

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of REPUBLIC)	
WIND, LLC for a Certificate of Environmental)	
Compatibility and Public Need for a Wind-)	Case No. 17-2295-EL-BGN
Powered Electric Generating Facility in Seneca)	
and Sandusky Counties, Ohio)	

**REPLY IN SUPPORT OF REPUBLIC WIND, LLC’S MOTION TO STRIKE
PORTIONS OF SUPPLEMENTAL DIRECT TESTIMONY OF MARK
SHIELDCASTLE AND *IN LIMINE* TO EXCLUDE RELATED HEARING
TESTIMONY**

The Local Residents’ response to the Applicant’s motion to strike portions of Mark Shieldcastle’s testimony fails to establish that the testimony in issue is relevant to the very limited subject-matter(s) for which the hearing has been reopened. The Local Residents do not disagree that the testimony they attempt to enter now has already been put into evidence and argued in post-hearing briefs. The purpose of the re-opened hearing, however, is not to allow the parties to repeat evidence already in the record that may relate to the “protection” of eagles, including Mr. Shieldcastle’s opinion about the imposition of a buffer around turbines.

The Board has reopened the hearing for the limited purpose of addressing one new eagle nest as related—not to the 2.5-mile buffer urged by Mr. Shieldcastle—but to the 1.17-mile half-mean inter-nest distance calculated by USFWS. (Aug. 4, 2020 Entry at ¶44.) The Board has not asked for testimony related to the “State of Ohio’s extensive studies of Bald Eagle territories” and how those (alleged) studies may support Mr. Shieldcastle’s already-conveyed opinion that there should be a 2.5-buffer around eagle nests. That topic was already addressed at length at the previous hearing and was argued by the Local Residents in their post-hearing brief. (Loc. Res. Dec. 23, 2019 Post Hearing Brief at pp. 66-67.) The parties should not be forced to expend additional resources to respond to these same issues a second time. But that is exactly the can of worms that will be re-

opened if the testimony at issue is not stricken and if Mr. Shieldcastle is not prohibited from testifying about this at the re-opened hearing.

For these reasons as well as the reasons set forth in the Applicant's motion, the Applicant requests that the Board strike from the record the testimony set forth in Shieldcastle Suppl. Testimony at Page 4, Lines 14-18 ("The State of Ohio's ... from the wind turbines.") and Page 5, Lines 6-8 ("However, a buffer ... conduct other activities.") and that Mr. Shieldcastle be precluded from testifying as to these matters at the reopened hearing. The Applicant respectfully requests a ruling on this motion in advance of the hearing, so that it may adequately prepare, including the possibility of calling any rebuttal witness(es), if necessary.

Respectfully submitted on behalf of
REPUBLIC WIND, LLC



Dylan F. Borchers (0090690)
Devin D. Parram (0082507)
Dane Stinson (0019101)
Jennifer A. Flint (0059587)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-Mail: dborchers@bricker.com
dparram@bricker.com
dstinson@bricker.com
jflint@bricker.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply in Support was served upon the following parties of record via electronic mail this 28th day of September, 2020.



Jennifer A. Flint

cendsley@ofbf.org

lcurtis@ofbf.org

amilam@ofbf.org

mleppla@theoec.org

tdougherty@theoec.org

ctavenor@theoec.org

jvankley@vankleywalker.com

cwalker@vankleywalker.com

dwd@senecapros.org

jclark@senecapros.org

mulligan_mark@co.sandusky.oh.us

jodi.bair@ohioattorneygeneral.gov

dennyh7@frontier.com

mkessler7@gmail.com

william.cole@ohioattorneygeneral.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/28/2020 8:45:08 AM

in

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

Summary: Reply in Support of Republic Wind, LLC's Motion to Strike Portions of Supplemental Direct Testimony of Mark Shieldcastle and In Limine to Exclude Related Hearing Testimony electronically filed by Teresa Orahod on behalf of Jennifer A. Flint