

BEFORE

OHIO POWER SITING BOARD

In the Matter of the Application of Buckeye)
Wind LLC for a Certificate to Construct)
Wind-powered Electric Generation Facilities) Case No. 08-666-EL-BGN
in Champaign County, Ohio.)

ENTRY

The Administrative Law Judge finds:

- (1) On April 24, 2009, Buckeye Wind LLC (Buckeye) filed with the Ohio Power Siting Board (Board) an application pursuant to the provisions of Chapter 4906-13, Ohio Administrative Code (O.A.C.), for a certificate of environmental compatibility to construct a wind-powered electric generation facility. As proposed, the project consists of 70 wind turbine generators, other associated facilities, and access roads to be located on approximately 9,000 acres of land in Goshen, Rush, Salem, Union, Urbana, and Wayne Townships, Champaign County, Ohio.
- (2) By opinion, order, and certificate issued March 22, 2010, the Board granted Buckeye's application for authority to construct 53 of the proposed 70 wind turbines and associated facilities, subject to 70 conditions.
- (3) Pursuant to Sections 4903.10 and 4906.12, Revised Code, any party who has entered an appearance in a Board proceeding may apply for rehearing with respect to any matters decided. Any application for rehearing must be filed within 30 days of the issuance of the Board's decision. Accordingly, Union Neighbors United, Inc., Robert and Diane McConnell and Julia F. Johnson (jointly UNU) filed an application for rehearing on April 20, 2010. On April 21, 2010, the Board of Commissioners of Champaign County, Ohio, along with the Boards of Trustees of the Townships of Goshen, Rush, Salem, Urbana, and Wayne (jointly County)¹ and Buckeye filed applications for rehearing.

¹ The township of Rush was granted intervention in this proceeding and was represented by the Champaign County Prosecutor along with the other named townships. Rush Township appears not to be a party to the County's application for rehearing or motion for an extension.

- (4) In accordance with Rule 4906-7-17(E), Ohio Administrative Code (O.A.C.), any party may file a memorandum contra within 10 days after the application is filed. Accordingly, memoranda contra UNU's application are due by April 30, 2010, and memoranda contra the County's and Buckeye's application are due May 3, 2010.
- (5) On April 27, 2010, the County filed a motion for an extension of time to file its memorandum contra Buckeye's application for rehearing requesting that the deadline be extended from May 3, 2010, to May 5, 2010, and requesting an expedited ruling. The County states that Buckeye's application raises an issue with regard to the screening plan for Fairview Cemetery which is owned by the Board of Trustees of Union Township.² The County further states that, in accordance with the provisions of Section 121.22, Revised Code, known as the Ohio Sunshine Law, counsel can not discuss this matter with the Board of Trustees of Union Township unless the discussions are held at a public meeting duly called and the public notified, or discussions are held in executive session entered into at a public meeting pursuant to an enumerated exception to the Ohio Sunshine Law. According to the motion, the Board of Trustees of Union Township holds its regular meetings on the first and third Monday of each month. Accordingly, the County notes, no regular meeting was scheduled to occur between the filing of Buckeye's application and the due date for the memorandum contra to permit the matter to be discussed with the Board. For this reason, the County requests that the time for filing memorandum contra Buckeye's application for rehearing be extended to May 5, 2010, for all parties.
- (6) On April 28, 2010, Buckeye and UNU filed responses to the motion for an extension. Neither party opposes the County's request for an extension. However, Buckeye interprets the extension request to apply to all three applications and argues that a uniform extension of the due date for the memoranda contra all of the applications would be the equitable approach and prevent confusion. On the other hand, UNU argues that there is no good cause to extend the due date for filing

² See *In re Buckeye*, Case No. 08-666-EL-BGN, Opinion, Order and Certificate at 89, Condition 30 (March 22, 2010).

memoranda contra on the other applications for rehearing. Further, UNU notes that it filed its memorandum contra Buckeye's application on April 28, 2010.

- (7) The administrative law judge finds that, in light of the requirements of the Ohio Sunshine Law and the brief extension requested, the County has stated good cause to grant its request for an extension to file its memorandum contra Buckeye's application for rehearing. In fairness to the other parties that may wish to file a memorandum contra the Buckeye application, the extension should be granted to all parties. Accordingly, memoranda contra the Buckeye application shall be filed by May 5, 2010.
- (8) Finally, the administrative law judge finds that, in fairness to all parties, the due date for all memoranda contra should be extended to May 5, 2010, as a consistent due date for all of the memoranda contra each of the applications for rehearing prevents confusion. Further, the administrative law judge fails to see how any party will be harmed by an extension of the due date for all memoranda contra all the applications for rehearing until May 5, 2010.

It is, therefore,

ORDERED, That, in accordance with findings (7) and (8), the County's request for an extension of time to file its memorandum contra Buckeye's application until May 5, 2010, be granted and all memoranda contra be due May 5, 2010. It is, further,

ORDERED, That a copy of this entry be served upon Buckeye and its counsel, and all other interested persons of record.

THE OHIO POWER SITING BOARD



By: Greta See
Administrative Law Judge

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Entered in the Journal

APR 29 2010



Renee J. Jenkins
Secretary