

BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application)	
Of Champaign Wind, LLC, for a)	
Certificate to Install Electricity)	Case No. 12-0160-EL-BGN
Generating Wind Turbines in)	
Champaign County)	

**RESPONSE TO CHAMPAIGN WIND, LLC's MOTION TO STRIKE BY
INTERVENOR, CITY OF URBANA, OHIO**

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Attorneys for Intervenor, City of Urbana

On June 28, 2013, pursuant to Ohio Revised Code § 4903.10 and Ohio Administrative Code § 4906-7-17(D), the City of Urbana, Ohio, applied to the Ohio Power Siting Board ("OPSB") for rehearing on the issuance of a Certificate to Champaign Wind, LLC ("the Applicant."). On July 8, 2013, the Applicant filed a motion to strike the City's application.

The City submits that the application for rehearing was filed within the time limit imposed by Ohio Rev. Code §4903.10 and the Ohio Administrative Code. In the alternative, the OPSB should consider any delay on the City's part excusable given the particular circumstances:

1. The Order was not available when the City's designated counsel of record, Staff Attorney Breanne Parcels, requested it from Matt Butler, OPSB public information officer, immediately after the 3:30 p.m. hearing on May 28. Mr. Butler said a "press release" would be issued later that day. Thus, no personal service was made.
2. The Order was electronically docketed at 3:55 p.m. on May 28, 2013 (with five minutes remaining in the City's business day).
3. A "service notice" was docketed at 4:48 p.m., after City offices were closed. The notice included Law Director Gil S. Weithman and Director of Administration Kerry Brugger, but not Ms. Parcels, the City's designated trial attorney in accordance with Ohio Admin. Code §4906-7-11. The service notice included Mr. Weithman's "diroflaw@ctcn.net" e-mail address, but Mr. Weithman received no service of the Order by e-mail at that address on May 28 or any date after. Mr. Weithman and Ms. Parcels were not served with the Order via their "@ci.urbana.oh.us" e-mails. A press release was sent to Ms. Parcels' e-mail at 4:03 p.m. but the Order was not attached.
4. Ohio Admin. Code §4901-1-05(C)(4) permits service by e-mail, but also requires the sender to retain confirmation "as proof of service until the final disposition of the case and through any appeal period." Therefore, if unable to provide such confirmation, the OPSB must recognize City's counsel were not served until the Order arrived by mail.
5. The City was served with the Order by mail on May 30, 2013 and that hard copy was stamped with the date upon receipt by Mr. Brugger's office.
6. Ohio Rev. Code §4903.10 states an application for rehearing "shall be filed within thirty days after the entry of the order upon the journal of the commission," referring to the

Public Utilities Commission of Ohio (“PUCO”). The OPSB must follow PUCO procedures in accordance with Ohio Rev. Code §4906.12, including Ohio Admin. Code §4906-7-17(A)(3), which requires the OPSB to serve an Order “on all attorneys of record and all unrepresented parties in the proceedings by ordinary mail.”

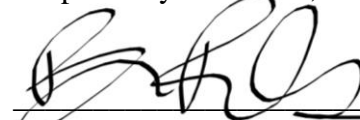
7. Ohio Admin. Code §4901-1-07 mirrors the time computation calculations of Rule 6 of the Ohio Rules of Civil Procedure:

(A) In computing any period of time prescribed or allowed by the commission, the date of the event from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it falls on a Saturday, Sunday, or legal holiday, in which case the period of time shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Unless otherwise noted, time is measured in calendar, not business, days.

(B) Whenever a party is permitted or required to take some action within a prescribed period of time after a pleading or other paper is served upon him or her and service is made by mail, three days shall be added to the prescribed period of time.

Applicant’s counsel ignores the plain language of (A) that the “the date of the event ... shall not be included.” June 28, 2013, is the 30th day from the day after May 28. But moreover, because the City was served by mail rather than personal service or e-mail, three days must be added to the 30-day period, with a resulting date of June 30, 2013 rather than June 27, 2013 as claimed by Applicant’s counsel. As June 30 was a Sunday, the deadline then became July 1, the next day not a “Saturday, Sunday or legal holiday.” Therefore, the City’s Application for Rehearing should be considered by the OPSB and Champaign Wind’s motion to strike overruled, as the City timely filed on June 28, 2013.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Response to Motion to Strike, submitted on behalf of the City of Urbana, Ohio, was served via electronic mail, on July 11, 2013, on Howard Petricoff (mhpetricoff@vorys.com); Michael J. Settineri (mjsettineri@vorys.com); Miranda Leppla (mrleppla@vorys.com); Stephen Howard (smhoward@vorys.com); and Gretchen Petrucci (glpetrucci@vorys.com); Champaign County Assistant Prosecutor Jane Napier (jnapier@champaignprosecutor.com); Jack Van Kley (jvankley@vankleywalker.com) and Christopher Walker (cwalker@vankleywalker.com); Assistant Attorneys General Werner Margard (Werner.Margard@puc.state.oh.us), Stephen Reilly (Stephen.Reilly@puc.state.oh.us), Devin Parram (Devin.Parram@puc.state.oh.us), Summer Plantz (summer.plantz@ohioattorneygeneral.gov) and Sarah Anderson (sarah.anderson@ohioattorneygeneral.gov); Philip B. Sineneng (Philip.Sineneng@ThompsonHine.com) and Chad Endsley (cendsley@ofbf.org).



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Case No(s). 12-0160-EL-BGN

Summary: Response City of Urbana's Response to Motion to Strike electronically filed by Mr. Gil S Weithman on behalf of City of Urbana, Ohio