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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 Electrical Substation in)
Union Township,)
Champaign County, Ohio)**

Case No. 08-0666-EL-BGN

**MEMORANDUM CONTRA OF BUCKEYE WIND LLC
TO INTERVENORS CHAMPAIGN COUNTY AND GOSHEN, SALEM, UNION,
URBANA AND WAYNE TOWNSHIPS' APPLICATION FOR REHEARING AND
RECONSIDERATION**

I. INTRODUCTION

The Champaign County Board of County Commissioners and Boards of Trustees of Goshen, Salem, Union, Urbana and Wayne Townships (the "County and Townships") seek rehearing on four conditions. First, the County and Townships ask the Board to require Buckeye Wind to include a toll-free complaint number as part of the complaint resolution procedure required under Condition 8(j). Second, the County and Townships argue that Condition 56 should be revised to allow the Champaign County Engineer to have the sole discretion to set the amount of the road bond required under that condition. Third, the County and Townships argue that the Board should hold an evidentiary hearing to determine the sufficiency of the \$5,000 per turbine bond required under Condition 69. Fourth, the County and Townships argue that the Board should revise the bonding schedule in Condition 70 to increase the bonding requirement from 100% of net decommissioning costs to 120% of net decommissioning costs pointing to the bonding schedules in the certificates for the J.W. Great Lakes Wind and Hardin Wind Energy wind farm projects.

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The Board should deny the County and Townships' request for rehearing with respect to Conditions 8(j), 56 and 69. The Board did not act unreasonably or unlawfully by not requiring a toll-free complaint number in Condition 8(j), especially as Staff has final approval of the complaint resolution procedure and a toll-free emergency number will already exist for the Facility. Likewise, the Board did not act unreasonably or unlawfully in adopting Condition 56 as that condition specifically requires Buckeye Wind to submit proof of the road bond for approval to Staff in consultation with the ODOT. The Board should also deny the County and Townships' request for rehearing on Condition 69 because the record does not support the need for any bond requirement from construction through the first year of operation. Regarding the bonding schedule in Condition 70, the Board should grant rehearing on this issue, but only to the extent requested by Buckeye Wind in its application for rehearing.

Accordingly, the Board should deny the County and Townships' request for rehearing on Condition 8(j), Condition 56 and Condition 69, and grant rehearing on Condition 70 but only to the extent requested by Buckeye Wind in its application for rehearing

II. ARGUMENT

A. Condition 8(j) As Written Is Not Unlawful Or Unreasonable.

The County and Townships ask the Board to order that "a toll-free number be established by Applicant for citizens' complaints." (County and Townships' Application for Rehearing, p.6.) Although the County and Townships acknowledge that the Board required Buckeye Wind to maintain an emergency toll-free number under Condition 36, the County and Townships apparently believe that a separate number is required for complaints.

Buckeye Wind does not believe that the record supports the need for a separate toll-free number for complaints. Condition 8(j) requires that "[a]t least 30 days prior to the preconstruction conference, Buckeye shall provide the following documents to staff for review

and acceptance: ... [a] completed informal complaint resolution procedure, including, at a minimum, a process to periodically inform staff of the number and substance of complaints received by Buckeye.” (Order 83, 85.) Buckeye Wind would like the opportunity to design the compliant resolution procedure in a manner it believes appropriate, which may or may not include a separate toll-free number for complaints.

The Board may also take note that Condition 8(j) requires Staff acceptance of Buckeye Wind’s complaint resolution procedure. As Staff witness Raymond Strom testified, in his experience he prefers an applicant to complete the first draft of a submittal because “[i]f you give them a broader requirement of create this thing, you’ll get other stuff potentially that you didn’t even think of.” (TR 1862.) Accordingly, the Board should deny the County and Townships’ request for rehearing on Condition 8(j) because the lack of a separate toll-free number for complaints is neither unreasonable nor unlawful.

B. Condition 56 As Written Is Not Unlawful Or Unreasonable.

The County and Townships next argue at page 6 of their application for rehearing that Condition 56 as written is unreasonable because “it is unclear by the terms of the Order whether the [Board] has been persuaded by the [County and Townships’] argument to require the Applicant to post a bond in an amount determined by the Champaign County Engineer sufficient to repair the damage to the roads within Champaign County resulting from the construction and decommissioning of the proposed facility.” The County and Townships claim that the Order is not clear whether the “sole determination of ‘adequate funds’ is to be made by the Champaign County Engineer or by the County Engineer with approval by the Staff.” (County and Townships Application for Rehearing, p.7.) The County and Townships believe that Staff will not act to protect the County and Townships and therefore the Champaign County Engineer should have sole authority over the bond amount.

The Board should deny the County and Townships' request to give the Champaign County Engineer sole discretion over the bond amount through the Board's certificate.

Condition 56 states that:

Prior to the commencement of construction, Buckeye shall secure a road bond(s), or other similar surety, through the Champaign County Engineer's Office to provide adequate funds to repair any damage to public roads resulting from the construction or decommissioning of the proposed facility. Buckeye shall submit proof of the bond or other similar surety, for staff's approval in coordination with ODOT.

(Order 93, emphasis added.) The condition as written is not ambiguous, giving Staff the authority to approve the amount of the bond in coordination with the ODOT. The language is also clear that Buckeye Wind must work with the Champaign County Engineer's Office to put in place a road bond.

As Condition 56 is not ambiguous on this point, the Board should deny the County and Townships' request for rehearing. Buckeye Wind will work with the Champaign County Engineer's Office to secure a road bond or other similar surety. Buckeye Wind will then submit proof of that bond (including the amount of the bond) to Staff for its approval. Condition 56 as written is neither unreasonable nor unlawful.

C. The Board Should Reject In Part And Grant In Part The County And Townships Request For Rehearing On Condition 69 and Condition 70.

1. As stated in Buckeye Wind's Application for Rehearing, Condition 69 should be deleted from the Certificate.

The County and Townships request rehearing on Condition 69, asking the Board to hold an evidentiary hearing to determine whether the \$5,000 per turbine bond requirement from commencement of construction to the first year of turbine operation is sufficient. (County and Townships, Application for Rehearing at p.8.) Condition 69 requires that "[p]rior to construction of each turbine, Buckeye shall post and maintain financial assurance for said turbine in the

amount of \$5,000. This financial assurance shall be in place until such time that the facility has been operational for one year.” (Order at 95.) Buckeye Wind also requested rehearing on Condition 69, stating that such a \$5,000 per turbine bond requirement was not necessary given the high salvage value amount of the equipment.

The Board should deny the County and Townships’ request for rehearing. As Buckeye Wind argues in its application for rehearing, the record establishes that decommissioning bonds are not necessary prior to construction or during the early phases of a project’s operation. (TR at 192-193.) Buckeye Wind witness Christopher Shears, who was the chairman of the British Wind Energy Association from 2005-2007, was vice-chairman for two terms and sat on the Board of the British Wind Energy Association for 10 years (TR at 40-41), also testified that it is “inconceivable” that the project will need to be decommissioned within the first five years. (TR at 192.) Likewise, Staff concluded in the Staff Report that a decommissioning bond is “not always required to be in place at the onset of construction.” (Staff Ex. 1 at 52-53.) Rather, it varies from state-to-state: “[s]ome states allow five to ten years of operation before a bond or other financial assurance must be secured for decommissioning; others require it initially.” (Staff Ex. 2 at 53.)

Considering the evidence in the record, the Board does not need to hold an evidentiary hearing regarding the \$5,000 per turbine bond amount. The record already establishes that it is “inconceivable” that the project will need to be decommissioned within the first five years. (TR at 192.) Thus, the \$5,000 per turbine amount is more than sufficient. More importantly, as Buckeye Wind argues in its application for rehearing, any bond from construction through the first year of operation is unnecessary. The Board should deny the County and Townships’ request for rehearing on Condition 69.

2. The Board should revise Condition 70 as set forth in Buckeye Wind's application for rehearing

The County and Townships also request rehearing on Condition 70, pointing out that the Board included a bonding requirement of 100% of net decommissioning costs in the Buckeye Wind certificate while adopting a different bonding requirement in the J.W. Great Lakes Wind and Hardin Wind Energy certificates. *See In re J.W. Great Lakes Wind, LLC*, Case No. 09-277-EL-BGN, Opinion, Order, and Certificate, March 22, 2010, at 25-26 and *see In Re Hardin Wind Energy, LLC*, Case No. 09-479-EL-BGN, Opinion, Order, and Certificate, March 22, 2010, at 32. As discussed below and in its application for rehearing, Buckeye Wind fully supports adopting the decommissioning bond schedule used in the J.W. Great Lakes Wind and Hardin Wind Energy certificates.

The County and Townships argue at page 9 of their application for rehearing that the Board “only required the amount of the decommissioning bond to be equal [to] ... 100 percent of the net decommissioning costs.” Buckeye Wind opposes the County and Townships’ request for rehearing to the extent that they only seek to revise Condition 70 to increase the maximum bond to 120 percent of the net decommissioning from 100 percent because Condition 70 also sets the minimum bond amount requirement equal to 25% of the actual decommissioning cost estimate. (Order 96.) This minimum amount ignores the salvage value of the turbines and will result in an arbitrarily high bond requirement in the initial years of the project when turbine salvage value is very high.

Buckeye Wind does support rehearing on this issue to the extent the County and Townships ask the Board to adopt the bonding schedule from the other two wind farm certificates. As Buckeye Wind argued in its application for rehearing, the Board approved the same decommissioning financial assurance conditions in both of the other wind farm

proceedings. Both project sponsors are required to "post and maintain decommissioning funds or financial assurance in an amount equal to the following schedule: from years one through five, \$5,000 per turbine; and from year six through the end of the life of the project the greater of \$10,000 per turbine, 15 percent of the decommissioning costs, or 120 percent of the net decommissioning costs." *In Re Hardin Wind Energy, LLC, supra* at 27. An independent engineer is to develop estimates for the decommissioning costs and salvage value within the first five years of operation and every five years thereafter. *Id.*

As the County and Townships imply, there is an inconsistency between the bonding schedule for the Buckeye Wind project and the other two certificated wind farm projects. Moreover, there is no support in the Buckeye Wind record for the minimum bond requirement of 25% of the actual decommissioning cost recommended by Staff. The Buckeye Wind record also supports the conclusion that it is very unlikely that decommissioning will occur in the first few years of operation and that turbines will have significant scrap value in the first years of operation. (TR at 192-193.) Regardless that the bonding schedule for the other two wind farm projects were not debated at the Buckeye Wind hearing, the Board may grant rehearing on Condition 70 by relying on the above facts from the Buckeye Wind record and the fact that certain figures in Condition 70 were adopted arbitrarily. However, no evidentiary hearing need be held.

Accordingly, Buckeye Wind supports the County and Townships' request to grant rehearing on this issue, but only to the extent requested in Buckeye Wind's application for rehearing, deleting Conditions 69 and 70 and inserting the following condition which mirrors Condition 51(i) in the Hardin Wind Energy certificate.

Subject to approval by staff and within five years after the start date of commercial operation, an independent and registered professional

engineer, licensed to practice engineering in the state of Ohio, shall be retained by Buckeye to estimate the total cost of decommissioning in current dollars (decommissioning costs) without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment (net decommissioning cost). Said estimate shall include: an analysis of the physical activities necessary to implement the approved reclamation plan, with physical construction and demolition cost based on ODOT's Procedure for Budget Estimating and RS Means Material and Labor Costs Indices; the number of units required to perform each of these activities, and an amount to cover contingency cost (not to exceed 10% of the above-calculated reclamation cost). Said estimate should be on a per turbine basis and shall be permitted for staff review and approval, after five years of facility operation, and every fifth year thereafter. Buckeye shall post and maintain decommissioning funds in an amount equal to the following schedule: from years one through five, \$5,000 per constructed wind turbine; and from year six through the end of the life of the project, the greater of \$10,000 per constructed wind turbine, 15 percent of the decommissioning costs, or 120 percent of the net decommissioning costs. The form of financial assurance will be a financial instrument mutually agreed upon by staff and Buckeye and conditioned on the faithful performance of all requirements and conditions of the application's approved decommissioning and reclamation plan. Once the financial assurance is provided, Buckeye shall maintain such funds throughout the remainder of the applicable term and shall adjust the amount of the assurance, if necessary, to offset any increase in the decommissioning costs at the end of the applicable term. The value of salvaged steel and copper, at the end of the five-year term and for any other revisions of this report thereafter, shall be calculated based on the five-year annual average for the years preceding the anniversary of such reports.

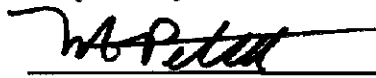
III. CONCLUSION

For the foregoing reasons, the Board should deny the County and Townships' request for rehearing as to Condition 8(j), Condition 56 and Condition 69. Under Section 4903.10, Revised Code, the County and Townships' have the burden of showing that these conditions are unreasonable or unlawful.¹ As explained above, the County and Townships have not met that burden. As to Condition 70, the Board should grant the County and Townships' request for

¹ Section 4906.12, Revised Code, incorporates Section 4903.10, Revised Code.

rehearing but only to the extent requested in Buckeye Wind's application for rehearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following parties of record via electronic mail on this 5th day of May 2010.

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