

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 )

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**LOCAL RESIDENTS' MEMORANDUM IN OPPOSITION TO  
REPUBLIC WIND'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL  
MEMORANDUM AND LOCAL RESIDENTS' MOTION TO  
STRIKE REPUBLIC WIND'S SUPPLEMENTAL MEMORANDUM**

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Republic Wind's submission of a supplemental memorandum about the public's views on its wind project ("Project") is a transparent attempt to file new argument on its application for rehearing almost a month after the 30-day statutory deadline for filing it. Recognizing that its new argument is too late to include in its application for rehearing, Republic Wind ("RW") pretends that its supplemental argument responds to the Post-Hearing Brief attached to the Local Residents' application for rehearing instead. However, the Local Residents' application for rehearing asked only that the Board decide the issues in their post-hearing briefs that had not yet been decided in the Board's Opinion. The Board's Opinion addressed, and agreed with, the Local Residents' position that public opposition greatly outweighs public support for the Project. So this issue was not a subject of the Local Residents' application for rehearing. Thus, RW's new argument is an indirect attack on the Board's Opinion that should have been included in RW's application for rehearing; it is not a response to the Local Residents' application for rehearing. Consequently, the Local Residents move that the Board strike RW's supplemental memorandum.

RW also contends that it did not have enough time to address the public opposition issue in the 10 days allowed by the Board's rule for responding to the Local Residents' application for

rehearing. However, the Board's Opinion, to which RW is actually responding, thoroughly addressed this issue and RW had 30 days to prepare its arguments in response to the Opinion. RW has no excuse for not timely filing its new argument.

RW also asserts that the Local Residents are not prejudiced by RW's late filing, because they do not have a right to file a reply to RW's memorandum in opposition to the Local Residents' application for rehearing. However, RW should have included its argument in its application for rehearing as required by law, thus affording the Local Residents the opportunity to respond to the new argument. Instead of following proper procedure, RW seeks to deprive the Local Residents of their right to respond to RW's new argument by pretending that its supplemental memorandum is a response to the Local Residents' application for rehearing.

Moreover, Republic Wind's supplemental memorandum is a rank attempt to add new evidence to the closed record of proceedings. While the public comments filed in the public docket are part of the record, Republic Wind's supplemental memorandum goes beyond just mining information from those public comments. To its memorandum, RW has attached exhibits that are not part of the record, and which purportedly include the mapped locations of commenters' residences and a table of commenters' distances from the Project, none of which are in the record and none of which has been subjected to cross-examination to evaluate their accuracy. This is another reason to strike this filing.

Besides being late and relying on information outside of the record, RW's data offerings are wildly inaccurate. The most egregious oversight in RW's compilation of public commenters is its omission of most of the commenters opposing the Project. Although the Local Residents have not had the time to review all public comments in the case's four year timeline, the Local Residents have compared the records of public comments from November 11, 2017 through

September 9, 2019 to RW's list of commenters. The Local Residents have identified the Project opponents below whom RW omitted from its compilation, along with the dates on which their comments were filed:<sup>1</sup> Unlike most of the commenters supporting the Project, the commenters missing from RW's list are citizens living in the area impacted by the Project.

Donna Adams (7/17/18)

Larry Adelsperger (7/22/19)\*

Charles Allison (6/19/18)

Krista Beck (3/6/19)

Carrie Beckman (6/19/18)

Robert Berg (5/13/19)\*

Justin Brenner (7/16/18)

Heidi Brodman (6/20/18)

Anna Brooks (1/23/19)

Carol Burkholder (2/2/18 & 11/14/18)

John Bussey (6/20/18)

Stacey Bussey (6/20/18)

Rob Chappell (6/19/18 & 8/26/19)

James Cholodewitsch (7/13/18)

Julie Cholodewitsch (7/13/18)

Dave Clark (7/11/18)

Diane Clark (6/20/18)

Linda Coffman (9/25/18 & 11/14/18)

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<sup>1</sup> The persons whose names are tagged with an asterisk submitted letters to newspaper editors or newspaper advertisements opposing the Project. The articles were filed by Diane Hudok on the docket.

Tim Cornett (5/17/18)

Jack Daniel (9/24/18)

Matt DePolo (4/1/19)

Melinda DePolo (4/1/19)

Andrea Draper (8/13/18)

Jane Dular (6/19/18)

Jeff Egbert (5/21/18)

James Felton (7/22/19)\*

Bernadette Ferguson (6/19/18)

Brittany Frederick (6/19/18)

James Fritz (4/23/19)

Pamela Fritz (4/23/19)

Jodi Gibson (6/5/18)

Daniel Goshe (8/13/18)

Jennifer Goshe (8/13/18)

Dora Graham (6/20/18)

Joann Graham (6/20/18)

Stacy Green (7/17/18 & 2/25/19)

Charles Groth (1/23/19)\*

DeAnne Hamilton (6/19/18)

Bruce Hanzel (6/20/18)

Kathy Hanzel (6/20/18)

Jeffrey Hasselbach (6/19/18)

Derek Hay (2/8/18)

Duane Hay (3/5/18)

Bruce Hayward (7/13/18)

Ken Hetzel (6/20/18)

Linda Hetzel (6/20/18)

Keesha Hiser (6/20/18)

Richard Hiser (2/5/19)

Sandra Hiser (6/19/18 & 2/5/19)

Crystal Hoepf (8/12/19)

Michelle Hoepf (6/20/18)

Steve Holmer (10/9/18)\*

Jeffrey Hoyda (7/22/19)\*

Pamela Hunter (6/19/18)

David Hurley (8/21/18)

Nancy Hurley (8/21/18)

Joe Irving (7/22/19)\*

Paul Jones (1/11/19)\*

D. Kalb (2/6/18)

Andrew Kalnow (7/22/19)\*

Kimberly Kaufman for the Black Swamp Bird Observatory (10/9/18)\*

Karen Kelbley (2/20/18, 6/20/18 & 1/11/18)

Ronald Kelbley (2/20/18, 6/20/18 & 1/11/18)

Mandy Kelley (6/25/18)

Mike Kerschner (7/22/19)\*  
Kimmet Family (11/8/18)  
Kris Klepper (7/22/19)\*  
Mike Klepper (7/22/19)\*  
Chad Klotz (7/17/18)  
Len Kubitz (6/20/18)  
Kurt Lease (6/19/18)  
Nathan Leibengood (7/16/18)  
James Limbird (7/17/18)  
Kevin Maiberger (7/22/19)\*  
Tom Maiberger (7/22/19)\*  
Bob McClung (7/22/19)  
Erin McConnell (6/7/18)  
Shane McDannell (6/20/18)  
Linda Messersmith (6/20/18)  
Kelley Miller (8/13/18)  
Linda Miller (6/19/18)  
Loren Miller (7/13/18)  
Peggy Missler (4/16/19)  
Lee Myers (7/26/18)  
Valerie Myers (7/26/18)  
Jeffrey Neal (10/2/18)  
Craig Neifer (6/20/18)

Audrey Nickles (10/2/18)  
Dennis Niederkohr (11/8/18)  
Linda Niederkohr (11/8/18)  
Brad Oakleaf (8/13/18)  
Theresa Oakleaf (8/13/18)  
Ashley Owens (6/20/18)  
Jennifer Paradiso (8/21/18)  
Tony Paulus (7/22/19)\*  
Shanna Price (8/13/18)  
Theresa Reesman (6/20/18)  
Christina Riedel (7/16/18)  
Tim Riedel (7/16/18)  
Bob Risner (5/17/18)  
Robert SanGregory (7/22/19)\*  
Colin Schatzinger (6/20/18)  
Tom Scheele (2/21/18)  
John Schultz (7/13/18)  
Steve Shuff (7/22/19)\*  
Adrienne Smith (8/10/18 & 8/13/18)  
Janeen Smith (6/20/18 & 1/29/19)  
Tom Smith (6/19/18)  
Rhoda Sostakowski (7/1/19)  
Lynndsie Stahl (7/13/18)

Kate Stein (9/19/18)  
James Steinmetz (3/18/19)  
Herman Studer (2/8/18, 6/20/18 & 2/28/19)  
Patricia Studer (2/8/18, 6/20/18 & 2/28/19)  
Brittany Taylor (6/20/18)  
Mark Taylor (6/20/18)  
Christine Vogt (7/13/18)  
Don Vogt (6/19/18 & 8/13/18)  
Jodell Wagner (9/24/18)  
Susan Walton (5/7/18 & 12/20/18)  
Mary K. Watson (7/16/18)  
Travis West (6/19/18)  
Michael Work (6/19/18)  
Tim Wrenn (1/2/19)  
Howard Wurm (11/5/18)  
Norman Wurm (6/27/18 & 9/24/18)  
Susie Wurm (6/27/18 & 9/24/18)  
Chris Zeman (6/25/18 & 4/5/19)  
Fred Zoeller (7/22/19)\*

RW's omissions of these 129 opponents do not even include RW's likely omissions of opponents who filed comments during the last two years.

The Local Residents did not conduct a line-by-line comparison to figure out whether RW accurately determined which commenters favor the Project and which ones oppose it. However,



the Local Residents did notice that RW identified some commenters as Project supporters when they actually oppose the Project. RW listed Jan Sampson as a Project proponent, even though she filed comments opposing the Project on January 1, 2019 and August 22, 2019. RW listed Nelson Wright, who lives inside the Project Area with Intervenor Ann Wright, as a supporter even though his comment letter filed on March 4, 2018 opposed the turbines that he described as “hideous, harmful, and noxious to beautiful rural settings.”

Besides blatantly omitting Project opponents, RW is also attempting to mislead the Board about the opponents’ proximity to the Project. Although the Local Residents, unlike RW, will not go outside of the record to expose these errors in distance, the record contains enough evidence about some opponents’ proximity to the Project to demonstrate that RW provided inaccurate mileage information. Here are some examples:

1. RW’s list of commenters in Attachment C represents that Intervenor Ann Wright lives 50 miles from the Project Area, but her testimony reveals that her home is only 3515 feet from the nearest turbine site. LR Exh. 20, Wright Direct Testimony, Exh. A. Also see the Board’s entry of Feb. 15, 2019, pp. 7-8, finding that Ms. Wright’s property either abuts or is inside the Project Area.
2. RW’s list states that Intervenor Mary Chappell, who is married to Intervenor Rob Chappell, resides 2.3120476 miles from the Project Area, while Mr. Chappell’s direct testimony reveals that his home is inside the Project Area. LR Exh. 17, Chappell Direct Testimony, p. 1, A.1. Also see the Board’s entry of Feb. 15, 2019, pp. 7-8, finding that the Chappells’ property either abuts or is inside the Project Area.

3. RW's list represents that Intervenor Lori Scheele lives 2.3120476 miles away from the Project, even though the Board's decision on intervention finds that her property is inside the Project Area. See the Board's entry of Aug. 21, 2018, pp. 6-7.
4. RW's list states that 22 commenters reside exactly 2.3120476 miles from the Project. That is mathematically improbable. This fact throws doubt on RW's distance calculations altogether.
5. RW's list represents that Intervenor James Seliga lives 1.2 miles away from the Project, even though the Board's decision on intervention finds that his property either abuts or is inside the Project Area. See the Board's entry of Feb. 15, 2019, pp. 7-8.
6. RW's list represents that Intervenor Greg Jess lives more than 50 miles away from the Project, even though the Board's decision on intervention finds that his property is inside the Project Area. See the Board's entry of Aug. 21, 2018, pp. 6-7.

Although the Local Residents' briefing in this memorandum is constrained to the information in the record, the foregoing examples of substantial disparities between RW's figures and the actual distances show that RW's distance numbers cannot be trusted. The exhibits to RW's memorandum are not accurate.

In contrast to RW's misleading portrayal of public support, the Board's Opinion accurately and objectively characterized the "especially prominent and one-sided" opposition to the Project as shown by the 3,000 signatures on a petition against the Project as referenced by Seneca County Commissioner Mike Kerschner. Opinion, ¶ 92. Mr. Kerschner, who as a county

commissioner is familiar with his constituents' views, testified about the widespread opposition to the Project in Seneca County. The Board also noted that 35 (73%) of the 48 witnesses at the local public hearing testified against the Project. RW's supplemental memorandum ignores these people, so RW's map of commenter locations in Attachment A is missing about 3,000 opponents of the Project. The sign-in sheets at the local public hearing indicate that 182 of the 200 attendees oppose the Project. See the sheets filed on September 16, 2019. That is, 91% of the persons most directly impacted by the Project oppose it. Only 18 people showed up to support it.

The lopsided public opinion against the Project led RW in desperation to solicit signatures on form letters to provide the false appearance of support. RW wrote form letters in support of the Project and then invited people to dinners and parties to sign them. Carr, Tr. 299:1 to 302:5. The people signing these letters did not even bother to send to letters to OPSB themselves; RW sent them. *Id.*, Tr. 303:15 to 304:3. Even the Staff expressed concern about the lack of meaningfulness of comments that were not submitted by the persons signing them. Butler, Tr. 1432:15 to 1433:24. The Board properly saw through RW's subterfuge in finding that local opposition to the Project is overwhelming. RW's supplemental memorandum is merely another attempt to mislead the Board in this regard. RW's quantifications of public opposition are different than the Board's, because RW's figures are wrong and the Board's figures are correct.

The Local Residents request that the Board strike RW's supplemental memorandum. If the Board decides not to strike the memorandum, the Local Residents request that the Board recognize that RW's accurate and misleading statistics do not demonstrate public support for its Project.

Respectfully submitted,

/s/ Jack A. Van Kley

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### **CERTIFICATE OF SERVICE**

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Summary: Memorandum Opposing Republic Wind's Supplemental Memorandum electronically filed by Mr. Jack A Van Kley on behalf of Local Resident Intervenors