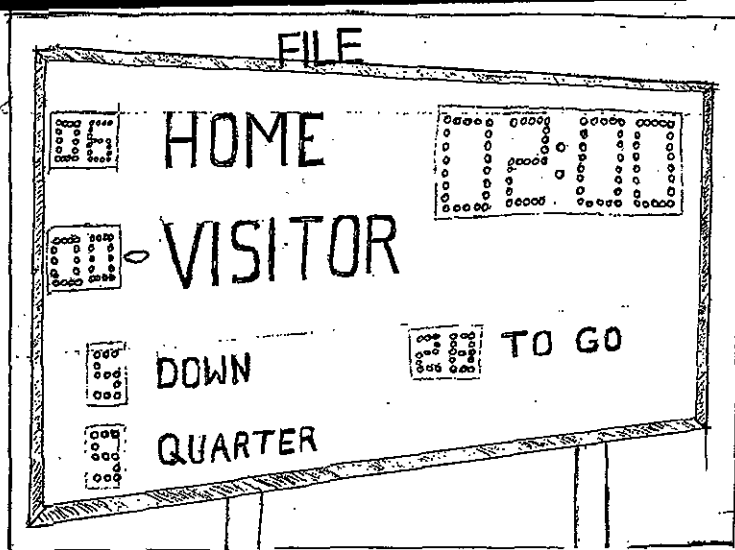




4906-7-19 (B)

SEPTEMBER 29, 2014 4
BRETT A HEFFNER
3429 STEIN ROAD
SHELBY, OHIO 44875
419-632-3845
TO: DOCKETING DIVISION
PUCO-OPSB
180 EAST BROAD STREET
COLUMBUS, OHIO 43215
RE: CASE # 10-2865-EL-BGN
RESPONSE TO MOTION FOR
EXTENSION OF CERTIFICATE

GREETINGS,

PLEASE DENY BLACK FORK WIND ENERGY'S REQUEST FOR EXTENSION OF CERTIFICATE, BECAUSE:

① BLACK FORK ASSERTS THEY "COULD NOT COMMENCE CONSTRUCTION UNTIL INTERVENORS' APPEALS WERE RESOLVED. THIS IS IN ERROR BECAUSE:

A. BLACK FORK, STAFF, AND OTHERS WERE SIGNATORIES, AND ACKNOWLEDGED THEIR AGREEMENT THERETO ON THE RECORD, TO A JOINT STIPULATION AND AGREEMENT THAT SPECIFICALLY INCLUDES INVALIDATION OF CERTIFICATE IF "APPLICANT HAS NOT COMMENCED A CONTINUOUS COURSE OF CONSTRUCTION OF THE PROPOSED FACILITY WITHIN 5 YEARS OF THE DATE OF THE JOURNALIZATION OF THE CERTIFICATE".

B. AN APPEAL TO THE OPSB OR THE OHIO SUPREME COURT DOES NOT EFFECT A STAY ON THE CERTIFICATE. THE COMPANY WAS NOT PROHIBITED FROM COMMENCING THE PROJECT, IT CHOSE NOT TO. IF A COMPANY IS RISK-AVERSE, WIND ENERGY IS AN INAPPROPRIATE FIELD OF ENDEAVOR. FEINT HEART NEVER THE FAIR MAIDEN WON.

C. THE APPEAL PROCESS ITSELF IS CODIFIED IN THE RC AND AC; AND THE COMPANY WAS OR SHOULD HAVE BEEN WELL AWARE THAT THESE APPEALS WERE A PART OF THE PROCESS WHICH BY RULE MUST BE CONTAINED WITHIN THE FIVE YEARS, THE COMMENCEMENT PERIOD.

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- D. THE COMPANY'S OPPOSITION TO OUR CODE GRANTED REQUEST FOR APPEALS, AND SUBSEQUENT APPEALS CONTRIBUTED GREATLY TO THE DELAY, THOUGH THEY ARE CERTAINLY ENTITLED TO OPPOSE US.
- E. THE BOARD GRANTED MY, AND OUR, STATUS AS INTERVENORS KNOWING THE TIME IMPLICATIONS, WITH AN EXPLICIT INSTRUCTION BY THE OAC TO CONSIDER POTENTIAL DELAY AS A REASON TO EXCLUDE US. 4906-7-04(3)(c)(d)
- F. OBJECTION ~~TO~~ ORDER OF FEB 28, AND REQUEST FOR EXPEDITED RULING FILED BY ME MARCH 2, 2012, IT WAS ASKED THAT THE PROCESS BE EXPEDITED, AS OUR RESPONSE TIMES WERE SHORT BY ADMINISTRATIVE RULE, THE STAFF AND COMPANY'S WERE FLEXIBLE AND LENGTHY.
- ② THE PREPONDERANCE OF DELAY IS PRECIPITATED BY THE COMPANY'S LATE INTRODUCTION OF MATERIALLY SIGNIFICANT CHANGES TO THE PROJECT IN BOTH TURBINE SPECIFICATION AND PROJECT LAYOUT, AND BECAUSE THIS INTRODUCTION IS CONTRARY TO THE CONDITIONS OF CERTIFICATE PERTAINING TO ACCEPTABLE TURBINE TYPES, AND CONTRARY TO THE JOINT STIPULATION AND AGREEMENT SIGNED BY COMPANY, STAFF, AND OTHERS.
- ③ THE WILLINGNESS OF THE BOARD TO WAIVE OR ALTER PROVISIONS OF THE CERTIFICATE AND JOINT STIPULATION OF AGREEMENT ON THIS ONE ISSUE, TIME, UNDERMINES THE PUBLIC CONFIDENCE IN THE BOARD TO UPHOLD OTHER "REQUIREMENTS" IN THOSE DOCUMENTS.
- ④ EXTENSION OF TIME TO COMMENCE BY 40% IS IN ITSELF A SIGNIFICANT AND MATERIAL CHANGE TO THE PROJECT, AND WARRANTS A PUBLIC HEARING.
- ⑤ ARE THERE ANY RULES THAT CONCRETELY, DISTINCTLY, SPECIFICALLY APPLY IN ALL CIRCUMSTANCES TO THE COMPANY, STAFF, OR BOARD? AMERICANS BRISTLE AT EX-POST-FACTO LAWS, RULES THAT APPLY DIFFERENTLY TO DIFFERENT SUBCLASSES, AND CHANGING RULES IN THE MIDDLE OF THE GAME TO BENEFIT A FAVORED PARTY.
- ⑥ THOUGH THE COMPANY CITES BOARD PRECEDENTS FOR EXTENSIONS GRANTED TO OTHERS, IT DOES NOT CITE REVISED CODE TO THE BOARD, OR ADMINISTRATIVE CODE THAT GRANTS AUTHORITY TO THE BOARD OR ENUMERATES CIRCUMSTANCES THAT CONSTITUTE "GOOD CAUSE", I SUBMIT THAT HAVING THE OTHER TEAM SHOW UP IS NOT PREJUDICIAL TO THE COMPANY, DID NOT CAUSE UNQUE DELAY, AND THAT OUR INVOLVEMENT WAS WITH BOARD APPROVAL.

② CONT'D →

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⑦ LACK OF PRESCIENCE OF MARKET MOVEMENT IS NOT A TRAIT PECULIAR TO THE WIND INDUSTRY. CERTAINTY OF RESULTS WHEN INVESTING IS BARELY GUARANTEED, AND FOR GOOD REASON.

ANYTHING OTHER THAN A COMPLETE REJECTION OF THE REQUEST FOR EXTENSION WILL CAST DOUBT UPON THE SOLIDITY OF ALL OTHER PROVISIONS OF THE CERTIFICATE, FOR ANY ONE, OR FOR ALL THE ABOVE REASONS, PLEASE REJECT THE COMPANY'S REQUEST FOR EXTENSION OF CERTIFICATE.

BEST REGARDS, BRETT ~~SR~~

Brett Neffner 9/29/14

INTERVENOR IN
ABOVE NAMED CASE

Certificate of Service

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

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BA Heffner
9/29/14
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