

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

BLUE CREEK WIND FARM, LLC	:	CASE NO. 16 CV 004414
	:	
Plaintiff,	:	JUDGE JENIFER FRENCH
	:	
v.	:	
	:	
OHIO DEPT. OF NATURAL RESOURCES,	:	
	:	
and	:	
	:	
OHIO POWER SITING BOARD	:	
	:	
Defendants.	:	

ANSWER OF DEFENDANT OHIO DEPARTMENT OF NATURAL RESOURCES

Now comes Defendant, the Ohio Department of Natural Resources (“ODNR”), by and through its counsel the Ohio Attorney General, and hereby answers the Complaint of Plaintiff as follows:

1. Defendant ODNR is unable to admit or deny the allegations contained in Paragraphs 1, 2, and 3 of the Complaint for lack of information or belief.
2. Defendant ODNR admits the allegations contained in Paragraph 4 and 5 of the Complaint.
3. Defendant ODNR admits the allegations contained in Paragraph 6(a), 7(a), and 8(a) of the Complaint.¹

1. Plaintiff’s Complaint contains a numbering error, in that there are two sets of Paragraph numbers 6-8. For clarification, Defendant ODNR will refer to the first set of these paragraphs as 6(a), 7(a), and 8(a), and Defendant ODNR will refer to the second set of these paragraphs as 6(b), 7(b), and 8(b).

4. Defendant ODNR admits that the Ohio Power Siting Board granted a Certificate of Environmental Compatibility and Public Need to Plaintiff in 2010. Defendant ODNR is unable to admit or deny the remaining allegations in Paragraphs 6(b), 7(b), and 8(b) for lack of information or belief, or because the statements therein contain arguments of law rather than statements of fact.
5. Defendant ODNR admits the allegations contained in Paragraphs 9 and 10 of the Complaint.
6. Defendant ODNR denies the allegations in Paragraph 11 related to listed species, as Defendant has knowledge of state- and federally-listed species in the Project Area. Defendant ODNR is unable to admit or deny the remaining allegations in Paragraph 11 for lack of information or belief, or because the statements therein contain arguments of law rather than statements of fact.
7. Defendant ODNR admits it made certain recommendations to Blue Creek related to the facility design. Defendant ODNR is unable to admit or deny the remaining allegations in Paragraph 12 for lack of information or belief.
8. Defendant ODNR denies the allegations in Paragraph 13, as Defendant ODNR has knowledge of operations at the Wind Project in 2011.
9. Defendant ODNR is unable to admit or deny the allegations in Paragraphs 14 through 28 for lack of information or belief.
10. Defendant ODNR admits that Plaintiff conducted Post Construction Monitoring in 2012 and 2013. Defendant ODNR denies the allegation that operations began in 2012, as Defendant ODNR has knowledge of operations at the Wind Project in 2011.

- Defendant ODNR is unable to admit or deny the remaining allegations in Paragraphs 29 through 32 for lack of information or belief.
11. Defendant ODNR admits that Plaintiff submitted the “2013 Report” and the “2014 Report” to Defendant ODNR. Defendant ODNR is unable to admit or deny the remaining allegations in Paragraphs 33 through 36 for lack of information or belief, or because the statements therein contain arguments of law rather than statements of fact.
 12. Defendant ODNR admits that Plaintiff submitted documents to Defendant ODNR and to the Public Utilities Commission of Ohio and that some of those documents were self-identified as containing trade secret information. Defendant ODNR is unable to admit or deny the remaining allegations in Paragraphs 37 through 40 for lack of information or belief, or because the statements therein contain arguments of law rather than statements of fact.
 13. Defendant ODNR admits the allegations contained in paragraphs 41 and 42 of the Complaint.
 14. Defendant ODNR is unable to admit or deny the allegations in Paragraph 43 for lack of information or belief.
 15. Defendant ODNR admits the allegations in paragraphs 44 and 45 of the Complaint.
 16. Defendant ODNR is unable to admit or deny the allegations in Paragraph 46 for lack of information or belief.
 17. Defendant ODNR admits the allegations contained in Paragraphs 47 and 48 of the Complaint.

18. Defendant ODNR admits Plaintiff submitted an analysis with its arguments in favor of trade secret protection. Defendant ODNR also admits that it received a copy of some correspondence between Plaintiff and the U.S. Fish and Wildlife Service. Defendant ODNR is unable to admit or deny the remaining allegations in Paragraph 49 for lack of information or belief, or because the statements therein contain arguments of law rather than statements of fact.
19. Defendant ODNR admits that it sent Plaintiff a letter on September 3, 2014, which explained that Defendant ODNR did not have enough information to substantiate Plaintiff's trade-secret claim regarding the "bird survey data," and which asked Plaintiff to provide additional explanation in support of its trade-secret claim. Defendant ODNR denies the remaining allegations contained in Paragraph 50 of the Complaint.
20. Defendant ODNR admits that is aware that Blue Creek agreed to work with Black Swamp. Defendant ODNR is unable to admit or deny the remaining allegations in Paragraph 51 for lack of information or belief, or because they are arguments of law rather than statements of fact.
21. Defendant ODNR admits the allegations alleged in paragraphs 52 through 55 of the Plaintiffs Complaint.
22. Defendant ODNR is unable to admit or deny the allegations in Paragraph 56 for lack of information or belief.
23. Defendant ODNR admits the allegations contained in Paragraph 57 of the Complaint.

24. Defendant ODNR is unable to admit or deny the allegations contained in Paragraph 58 and 59 for lack of information or belief, or because they are arguments of law rather than statements of fact.
25. Defendant ODNR is unable to admit or deny the allegations contained in Paragraph 60 through 62 because they are arguments of law rather than statements of fact.
26. Defendant ODNR is unable to admit or deny the allegations contained in Paragraph 63 through 68 for lack of information or belief, or because they are arguments of law rather than statements of fact.
27. Defendant ODNR admits that it has informed Plaintiff that Defendant ODNR intends to comply with Ohio's Public Records Act, R.C. 149.43, *et seq.*, unless a court of competent jurisdiction determines that the documents in question are subject to trade secret protection or are otherwise exempt from disclosure. Defendant ODNR is unable to admit or deny the remaining allegations of Paragraph 69 of Plaintiff's Complaint for lack of information or belief, or because they are arguments of law rather than statements of fact.
28. Defendant ODNR is unable to admit or deny the allegations contained in Paragraph 70 through 74 for lack of information or belief, or because they are arguments of law rather than statements of fact.
29. Defendant ODNR denies any other allegation not specifically admitted.

AFFIRMATIVE DEFENSES

30. Plaintiff fails to state a claim upon which relief may be granted.
31. Plaintiff fails to name all necessary parties.

Respectfully submitted,

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**

/s/ Cameron F. Simmons

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via email and e-

Service via the Court's CM/ECF System on June 8, 2016 to:

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