

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Black Fork Wind Energy, LCC to)	
Amend Its Certificate Issued in)	Case No. 17-1148-EL-BGA
Case No. 10-2865-EL-BGN)	

PROPOSED INTERVENORS' (GARY J. BIGLIN, KAREL A. DAVIS, BRETT A. HEFFNER, ALAN PRICE, CATHERINE PRICE, MARGARET RIETSCHLIN, AND JOHN WARRINGTON) REPLY TO BLACK FORK WIND ENERGY LLC'S MEMORANDUM CONTRA THE PETITION TO INTERVENE

I. INTRODUCTION

Gary J. Biglin, Karel A. Davis, Brett A. Heffner, Alan Price, Catherine Price, Margaret Rietschlin, and John Warrington (together, the “Intervenors”) have participated in the proceedings on Black Fork Wind Energy, LLC’s (“Black Fork”) original Application for Certificate of Environmental Compatibility and Public Need to Site a Wind Powered Electric Generation Facility In Richland and Crawford Counties, Ohio (Case No. 10-2865-EL-BGN), and in the proceedings on Black Fork’s prior application to amend the Certificate (Case No. 14-1591-EL-BGA).¹ This Board has previously determined that each of the Intervenors met all of the requirements of R.C. 4906.08 and O.A.C. §4906-2-12 for intervention in the proceedings regarding the Black Fork wind farm project. See *In re Application of Black Fork Wind Energy, LLC*, No. 10-2865-EL-BGN, slip op. at 2-4, ¶¶7, 9, 11-12 (Aug. 30, 2011); *In re Application of Black Fork Wind Energy, LLC*, No. 14-1591-EL-BGA, slip op. at 3 (Aug. 27, 2015).

The Intervenors’ participation in those cases neither prejudiced any parties nor caused any delay. Now, despite this Board having twice previously concluded that each of the Intervenors satisfied all of the requirements for intervention, Black Fork seeks to end

¹The Prices did not seek to intervene in proceedings on Black Fork’s Application to Amend, Case No. 14-1591-EL-BGA.

Intervenors' participation. And, by alternatively seeking to limit the scope of any intervention, Black Fork candidly acknowledges that the reason for its opposition to Intervenors' continued participation is to prevent any party from arguing the amendment requires the application of new statutory setback requirements, thereby shielding from review any potential finding by this Board that such setback requirements do not apply to this project. Because Black Fork has failed to present any legitimate opposition to the Petition to Intervene, this Board should grant the petition for all of the Intervenors.

II. ARGUMENT

A. Gary J. Biglin

Intervenor Gary J. Bilgin is a non-participating landowner and family farmer in Richland County's Sharon Township. At the time of the original application, his farm abutted property leased for the Project on three sides. Bilgin sought intervention with regard to both the original application (No. 10-2865-EL-BGN) and Black Fork's first application to amend its certificate (No. 14-1591-EL-BGA). He was granted intervention in both cases. *In re Application of Black Fork Wind Energy, LLC*, No. 10-2865-EL-BGN, slip op. at 3-4, ¶11 (Aug. 30, 2011); *In re Application of Black Fork Wind Energy, LLC*, No. 14-1591-EL-BGA, slip op. at 3 (Aug. 27, 2015).

Now, for the first time in the proceedings related to this project, Black Fork indicates that, effective October 31, 2013, it terminated the lease of the property that abutted Mr. Biglin's farm. See Memorandum Contra at 4-5. Significantly, however, Black Fork opposed Mr. Biglin's intervention in the prior certificate amendment case *nearly a year after the termination of the lease for the abutting property* with no mention of the purported lease termination. See Black Fork Wind Energy LLC's Response to Petitions to Intervene by Margaret Rietschlin, Gary

Biglin, and Karel Davis, No. 14-1591-EL-BGA (filed Oct. 13, 2014). The Board granted Mr. Biglin intervention *approximately twenty-two (22) months after the purported lease termination*. In granting intervention, the Board necessarily concluded, as it did with regard to the original proceedings, that Mr. Biglin met all of the requirements for intervention. See *In re Application of Black Fork Wind Energy, LLC*, No. 14-1591-EL-BGA, slip op. at 3 (Aug. 27, 2015) (“[T]he Board finds their motions to intervene should be granted.”). See also *In re Application of Black Fork Wind Energy, LLC*, No. 10-2865-EL-BGN, slip op. at 3-4, ¶11 (Aug. 30, 2011).

As is clear from Black Fork’s applications—both the original and two for amendments to the Certificate—and its subsequent actions—such as the lease termination referenced in its Memorandum Contra—this project has undergone, and continues to undergo, changes in its scope and footprint. Although Black Fork may no longer in fact lease the land adjacent to Mr. Bilgin’s farm, the footprint of the project may again change prior to commencement of construction, which Black Fork now avers may not be until January 23, 2020. Mr. Biglin continues to have an interest as a landowner and resident very near the project, in ensuring that the project complies with all legal requirements, including the applicable setbacks. The Board should, therefore, grant Mr. Biglin’s request to intervene.

B. Brett A. Heffner

Intervenor Brett A. Heffner is a non-participating landowner in Richland County, near the proposed project. Heffner sought intervention with regard to both the original application and Black Fork’s first application to amend its certificate. He was granted intervention in both cases. *In re Application of Black Fork Wind Energy, LLC*, No. 10-2865-EL-BGN, slip op. at 3, ¶9 (Aug. 30, 2011); *In re Application of Black Fork Wind Energy, LLC*, No. 14-1591-EL-BGA, slip op. at 3 (Aug. 27, 2015). Although Black Fork suggests that Mr. Heffner’s intervention in the

original proceedings was granted only because it was treated as unopposed, see Memorandum Contra at 3 n.1, the ALJ in the original proceeding reviewed his request and stated that “Mr. Heffner's motion to intervene meets the requirements for intervention set forth in Section 4906.08(A)(2), Revised Code, and Rule 4906-7-04(A)(1), O.A.C [now, O.A.C. §4906-2-12].” *In re Application of Black Fork Wind Energy, LLC*, No. 10-2865-EL-BGN, slip op. at 3, ¶9 (Aug. 30, 2011). Moreover, the Board granted intervention in the prior amendment proceeding despite Black Fork having made the same argument it makes here, *i.e.*, that he lives “well outside the project area.” Black Fork Wind Energy LLC’s Memorandum Contra to Petitions to Intervene by John Warrington and Brett A. Heffner, No. 14-1591-EL-BGA at 1 (filed Oct. 31, 2014). See *In re Application of Black Fork Wind Energy, LLC*, No. 14-1591-EL-BGA, slip op. at 3 (Aug. 27, 2015) (“[T]he Board finds their motions to intervene should be granted.”).

C. The Remaining Intervenors

Black Fork’s only stated opposition to the remaining Intervenors’ participation in these proceedings is a suggestion that their intervention should be “limited,” *i.e.*, they should be precluded from raising any of the three primary issues necessarily implicated by the current Application to Amend—(1) the change in one of the turbine models to be used on the project, (2) the extension of the term of the Certificate to January 23, 2020, and (3) the application of the new setback requirements of Amended Substitute House Bill (“Am.Sub.H.B.”) 483 (effective September 15, 2014) mandated as a result of these two amendments to the Certificate.

By confining its opposition to these Intervenors’ participation to the arguments they should be permitted to advance if allowed to intervene, Black Fork implicitly acknowledges that these Intervenors—Karel A. Davis, Alan and Catherine Price, Margaret Rietschlin, and John Warrington—all have significant interests at stake in these proceedings. However, rather than

addressing Intervenor's arguments on their merits, Black Fork simply attempts to prevent those arguments from ever being made in this proceeding.

Of course, this relates primarily to the application of the new setback requirements of Am.Sub.H.B. 483 (effective September 15, 2014). Black Fork asserts that the Board has previously ruled on this issue and, therefore, the Board should not permit the argument to be made by the Intervenor in this proceeding. Memorandum Contra t 6. As the Board is aware, however, an appeal raising this issue is currently pending before the Ohio Supreme Court from the Board's prior ruling extending the term of the Certificate. See *In re Application of Black Fork Wind Energy, LLC*, No. 10-2865-EL-BGN (March 24, 2016), *appeal pending*, No. 2017-0412 (Ohio S.Ct.).

Intervenor contends that the General Assembly has clearly spoken: "*any amendment made to an existing certificate*" after September 15, 2014 requires the application of the new setback requirements. R.C. 4906.201(B)(2). Black Fork has asked the Board to make two additional amendments to its Certificate. Accordingly, the new setback requirements must be applied, and Intervenor must be permitted to so assert to preserve that issue for judicial review.

Moreover, the fact that Intervenor did not file applications for rehearing when the Board amended Black Fork's Certificate to allow a the use of a new turbine model² in no way forecloses Petitioners from opposing yet another change in the turbines Black Fork proposes to use on the project. Significantly, Black Fork cites no precedent to support its assertion that the failure to file for rehearing in one proceeding prohibits participation in, or making a particular argument in, a new proceeding. If the proposed change is significant enough to require an application to amend the certificate—and by filing the current Application for an amendment,

²Intervenor was not then represented by counsel.

Black Fork necessarily concedes that it is—then it is significant enough to be examined by the Board pursuant to its statutory obligation to do so. And Intervenors, who have participated in proceedings regarding Black Fork’s proposed wind farm from the outset, have a right to participate in those proceedings to protect their interests.

Each of the Intervenors has a real and substantial interest in this matter. All reside within or very near to the project area, and most own and reside on property that abuts the actual project site. They have a real and substantial interest in ensuring that the proposed amendments—the substitution of a turbine with increased capacity over those specified in the Certificate and its prior amendment and the extension of the Certificate’s term—do not have additional adverse impacts on their land, residences, roads, communities, and lives. Intervenors also have an interest in ensuring the proper application of setback requirements made applicable to this project through Amended Substitute House Bill (“Am.Sub.H.B.”) 483 (effective September 15, 2014).

As noted in Intervenors’ Petition to Intervene, the Board has previously allowed each of the Intervenors in this case to intervene in the prior proceedings dealing with this project. Those intervention rulings are entirely consistent with Board precedent. See, *e.g.*, *In the Matter of the Application of Buckeye Wind LLC*, No. 13-360-EL-BGA, slip op. at 5-6, ¶¶12-14 (Ohio Power Siting Bd. Nov. 21, 2013) (granting motion of proposed intervenors who claimed that the wind project would have “potential impacts” on “their residences, land, roads, and community”). See also *In the Matter of the Application of Champaign Wind, LLC*, No. 12-160-EL-BGN, slip op. 3-6, ¶¶19-23, 25 (Ohio Power Siting Bd. Aug. 2, 2012) (granting motion to intervene of “property owners who own real estate and reside within the footprint of the” wind turbine project and who “have a direct and substantial interest in [the] matter, in light of the potential visual, aesthetic,

safety, and nuisance impacts of the wind project on their residences, land, and community”); *In the Matter of the Application of American Transmission Systems, Inc.*, No. 12-1636-EL-BTX, slip op. at 1-2, ¶¶3-6 (Ohio Power Siting Bd. May 21, 2014) (granting motions to intervene of property owner along the possible alternate route of a proposed transmission line). The Board should not now reverse course and deny or limit the participation of adjoining and nearby landowners and residents.

III. CONCLUSION

For the foregoing reasons, and for the reasons set forth in the Memorandum in Support of their Petition to Intervene, Intervenors request the Board to grant the Petition To Intervene.

Respectfully submitted,

/s/ John F. Stock

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion To Intervene was served, via regular U.S. mail, postage prepaid, and email this 31st day of July, 2017, upon all parties listed in the attached Exhibit A.

/s/ John F. Stock _____
John F. Stock

EXHIBIT A

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Commission of Ohio Docketing Information System on

7/31/2017 4:07:57 PM

in

Case No(s). 17-1148-EL-BGA

Summary: Reply PROPOSED INTERVENORS' (GARY J. BIGLIN, KAREL A. DAVIS, BRETT A. HEFFNER, ALAN PRICE, CATHERINE PRICE, MARGARET RIETSCHLIN, AND JOHN WARRINGTON) REPLY TO BLACK FORK WIND ENERGY LLC'S MEMORANDUM CONTRA THE PETITION TO INTERVENE electronically filed by John F Stock on behalf of Biglin, Gary J. and Davis, Karel A. and Heffner, Brett A. and Price, Alan and Price, Catherine and Rietschlin, Margaret and Warrington, John