

BEFORE THE OHIO POWER SITING BOARD

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| In the Matter of the Application of |) | |
| Black Fork Wind Energy, LLC for an |) | Case No. 18-1346-EL-BGA |
| Amendment to its Certificate |) | |
| Issued in Case No. 10-2865-EL-BGN |) | |

MEMORANDUM CONTRA OF BLACK FORK WIND ENERGY LLC
TO THE PETITION TO INTERVENE OF ANDREW J. BIGLIN, MARCIA M. BIGLIN,
KAREL A. DAVIS, ALAN PRICE, CATHERINE PRICE, MARGARET RIETSCHLIN
AND JOHN WARRINGTON

I. INTRODUCTION

This is a new proceeding before the Board and any person seeking to intervene must satisfy the Board's standards for intervention. In other words, the above-named petitioners cannot rely on their past participation in proceedings related to the Black Fork Wind Energy project as justification to intervene and oppose a turbine model change. With that in mind, the Board should limit petitioners Andrew J. Biglin, Marcia M. Biglin, Karel A. Davis, Alan Price, Catherine Price, Margaret Rietschlin and John Warrington participation in this proceeding if their petitions to intervene are granted. They should not be allowed to litigate any issues that have previously been decided in other proceedings (including the Board's prior rulings that a turbine model change does not trigger the new statutory setbacks).

II. ARGUMENT

A. The Petitioners Must Satisfy the Legal Standard for Intervention

The standard for intervention in Board proceedings is a showing of good cause for the intervention. Ohio Adm.Code 4906-2-12(B)(1). In considering whether good cause exists, the Board or the administrative law judge may consider (a) the nature and extent of petitioners' interest, (b) the extent to which the petitioners' interest is represented by existing parties, (c) the petitioners' potential contribution to a just and expeditious resolution of the issues involved in

the proceeding, and (d) whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party. *Id.* The Board may also grant, under Ohio Adm.Code 4906-2-12(D)(1), limited participation if a person has no real and substantial interest with respect to the remaining issues.

B. The Board Should, if Intervention is Granted, Limit Petitioners' Participation to the Turbine Model Addition

A large portion of the petitions to intervene focus on petitioners' legal argument that the Board must apply current statutory setbacks to the project solely because the Certificate is being "amended". *See* Petition to Intervene at 10-13. But a desire to re-litigate legal issues that the Board has already decided in favor of this applicant and other applicants for wind electric generation projects in the past is not a sufficient interest that allows for intervention on those issues in this proceeding. The Board has repeatedly taken the position that R.C. 4906.20 and R.C. 4906.201 are silent as to the definition of an "amendment to an existing certificate" that would trigger the enhanced setbacks, and has used its discretion to determine what qualifies as an amendment. Intervention on this issue is not appropriate in this proceeding given past Board precedent. *See e.g. In re Black Fork*, Case No. 10-2865-EL-BGN, Entry on Rehearing at ¶ 29 (Feb. 2, 2017); *In re Greenwich Windpark, LLC*, Case No. 15-1921-EL-BGA, Second Entry on Rehearing (Aug. 17, 2017) at 7-8, ¶¶21-22 (addition of new turbine models do not constitute an amendment); *In re Black Fork*, Case No. 17-1148-EL-BGA, Order on Certificate (Dec. 7 2017) at 4, ¶17 ("The motions to intervene should be denied to the extent the Intervenor request intervention for the purpose of addressing irrelevant matters outside ...the identified scope of this application.") (Limiting intervention to turbine model capacity change, when proposed intervenors also attempted to challenge the applicability of setback requirements).

Petitioners further argue that they should be permitted to intervene to ensure that the addition of a single turbine model “does not have additional adverse impacts on their land, residences, roads, communities, and lives.” Petition to Intervene at 9. If the Board determines that intervention is appropriate for any petitioners, it should exercise its authority under Ohio Adm.Code 4906-2-12(D) as it has done in other proceedings, and allow intervention only as to the turbine model addition, not any other aspects of the project that petitioners oppose in general.

III. CONCLUSION

For the foregoing reasons, the Board should at most only allow the petitioners to participate in this proceeding as to the proposed additional turbine model for the project.

Respectfully submitted,

/s/ MacDonald W. Taylor

Michael J. Settineri (0073369), Counsel of Record

MacDonald W. Taylor (0086959)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

(614) 464-5462

(614) 719-5146 (fax)

mjsettineri@vorys.com

mwtaylor@vorys.com

Attorneys for Black Fork Wind Energy, LLC

CERTIFICATE OF SERVICE

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/s/ MacDonald W. Taylor
MacDonald W. Taylor

jstock@beneschlaw.com
mtucker@beneschlaw.com

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Summary: Memorandum Contra Petitions to Intervene of Andrew J. Biglin, Marcia M. Biglin, Karel A. Davis, Alan Price, Catherine Price, Margaret Rietschlin, and John Warrington electronically filed by Mr. MacDonald W Taylor on behalf of Black Fork Wind Energy LLC