

**BEFORE
THE OHIO POWER SITING BOARD**

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

**PREFILED TESTIMONY
OF
John Stains
ON BEHALF OF THE OHIO DEPARTMENT OF TRANSPORTATION**

STAFF EX. ____

September 9, 2020

1 1. Q: Please state your name and business address.

2 A: My name is John Stains. My business address is 2829 West Dublin
3 Granville Road, Columbus, Ohio 43235-2786.
4

5 2. Q: By whom are you employed?

6 A: I am employed by the Ohio Department of Transportation (ODOT).
7

8 3. Q: Did you or your office issue a determination to the Ohio Power Siting
9 Board staff regarding the Application for Certification submitted by Apex
10 Clean Energy for the Republic Wind Farm in Ohio Power Siting Board
11 Case Number 17-2295-EL-BGN?

12 A: Yes. We issued determination letters on April 11, 2019; July 18, 2019 and
13 September 27, 2019, and then a modified determination on March 10, 2020.
14

15 4. Q: Can you please explain the reason for the modified determination issued on
16 March 10, 2020?

17 A: Yes. ODOT Office of Aviation interprets our jurisdiction with regard to
18 structures and objects near airports to be based in whole upon obstruction
19 standards set forth in 14 C.F.R. 77.21 to 77.29, as amended. This is what
20 Ohio Revised Code section 4561.32 (A) states in the first part of its first
21 sentence. The federal regulations referenced in that statute govern
22 obstructions to all of an airport's navigable airspace. Our September 27,

1 2019 determination letter to the Power Siting Board staff outlines all of the
2 obstructions and impacts this proposed wind farm has on all the affected
3 airports. In a lawsuit unrelated to the Ohio Power Siting Board, One Energy
4 challenged our interpretation, claiming that our jurisdiction is controlled by
5 the second part of that same sentence in Ohio Revised Code section
6 4561.32(A) and is limited to structures and objects in an airport's clear
7 zone surface, horizontal surface, conical surface, primary surface, approach
8 surface or transitional surface. This is only part of an airport's navigable
9 airspace. On March 2, 2020, a Franklin County Court of Common Pleas
10 judge issued a decision agreeing with One Energy. In light of the court's
11 ruling, it became apparent that this statute is ambiguous. ODOT has
12 decided to take a conservative approach in light of this ambiguity. One such
13 area where ODOT is applying this conservative approach is Ohio Revised
14 Code section 4561.341 which states that when consulting with the Power
15 Siting Board regarding an application for certification, the ODOT Office of
16 Aviation shall review the application to determine whether the facility will
17 constitute an obstruction to air navigation based upon the rules adopted
18 under Ohio Revised Code section 4561.32 As a result, we felt the need to
19 issue a modified determination.

20
21 5. Q: So, did ODOT Office of Aviation change its belief as to the impacts of the
22 proposed wind farm?

1 A: No. Our detailed and extensive analysis identified the impacts of the
2 proposed wind farm on these airports' navigable airspace, and these
3 impacts remain the same as indicated in our September 27, 2019
4 determination. The modified letter of March 10, 2020 merely reflects the
5 court's ruling that our official submitted determination to the Power Siting
6 Board must be limited to, among other things, the imaginary surfaces
7 specifically identified in the Ohio Revised Code.

8
9 6. Q: Did you submit written testimony and provide oral testimony regarding the
10 Application for Certification submitted by Apex Clean Energy for the
11 Republic Wind Farm in Ohio Power Siting Board Case Number 17-2295-
12 EL-BGN?

13 A: Yes.
14

15 7. Q: Does this court ruling change what you submitted as written testimony or
16 what you testified to orally?

17 A: No. My previous testimony is true and accurate to the best of my ability. I
18 testified, and reiterated in the March 10, 2020 determination, that none of
19 the imaginary surfaces are impacted. The aeronautical impacts of the
20 proposed wind farm identified by ODOT match the impacts identified in
21 the FAA's determination. Regardless of what is permitted to be included in
22 ODOT's determination, the impacts have been clearly identified and should

1 be taken under consideration by the Ohio Power Siting board when
2 deciding whether to issue a certificate.

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Prefiled Testimony of John Stains**, submitted on behalf of the Staff of the Ohio Power Siting Board, was served via electronic mail, upon the following parties of record, this 9th day of September, 2020.

/s/ Jodi J. Bair

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Summary: Testimony Prefiled Testimony of John Stains electronically filed by Mrs. Kimberly M Naeder on behalf of OPSB