

**BEFORE
THE OHIO POWER SITING BOARD**

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| In the Matter of the Application of |) | |
| Black Fork Wind Energy, LCC to |) | |
| Amend Its Certificate Issued in |) | Case No. 18-1346-EL-BGA |
| Case No. 10-2865-EL-BGN |) | |

**PROPOSED INTERVENORS' (ANDREW J. BIGLIN, MARCIA M. BIGLIN,
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 MEMORANDA 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 applications to amend the Certificate (Case Nos. 14-1591-EL-BGA¹ and 17-1148-EL-BGA).² This Board has previously determined that each of these 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*

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

²First-time Intervenors Andrew J. and Marcia M. Biglin are non-participating residents and landowners in Crawford County’s Vernon Township, in the footprint of the proposed project. They purchased their home this past summer from Bradley and Debra Bauer, who sought and were granted intervention in the Original Proceeding. *In re Application of Black Fork Wind Energy, LLC*, No. 10-2865-EL-BGN, slip op. at 2-3, ¶9 (Aug. 30, 2011). With regard to the Bauers, the ALJ in the Original Proceedings stated that their motions “m[et] the requirements for intervention set forth in Section 4906.08, Revised Code, and Rule 4906-7-04(A)(2), 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 2, ¶7 (Aug. 30, 2011).

Application of Black Fork Wind Energy, LLC, No. 10-2865-EL-BGN, slip op. at 2-4, ¶¶7, 9, 11-12 (Aug. 30, 2011).

The Intervenor's participation in those cases neither prejudiced any parties nor caused any undue delay. Now, despite this Board having previously concluded that these Intervenor's satisfied all of the requirements for intervention, Black Fork seeks to end or limit Intervenor's participation. And, by seeking to limit the scope of any intervention, Black Fork candidly acknowledges that the reason for its opposition to Intervenor's continued participation is to prevent any party from arguing that its Certificate amendment requires the application of the current 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 Intervenor's.

II. ARGUMENT

A. Gary J. Bilgin

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 in the Original Proceeding (No. 10-2865-EL-BGN), the First Amendment Proceeding (No. 14-1591-EL-BGA), and the Second Amendment Proceeding (No. 17-1148-EL-BGA). He was granted intervention in all three prior proceedings. *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); *In re Application of Black Fork Wind Energy, LCC*, No. 17-1148-EL-BGA, slip op. at 4, ¶17 (Dec. 7, 2017).

As it did with the Second Amendment Proceeding, Black Fork argues that Mr. Biglin is no longer entitled to intervene because, effective October 31, 2013, it terminated the leases of the property that abuts Mr. Biglin's farm. See Memorandum Contra at 2-3. Significantly, however, Black Fork opposed Mr. Biglin's intervention in the First Amendment Proceeding *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). And, the Board granted Mr. Biglin's intervention in the Second Amendment Proceeding over Black Fork's express objection regarding the cancellation of the abutting leases. See *In re Application of Black Fork Wind Energy, LCC*, No. 17-1148-EL-BGA, slip op. at 4, ¶17 (Dec. 7, 2017).

As is clear from Black Fork's applications—both the original and for three amendments to the Certificate—this project has undergone, and continues to undergo, material changes in its scope and footprint. Although Black Fork may no longer in fact lease the land adjacent to Mr. Biglin's farm, the footprint of the project may again change prior to commencement of construction, which now 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 in the Original Proceeding, the First Amendment Proceeding, and the Second Amendment Proceeding. He was granted intervention in all three proceedings. *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); *In re Application of Black Fork Wind Energy, LCC*, No. 17-1148-EL-BGA, slip op. at 4, ¶17 (Dec. 7, 2017). 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)(l), 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 First Amendment and Second Amendment Proceedings despite Black Fork having made the same argument it makes here, *i.e.*, that he "does not live 'within or near' the project area" Memorandum Contra at 2. 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."); *In re Application of Black Fork Wind Energy, LCC*, No. 17-1148-EL-BGA, slip op. at 4, ¶17 (Dec. 7, 2017). The Board should not now prevent Mr. Heffner from further participation, and should, therefore, grant his petition to intervene.

C. The Remaining Intervenors

Black Fork's only stated opposition to the remaining Intervenors' participation in this proceeding is a suggestion that their intervention should be "limited," *i.e.*, they should be precluded from raising one of the primary issues necessarily implicated by the current Application to Amend—the application of the current setback requirements of Amended Substitute House Bill ("Am.Sub.H.B.") 483 (effective September 15, 2014) mandated as a result of this proposed amendment 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—Andrew and Marcia Biglin, Karel A. Davis, Alan and Catherine Price, Margaret Rietschlin, and John Warrington—all have sufficient interests at stake in these proceedings to intervene. However, rather than addressing Intervenors' arguments on their merits, Black Fork simply attempts to prevent those arguments from ever being made in this proceeding.

A primary issue implicated by Black Fork's request for a Certificate amendment is the application of the current setback requirements of Am.Sub.H.B. 483 (effective September 15, 2014) to Black Fork's ever-changing project. 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 Intervenors in this proceeding. Memorandum Contra at 2-3. But, as the Board is aware two appeals raising this issue are currently pending before the Ohio Supreme Court from the Board's prior rulings regarding changes to this project. 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.); *In re Application of Black Fork Wind Energy, LCC*, No. 17-1148-EL-BGA (Dec. 7, 2017), *appeal pending*, No. 18-1134 (Ohio S.Ct.).

Intervenors contend 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 yet another amendment to its Certificate. Accordingly, the current setback requirements must be applied, and Intervenors must be permitted to so assert to preserve that issue for judicial review.

Intervenors, who have participated in proceedings regarding Black Fork’s proposed wind farm from the outset, have a right to continue 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 is within or abuts the actual project site. They have a real and substantial interest in ensuring that the proposed amendment—the substitution of a turbine with increased capacity over those specified in the Certificate—does not impose 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 Proposed Intervenor's' (Andrew J. Biglin, Marcia M. Biglin, 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 Memoranda Contra The Petition To Intervene was served, via regular U.S. mail, postage prepaid, this 5th day of December, 2018, upon all parties listed in the attached Exhibit A.

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

Exhibit A

Matt Bachelder
Mansfield-Richland County Public Library
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2221 Village Mall Drive
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Galion Public Library
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Galion, Ohio 44833

Joseph C. Palmer, Director
Mansfield-Richland County Public Library
43 W. Third Street
Mansfield, Ohio 44902

Kathy Webb, Director
Marvin Memorial Library
29 W. Whitney Avenue
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12/5/2018 3:42:58 PM

in

Case No(s). 18-1346-EL-BGA

Summary: Reply PROPOSED INTERVENORS' (ANDREW J. BIGLIN, MARCIA M. BIGLIN, 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 MEMORANDA CONTRA THE PETITION TO INTERVENE electronically filed by John F Stock on behalf of Andrew Biglin and Marcia Biglin and Brett A Heffner and Karel A Davis and Alan Price and Catherine Price and Margaret Rietschlin and John Warrington and Gary J Biglin