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BEFORE
THE OHIO POWER SITING BOARD

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

PUCO

2009 NOV 25 PM 12:30

RECEIVED-DOCKETING DIV

REBUTTAL TESTIMONY OF JUD G. BARCE

On Behalf of

Buckeye Wind LLC

Q.1. Please state your name and your business address.

A.1. My name is Jud G. Barce. My business address is Barce and Reece PC, 103 North Jackson Ave., Fowler, Indiana 47944.

Q.2. Please state your educational training and business experience.

A.2. I graduated from Indiana University with a Bachelor's degree in Criminal Justice in 1989 and received a Master of Science in Environmental Science and a Juris Doctorate from Indiana University in 1993. I am an attorney at law with a general law practice. One of my clients is the Benton County Planning Commission which I have represented for many years including the period when the Commission drafted zoning regulations for wind turbines. Finally, I served as the Benton County Prosecutor from 1998 to 2006, while maintaining a private practice.

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Technician JS Date Processed 11/25/09

Q.3. On whose behalf are you offering testimony?

A.3. I have been asked by the Applicant, Buckeye Wind LLC, to testify on my personal experience with the wind turbines which were constructed and are now operating in Benton County, Indiana.

Q.4. Are there wind turbines near where you live?

A.4. Benton County has some 495 wind turbines. There are no turbines on my property, but there are five turbines near my house. The closest turbine is within .57 miles from my house, followed by a turbine that is .72 miles, followed by a turbine which is .82 miles, followed by a turbine which is .99 miles and finally a turbine that is 1.33 miles.

Q.5. Can you hear the wind turbines from your house at any time – night or day - during the year?

A.5. No.

Q.6. Do you hear noise coming from wind turbines when visiting the homes of your neighbors or in public buildings? If so, how far are the homes or public buildings that you hear turbine noise from the source turbine?

A.6. I cannot remember ever hearing a turbine while in someone's home in Benton County. I have walked up to a turbine and standing nearby you can hear a swooshing sound. My children attend an elementary school that is 1,000 feet from a turbine. I drop my children off and occasionally pick them up there, but I do not recall hearing noise from that turbine. Nor have my children complained about turbine noise at their school.

Q.7. Have you or anyone you know in Benton County had difficulty sleeping because of turbine noise?

A.7. No.

Q.8. Did you play a role in the development of set-back limits for Benton County?

A.8. I currently represent the Planning Commission and the Board of Zoning Appeals and did so during the time of the drafting of the zoning requirements for wind turbines in Benton County. Prior to 2006, the Benton County Zoning Code was silent as to requirements for wind turbines. In Benton County, the Planning Commission is charged with developing and or reviewing changes to the county zoning code. The Planning Commission in preparation of developing appropriate set-back requirements studied other ordinances throughout the United States and from that developed its own standards for wind projects. I attended numerous meetings of the Planning Commission while it was doing its research and conducted the public meetings the Planning Commission held when the draft wind turbine requirements were promulgated.

In Benton County the Planning Commission only develops proposed zoning code amendments, the authority to change the zoning code rests with the County Commissioners. Further, there are a second set of public hearings required before any zoning changes can be approved by the County Commissioners. In the case of the wind turbine zoning requirements, the Benton County Commissioners approved the proposal made by the Planning Commission and signed the wind turbine zoning code into effect in July of 2006.

Q.9. Are the set-back requirements for Benton County less than 1.25 miles (6,600 feet) from a property line?

A.9. I have attached a copy of the full set-back requirements as Exhibit A of my testimony. The property line setback is a formula of 1.1 times the tower height. That generally is a number around 1,000 feet.

Q.10. How are citizen wind turbine complaints handled in Benton County?

A.10. All complaints would come either to the County Surveyor, who is a member of the Planning Commission, or the County Building Commissioner, who is an employee of the Planning Commission, they in turn would provide the complaint to me as the Planning Commission's counsel.

Q.11. How many complaints are you aware of and what was the nature of the complaints?

A.11. In the three years since service started I am only aware of four informal complaints being lodged, three for noise and one for flicker. In the case of the noise I know that the County Surveyor investigated and determined that no further action was necessary. In the case of flicker I approached the producer who offered to plant a row of trees to screen the flicker impact.

Q.12. What has been the impact on property values in Benton County since the wind farms became active in 2006?

A.12. As part of my legal practice I do estate work which often requires a professional land appraisal. Since the wind farms came in 2006 I have requested roughly 20 such appraisals. About half of the estates had either a wind turbine or an option for a future turbine. For those ten appraisals the increase in value per acre ranged from several

hundred dollars up to an additional one thousand dollars per acre depending on the number of acres and the number and size of the turbines.

Q.13. Have you noticed any decrease in the value of land in Benton County where the property was not participating in a wind program but was in an area with wind turbines?

A.13. No.

Q.14. Does this conclude your testimony?

A.14. Yes, it does.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following parties of record via e-mail on this 25th day of November, 2009.

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Michael J. Settineri

EXHIBIT A

g. Setbacks.

- i. No WECS shall be constructed in any setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the *County*.
- ii. Installation of any WECS may not be nearer than three hundred fifty (350) feet or one and one-tenth (1.1) times the height of the WECS tower height, whichever is greatest, to any property lines, dedicated roadway, railroad right-of-way or overhead electrical transmission or distribution lines. Distance shall be measured from the center of the foundation at the base of the tower. New *structures* built adjacent to wind power facilities shall maintain these same minimum setback requirements. Participating landowners within the area comprising the wind energy conversion system may waive property line setbacks with written approval from all landowners sharing such property line.
- iii. Except as provided herein the setback distance for turbines with a rated capacity of one megawatt (1.0 MW) or less shall be one thousand (1,000) feet or more from any existing or occupied residence and turbines with a greater rated capacity shall be set back one thousand (1,000) feet or more from any existing or occupied residence or from the boundary of any to which as of the date of approval of the WECS is in a *platted* subdivision and shall be setback from a property line one and one-tenth (1.1) times the height of the turbine with the blade tip at its highest point. Distance shall be measured at the time of application for *Improvement Location Permit* from the center of the foundation at the base of the tower. A turbine with a capacity of one megawatt (1.0 MW) or less may be placed as near as six hundred (600) feet from an occupied residence with the prior written approval of the owner. The setback distance will be followed except in specific instances allowed by the *Board*.
- iv. The setback distance for the WECS will be fifteen hundred (1500) feet from any *platted* community under the zoning jurisdiction of a municipality. Distance shall be measured from the center of the foundation at the base of the WECS to the closest Corporate Limit boundary line.