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A. The Order is unreasonable or unlawful because the Board processed the application under rules that violate Ohio law and rules the Board rescinded early in 2014. In Case No. 12-1981-GE-BRO and pursuant to a Finding and Order issued on February 18, 2014, the Board rescinded Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, 4906-15 and 4906-17, O.A.C., and thereafter adopted new Chapters 4906-1 through 4906-7, O.A.C. However, the Board did not file the new Chapters with JCARR in accordance with Section 111.15, Revised Code. Since the Board has failed to satisfy the statutory requirements that must be satisfied to effectuate new rules, new Chapters 4906-1 through 4906-7, O.A.C., are not in effect. Since the Board is obligated to, but failed to, adopt and apply rules that respect such things as the minimum setback requirements established by the General Assembly, the Board lacked jurisdiction to issue the Order until such time as it adopts rules which, among other things, respect the minimum setback requirements established by the General Assembly. Section 4906.20(A), Revised Code, states that "[a] certificate shall be issued only pursuant to this section." The Certificate issued by the Order is incompatible with the requirements in Section 4906.20(B)(2), Revised Code, and, therefore, was not lawfully issued by the Board in accordance with the authority delegated to the Board by the General Assembly. Because the Order issued by the Board is outside of the Board's authority, the Order and the associated Certificate are void.....	21
B. The Order unreasonably and unlawfully grants a Certificate to construct an economically significant wind farm without imposing a condition requiring Greenwich to comprehensively comply with applicable minimum setback requirements set down by the General Assembly in Section 4906.20(B)(2), Revised Code. The uncontested evidence shows that: (A) Greenwich did not seek a waiver from the minimum setback requirements in accordance with Sections 4906-17-08 and 4906-1-03, O.A.C.; (B) Greenwich's construction plan	