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BEFORE
THE OHIO POWER SITING BOARD

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In the Matter of the Application)
of Buckeye Wind LLC for a Certificate)
to Install Numerous Electricity)
Generating Wind Turbines in)
Champaign County to be Collected at)
an Electric Substation in)
Union Township,)
Champaign County, Ohio)

Case No. 08-666-EL-BGN

MOTION FOR PROTECTIVE ORDER, REQUEST FOR EXPEDITED RULING
AND MEMORANDUM IN SUPPORT

Pursuant to Rules 4906-7-01(B)(8)(c) and 4906-7-07(H) of the Ohio Administrative Code, Buckeye Wind, LLC ("Buckeye Wind") respectfully moves for a protective order to keep trade secret information relating to wind data, capacity calculations (including modeling) and other Buckeye Wind wind energy projects confidential and not subject to disclosure. Intervenor Union Neighbors United, Inc., Robert and Diane McConnell and Julia Johnson (the "Intervenors") have served discovery requests that seek information and documents related to other potential Buckeye Wind energy projects, capacity factor estimates and wind data.

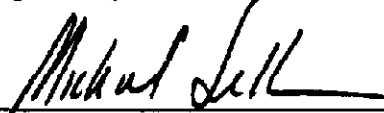
The information and documents sought by Intervenor contain trade secrets and public disclosure of this information would place the Applicant at an undue disadvantage and would give competitors an undue advantage. Buckeye Wind has spent over two years collecting and recording wind data. Buckeye Wind has also used the wind data to perform detailed capacity modeling for the Facility. And Buckeye Wind, like many wind energy developers, has other

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potential projects under development. The extreme confidentiality of this information warrants a protective order

WHEREFORE, Buckeye Wind respectfully moves for a protective order to keep all trade secret information relating to wind data, capacity factors and the development of other Buckeye Wind energy projects confidential and that they shall not be disclosed. Pursuant to Rule 4906-7-12(C), Buckeye Wind moves for an expedited ruling on this request. Counsel for Intervenors were contacted and object to the issuance of an expedited ruling.

Respectfully submitted,



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Attorneys for Buckeye Wind LLC

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER AND EXPEDITED RULING**

The Intervenor seeks to require Buckeye Wind to produce information and documents related to wind resource data, capacity factor calculations and other Buckeye Wind wind energy projects. The specific discovery requests (see Attachment A) are Interrogatory 33, Document Request 48 and Document 55. Buckeye Wind seeks to protect information and documents that may fall under these requests because the information and documents contain trade secrets, are highly confidential and disclosure of the information would be very damaging to Buckeye Wind.

Wind resource data pertains to data which Buckeye Wind collects in order to determine if a wind farm project is feasible. Buckeye Wind spent over two years collecting and recording the wind data at the Facility site. Such wind data is considered to be a trade secret and is not disclosed outside a very small group of individuals within the company. As other developers are active in Champaign County, each disclosure would give a tremendous competitive advantage to others and would place Buckeye Wind at an undue disadvantage.

Documents related to capacity estimates for the Facility are highly confidential. Capacity calculations are based on wind data (also confidential) and disclosure would reveal Buckeye Wind's methods for maximizing turbine capacity. Public disclosure of this trade secret information would again place Buckeye Wind at an undue disadvantage. This information should be protected.

Information related to Buckeye Wind's other potential energy generation projects is also highly confidential. Buckeye Wind competes with other wind energy developers to sign-up landowners and locate areas for wind energy generation facilities. Disclosure of information

related to any of Buckeye Wind's future business plans will place Buckeye Wind at an undue competitive disadvantage.

Wind data, capacity factor calculations and Buckeye Wind's plans for any future projects qualify for trade secret protection. The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

"Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 1333.61(D), Revised Code. This definition clearly reflects the state policy favoring the protection of trade secrets.

Indeed, the Public Utilities Commission of Ohio long ago recognized the statutory obligations with regard to trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari materia with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982).

In Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), delineated factors to be considered in recognizing a trade secret:

(1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, i.e., by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

Buckeye Wind's wind resource data, capacity factor documentation and information on future projects qualify as trade secrets. Buckeye Wind does not make this information available to the public. It limits access to the information to only those employees who have a need for the information. It takes steps to protect disclosure of the information. It has expended significant resources to collect and develop the information, resources competitors would not have to expend if this information were disclosed. These facts warrant a protective order.

Rules 4906-7-01(B)(8)(c) and Rule 4906-7-07(H)(1) of the Ohio Administrative Code give an administrative law judge great latitude in protecting information from disclosure. In this matter, the Administrative Law Judge has already issued a protective order covering financial documents filed under seal and information related to landowner payments (see Entry, July 31, 2009). Buckeye Wind seeks to extend that protection to wind resource data, documents related to capacity calculations and information related to other wind generation projects that Buckeye Wind is considering.

Intervenors may claim that this information can be disclosed under a confidentiality agreement. Intervenors, however, have refused to execute a confidentiality agreement proposed by Buckeye Wind. Correspondence related to this issue was attached to Buckeye Wind's opposition to the Intervenors' motion to compel filed on October 16, 2009. Moreover, any information provided to the Intervenors is at a high risk of disclosure, especially as Union

Neighbors United maintains a public web-site (see <http://www.safesetbacks.com>). Regardless, the trade secret status of the information and its value is such that Buckeye Wind would not disclose it to the Intervenor even under a confidentiality agreement.

Attached as Attachment A is a list of the specific discovery requests which are the subject of this request for a protective order and copies of the discovery requests.

Attached as Attachment B is an affidavit of counsel setting forth the efforts which have been made to resolve any differences with the Intervenor seeking discovery.

Pursuant to Rule 4906-17-12(C), Buckeye Wind seeks an expedited ruling on this request. An expedited ruling is appropriate given the Intervenor's pending motion to compel on these same discovery requests. Counsel for the Intervenor were contacted and object to the issuance of an expedited ruling.

WHEREFORE, for the above reasons, Buckeye Wind requests that the Board grant its motion for a protective order and to protect the information listed on Attachment A from discovery and public disclosure.

Respectfully submitted,



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mjsettineri@vorys.com

Attorneys for Buckeye Wind LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following parties of record via e-mail and U.S. Mail on this 20th day of October, 2009.

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Michael J. Settineri

ATTACHMENT A

FOR WHICH PROTECTION FROM DISCOVERY IS SOUGHT

EXHIBITS

REASONS JUSTIFYING PROTECTION

Interrogatory 33 (other wind power projects)

Disclosure of trade secret information relating to other potential wind projects.

Document Request 48 (capacity calculations)

Disclosure of trade secret information related to capacity factor calculations.

Document Request 55 (wind data)

Disclosure of trade secret information related to collected and recorded wind data.

The above interrogatory and document requests were filed by Intervenors with the Power Siting Board on July 20, 2009. The applicable pages from those requests follow.

FILE

**BEFORE
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In the Matter of the Application of)
Buckeye Wind, LLC, for a Certificate)
to Install Numerous Electricity)
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Champaign County to be Collected at)
an Electrical Substation in)
Union Township,)
Champaign County, Ohio)

Case No. 08-0666-EL-BGN

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**FIRST SET OF INTERROGATORIES FROM INTERVENORS UNION
NEIGHBORS UNITED, ROBERT McCONNELL, DIANE McCONNELL,
AND JULIA JOHNSON TO APPLICANT BUCKEYE WIND, LLC**

Intervenors Union Neighbors United, Robert McConnell, Diane McConnell, and
Julia Johnson hereby serve these interrogatories on Applicant Buckeye Wind LLC.

Buckeye shall respond to these interrogatories within 20 days of service.

DEFINITIONS

The following definitions apply to the terms used in these requests for documents:

1. "And" and "or" are both conjunctive and disjunctive and shall be interpreted to call for the most comprehensive information available to Buckeye.
2. "Applicant" or "Buckeye" means Buckeye Wind LLC.
3. "Application" means the "Application to the Ohio Power Siting Board for a Certificate of Environmental Compatibility and Public Need for the Buckeye Wind Project" submitted by Buckeye in this proceeding.
4. "Documents" include but is not limited to all writings, correspondence, memoranda, letters, summaries, notes, reports, studies, manuals, telephone logs,

32. State whether it is Applicant's position that its Application conforms with the requirements of OAC Chapter 4906-17. If not, identify the provisions with which the Application does not conform.

Response:

33. Regarding the Site Alternatives Analysis on pages 20-28 of the Application:



- a. Identify any other areas in Ohio that the Applicant has considered for a wind power project besides the study area described in the Application.
- b. For each such area:
 - i. Is the area feasible to develop a for-profit wind-powered electric generation facility that will maximize energy production from wind resources and deliver clean, renewable, low-cost electricity to the Ohio bulk power transmission system? If no, why not?
 - ii. Will the local economy of the area benefit from a wind power facility? If no, why not?
 - iii. Will a wind power facility in that area provide a fair investment return? If no, why not?
 - iv. Does the area provide adequate access to the bulk transmission system? If no, why not?
 - v. Is predominant land use of the area compatible with wind project development? If no, why not?
 - vi. Does the area have a low population density as compared to statewide estimates?
 - vii. Does the area provide an adequate system of roads for transportation of turbine parts, construction equipment, and staff to the site? If no, why not?
 - viii. Does the area present significant geotechnical constraints that would impede development of a wind project? If so, describe those constraints.

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Generating Wind Turbines in)
Champaign County to be Collected at)
an Electrical Substation in)
Union Township,)
Champaign County, Ohio)

**FIRST REQUEST FOR PRODUCTION OF DOCUMENTS BY INTERVENORS
UNION NEIGHBORS UNITED, ROBERT McCONNELL, DIANE McCONNELL,
AND JULIA JOHNSON TO APPLICANT BUCKEYE WIND LLC**

Pursuant to Ohio Administrative Code § 4906-7-07(F), Intervenor Union Neighbors United, Robert McConnell, Diane McConnell, and Julia Johnson serve this Request for Production of Documents on Applicant Buckeye Wind LLC. Documents shall be produced to the attention of undersigned counsel at the offices of Van Kley & Walker, LLC, 132 Northwoods Blvd., Suite C-1, Columbus, Ohio 43235, within 20 days of service, or at some other time or location mutually agreed by counsel for the parties. All documents requested herein are to be provided if in the possession, custody, or control of Buckeye Wind LLC or its employees, agents, consultants, counsel, or representatives.

DEFINITIONS

The following definitions apply to the terms used in these requests for documents:

1. "And" and "or" are both conjunctive and disjunctive and shall be interpreted to call for the most comprehensive information available to Buckeye.

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43. All documents relating or referring to the effects that the Facility may have on the residents of surrounding communities.

44. All documents relating or referring to any injuries, effects, or harm to human health, human comfort, or the environment that may be caused by the Facility.

45. All documents describing the manufacturer's health and safety specifications or recommendations (such as buffers or setback specs or recommendations) for each turbine model the Applicant has considered for the Facility.

46. All documents relating or referring to the Applicant's consideration, evaluation, or selection of turbines for the Facility.

47. All documents stating the capacity factor achieved by any wind power facility in the United States.

48. All documents relating or referring to or used to calculate any capacity factor estimate or annual production hour estimate for the Facility.

49. All documents relating or referring to the identification of the land areas that will be affected by noise, visual impacts, or shadow flicker from the Facility or the evaluation of the effects of the noise, visual impacts, or shadow flicker from the Facility.

50. All documents relating or referring to the additional work that must be finished in order to complete the final design of the Facility.

51. All documents relating or referring to any of the "federal incentive programs" to which page 17 of the Application refers.

52. All documents relating or referring to the "Investment Tax Credit" or the "other associated credits and grants" under the American Recovery and Reinvestment Act of 2009 to which page 17 of the Application refers.

53. All documents containing any reference to or discussion about whether the Application must comply with or does comply with the new OPSB wind power rules (OAC 4906-17).

54. All documents related to the calculation of the "fair investment return" for the Facility as referenced on page 21 of the Application.

55. All documents relating or referring to the evaluation conducted to determine whether the proposed project site has an "adequate wind resource" as asserted on page 22 of the Application.

56. All documents relating or referring to any evaluation of the wind resources in Logan and Hardin Counties.

57. All documents relating or referring to the topics of Interrogatory 38 of the Intervenor's First Set of Interrogatories to Applicant.

58. All documents relating or referring to the cross-sectional view and locations of test borings for the Facility, including all documents discussing the schedule for the development of this information.

59. All documents relating or referring to soil borings for the Facility.

60. All documents relating or referring to the costs referenced in Interrogatory 40 of the Intervenor's First Set of Interrogatories to Applicant.

61. All documents relating or referring to the "additional field surveys" identified on page 11 of Applicant's Motion for Waiver, including all documents discussing the schedule for the development of this information.

ATTACHMENT B

State of Ohio)
) SS:
County of Franklin)

Affidavit

I, Michael J. Settineri, declare that I am one of the attorneys for the Applicant Buckeye Wind LLC in Ohio Power Siting Board Case No. 08-666-EL-BGN. I declare under oath that I have talked with counsel for the Intervenor Union Neighbors United et al. and have been unable to resolve our differences with respect to the Intervenor's request to have access documents and/or information relating to wind data, capacity factor estimates and information related to other wind power projects in Ohio.

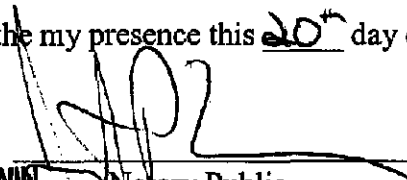


Michael J. Settineri

Sworn and subscribed before me in the my presence this 20th day of October, 2009.



JONATHAN P. CORWIN
ATTORNEY AT LAW
Notary Public, State of Ohio
My commission has no
expiration date.



Notary Public