

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application)
of Buckeye Wind LLC for a Certificate)
to Install Numerous Electricity) Case No. 08-666-EL-BGN
Generating Wind Turbines in)
Champaign County to be Collected at)
an Electric Substation in)
Union Township,)
Champaign County, Ohio)

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MEMORANDUM OF APPLICANT IN RESPONSE TO
APRIL 28, 2009 NOTICE OF UNION NEIGHBORS UNITED,
ROBERT MCCONNELL, DIANE MCCONNELL AND JULIA F. JOHNSON

On April 24, 2009, Buckeye Wind LLC ("Buckeye Wind" or "the Applicant"), filed an application for a wind farm to be located in Champaign County Ohio as well as a motion for waiver of certain of the Board's rules, and a motion for protective order in Case No. 08-666-EL-BGN. On April 28, 2009, the Union Neighbors United, Robert McConnell, Diane McConnell, and Julia F. Johnson ("Prospective Intervenor") submitted a notice of their intent to file memoranda in opposition to the Applicant's motion for waiver and motion for protective order. The Prospective Intervenor declare that they intend to file a memorandum opposing the motion for waiver and the motion for protective order, but have not because the notice required under Sections 4906.06(B) and (C), Revised Code has not been published. The Prospective Intervenor cite Section 4906.08, Revised Code, Sections 4906.06(B) and (C), and Rule 4906-7-04(A)(2) of the Ohio Administrative Code for the inability to file to intervene and oppose the Applicant's motion for waivers and protective order.

The Applicant respectfully submits that the Prospective Intervenor have misinterpreted the statute and the rule. Section 4906.08(A)(3), Revised Code, and Rule 4906-7-04(A)(2) of the Ohio Administrative Code set forth a deadline for filing a motion seeking

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intervention, not a window of time in which to file. Motions for leave to intervene can be filed at any time after the waivers are filed up until the 30th day after the publication of notice that the application has been found to be complete and the public officials noted in Section 4906.06, Revised Code have been served with a copy. Simply put, the publication of notice is not a condition precedent to filing a motion to intervene; it is only a "trigger" to determine the deadline for a timely intervention. Further, the publication of notice that the Prospective Intervenors cite will not take place until after the Chairman of the Ohio Power Siting Board certifies the application as complete, a process that could take sixty days. See Rule 4906-5-08(C) of the O.A.C.

The Applicant submits that the clock is currently running on the time to respond to the motion for waiver and the motion for protective order. The Prospective Intervenors are aware of the Application and the April 24, 2009 motions, by virtue of their pleading, and have access to the Application and the motions on the Docketing Division web site. If they wish to oppose the motions in whole or in part, the Prospective Intervenors need to demonstrate the existence of a real and substantial interest in accordance with Rule 4906-7-04 (A) (2) of the O.A.C., as well as state their opposition to the Applicant's motions.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons via e-mail and via first class U.S. mail, postage prepaid, this 30th day of April, 2009.

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