

BEFORE  
THE OHIO POWER SITING BOARD

In the Matter of the Application of Republic )  
Wind, LLC, for a Certificate to Site Wind )  
Powered Electric Generating Facilities in ) Case No. 17-2295-EL-BGN  
Seneca and Sandusky Counties, Ohio )

---

**LOCAL RESIDENTS' MOTION TO STRIKE AND MOTION IN LIMINE**

---

The Local Residents move to strike and/or exclude the following testimony and exhibits of the following witnesses:

William Carr

We request that the Board strike Line 22 of Page 13, starting with “However, Attorney” through the period in Line 1, Page 14. This testimony describes a public comment by an attorney that expressed an opinion on karst geology. The attorney is not described as a geologist or hydrogeologist, but Mr. Carr describes the attorney’s opinion as if it were a qualified geologic expert opinion.

Kenneth Mundt

Kenneth Mundt is not an acoustic engineer, nor does he have any expertise with noise. Consequently, the following portions should be struck:

Page 9, lines 14-24;

Page 16, line 5 to Page 20, line 24

In addition, none of the documents attached to Mr. Mundt’s testimony should be admitted into evidence, except for his resume and list of cases in which he has testified. While an expert is allowed to utilize treatises and other literature as a basis for an expert opinion, the treatises and literature may not be admitted into evidence. *See* Rule 803(18) of the Ohio Rules of Evidence.

Republic Wind's Expert Witnesses

The Local Residents move that the following witnesses be precluded from testifying: Dalton Carr; Benjamin Doyle; Paul Kerlinger; Chris Leftwich; Francis Marcotte; Michael MaRous; Shawn McGee; Kenneth Mundt; Isaac Old; Janet Rice; Matthew Robinson; and Ryan Rupprecht. Republic Wind has not produced the documents used by these experts to prepare their testimony, despite repeated requests by the Local Residents' counsel to do so. These records were originally requested through a Request for Production of Documents (RFPD) on September 6, 2019. Counsel agreed to an extension of Republic Wind's deadline for responding to the RFPD until October 10, 2019. The Local Residents' counsel has sent the two attached messages to Republic Wind's counsel requesting these records, and still has not received them even though the start of hearing is only one business day away. Consequently, since Republic Wind has not provided these records to enable informed cross-examination, the testimony of these witnesses should not be heard.

Respectfully submitted,

/s/ Jack A. Van Kley  
Jack A. Van Kley (0016961)  
Counsel of Record  
Van Kley & Walker, LLC  
132 Northwoods Blvd., Suite C-1  
Columbus, Ohio 43235  
(614) 431-8900 (telephone)  
(614) 431-8905 (facsimile)  
Email: [jvankley@vankleywalker.com](mailto:jvankley@vankleywalker.com)

### **CERTIFICATE OF SERVICE**

On October 31, 2019, the docketing division's e-filing system will electronically serve notice of the filing of this document on the following counsel for the parties: Sally W. Bloomfield ([sbloomfield@bricker.com](mailto:sbloomfield@bricker.com)), Dylan Borchers ([dborchers@bricker.com](mailto:dborchers@bricker.com)), Joshua D. Clark ([jclark@senecapros.org](mailto:jclark@senecapros.org)), Leah F. Curtis ([lcurtis@ofbf.org](mailto:lcurtis@ofbf.org)), Chad A. Endsley ([cendsley@ofbf.org](mailto:cendsley@ofbf.org)), Miranda Leppla ([mleppla@theoec.org](mailto:mleppla@theoec.org)), Amy M. Milam ([amilam@ofbf.org](mailto:amilam@ofbf.org)), Mark Mulligan ([mulligan\\_mark@co.sandusky.oh.us](mailto:mulligan_mark@co.sandusky.oh.us)), Devin D. Parram ([dparram@bricker.com](mailto:dparram@bricker.com)), Chris Tavenor ([ctavenor@theoec.org](mailto:ctavenor@theoec.org)), Trent Dougherty ([theoec.org](mailto:theoec.org)), Dane Stinson ([dstinson@bricker.com](mailto:dstinson@bricker.com)), Derek Devine ([dwd@senecapros.org](mailto:dwd@senecapros.org)), and Jodi Bair ([jodi.bair@ohioattorneygeneral.gov](mailto:jodi.bair@ohioattorneygeneral.gov)). On the same date, I served a copy of this filing by electronic mail on the above-listed counsel, Dennis Hackenburg at [Dennyh7@frontier.com](mailto:Dennyh7@frontier.com), and Mike and Tiffany Kessler at [mkessler7@gmail.com](mailto:mkessler7@gmail.com).

/s/ Jack A. Van Kley  
Jack A. Van Kley

## Jack Van Kley

---

**From:** Jack Van Kley  
**Sent:** Wednesday, October 30, 2019 4:32 PM  
**To:** Parram, Devin; Akhbari, Elyse  
**Subject:** Outstanding Document Production

Devin and Elyse,

I have reviewed the documents that Republic Wind has produced in order to determine what is still missing from your production. Based on this review, Republic Wind has not produced the following records:

The documents used to prepare the Application. You have stated that about one-third of the documents cited in the Application are provided with hyperlinks and the rest of them are fully cited in the bibliography. We are looking to see how many of them we can find on the internet and will let you know what records cannot be accessed from the internet.

Also note that our request also applies to records that were used to prepare the Application, but not cited in, the Application. To the extent these records have not been produced, they must be provided. Note that OPSB's decision in the Buckeye Wind case determined only that draft applications need not be produced. Evidence used to prepare the Application were not at issue, because Buckeye Wind produced them.

I see no emails or other correspondence between Republic Wind and its consultants generated in the course of preparing the Application, or the reports used in the Application. The consultants' emails and correspondence related to their conducting the studies used in the Application also were not produced.

The documents used by your experts to prepare their testimony have not been produced. See my message sent last night. In particular, the wildlife consultants' field notes for bird and bat studies have not been produced. The acoustic consultants' records related to the selection of the background sound monitoring stations have not been produced. There should be records, such as emails between the consultant's employees, or emails between the consultant and Republic Wind, discussing the selection and arrangement for use of sites for the monitoring stations.

No reports or documents related to the presence of the Indiana Bat, Kirtland's Warbler, or Bald Eagle have been produced, except for what is in the Application.

You have promised to produce the manufacturers' safety manuals, now that I have signed a confidentiality agreement. I assume you also will now produce the documents related to the manufacturers' recommendations for setbacks or buffers for turbines. Please advise on whether you will do so.

An email in your document production reveals that you received records from OPSB pursuant to a public records request. Please produce those records and any other public records you have received from OPSB or any other state or federal agency.

You have not supplemented your discovery responses as requested in my email of October 8.

You have not answered some of my last set of interrogatories. See my email of this morning.

While you have produced about 5000 pages of records, that production is fall short of the volume of relevant records typically associated with a wind turbine project. Buckeye Wind and Champaign Wind, for example, produced far more records than Republic Wind has produced. So it is apparent that Republic Wind has made a substandard effort to comply with my records requests. I would also note that I cancelled a three day vacation to devote those three days as well as the ensuing weekend to timely fulfilling your last discovery request, including the production of interrogatory answers for 69 clients.

In this message, I have reduced my requests for the outstanding from what I requested in my memorandum of October 17, 2019 in an effort to expedite the production of the documents described above. I will need the records by Friday to prepare for crossing your witnesses starting on Monday. Please advise me by noon tomorrow as to what you will be producing and when you will produce it. If you have any questions about whether I actually want some of the documents that you found, please inquire. If I can reduce the scope of what Republic produces without jeopardizing the production of what I need, I would be happy to do that.

Regards, Jack

---

Jack A. Van Kley  
Van Kley & Walker, LLC  
132 Northwoods Blvd.  
Suite C-1  
Columbus, OH 43235  
Telephone: (614) 431-8900  
Facsimile: (614) 431-8905  
E-Mail: [jvankley@vankleywalker.com](mailto:jvankley@vankleywalker.com)  
Website: [www.vankleywalker.com](http://www.vankleywalker.com)

## Jack Van Kley

---

**From:** Jack Van Kley  
**Sent:** Tuesday, October 22, 2019 11:50 AM  
**To:** Parram, Devin  
**Subject:** Overdue Discovery Responses

Devin,

Republic Wind's production of records pursuant to my RFPDs of September 6, 2019 is now 11 days overdue from the date of the 14-day extension to which I agreed. My clients' and their experts' testimony is due on Monday, and we have not had the opportunity to review Republic's records related to the subject matter of our testimony. I will have to request an extension on our written testimony if I do not receive the records by tomorrow at the latest. Since my experts will testify on wildlife and geology (karst) issues, it is especially critical that the records on these topics be produced ASAP. Please let me know when you will be producing the requested records, including the records from your consultants and expert witnesses.

You also have not updated your responses to our first set of discovery.

I heard that Republic may have recently performed geologic exploration work in the field, perhaps including drilling borings. If that is the case, please produce the records of this work, including field notes, since these records are requested by RFPDs Nos. 24-26 of the currently due responses to RFPDs. My karst expert will need to see those records right away to prepare his testimony.

Regards, Jack

---

Jack A. Van Kley  
Van Kley & Walker, LLC  
132 Northwoods Blvd.  
Suite C-1  
Columbus, OH 43235  
Telephone: (614) 431-8900  
Facsimile: (614) 431-8905  
E-Mail: [jvankley@vankleywalker.com](mailto:jvankley@vankleywalker.com)  
Website: [www.vankleywalker.com](http://www.vankleywalker.com)

---

**From:** Jack Van Kley  
**Sent:** Tuesday, October 15, 2019 11:44 AM

**To:** Parram, Devin <dparram@bricker.com>

**Subject:** Discovery Responses

Devin, by my calculation, your responses to my discovery were due last Thursday under the extension that I gave you. When do you expect to provide me with those responses and documents? Regards, Jack

---

Jack A. Van Kley  
Van Kley & Walker, LLC  
132 Northwoods Blvd.  
Suite C-1  
Columbus, OH 43235  
Telephone: (614) 431-8900  
Facsimile: (614) 431-8905  
E-Mail: [jvankley@vankleywalker.com](mailto:jvankley@vankleywalker.com)  
Website: [www.vankleywalker.com](http://www.vankleywalker.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**10/31/2019 5:08:11 PM**

**in**

**Case No(s). 17-2295-EL-BGN**

Summary: Motion to Strike and Motion in Limine electronically filed by Mr. Jack A Van Kley on behalf of Local Resident Intervenors