

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of the 6011)
Greenwich Windpark, LLC for a Certificate to)
Site Wind-Powered Electric Generation Facilities) Case No. 13-990-EL-BGN
in Huron County, Ohio)

**Ohio Farm Bureau Federation's Memorandum Contra
Second Application for Rehearing of Omega Crop Co., LLC**

I. Introduction

On August 25, 2014, the Ohio Power Siting Board ("OPSB" or "Board") issued its Opinion, Order, and Certificate approving the Stipulation entered into between 6011 Greenwich Windpark, LLC ("Greenwich"), OPSB Staff, and the Ohio Farm Bureau Federation ("OFBF"), issuing a certificate to construct the Greenwich Windpark, and denying Omega Crop, LLC's ("Omega") late filed intervention. On September 23, 2014, Omega filed an application for rehearing of the Board's August 25, 2014 Order. By Entry issued August 27, 2015, the Board denied, in its entirety, Omega's application for rehearing. On September 24, 2015, Omega filed a second application for rehearing from the Board's August 27, 2015 Entry on Rehearing.

OFBF urges the Board to dismiss Omega's second application for rehearing. First, Omega is not a proper party to this case and has no standing to bring this second application for rehearing. OFBF did not oppose Omega's late filed motion to intervene. Nonetheless, Omega's status has already been adjudicated, and it has no standing to file this second application for rehearing.

Second, Omega's interpretation of Ohio Revised Code Section ("R.C.") 4906.20 pertaining to the minimum setback waivers would unreasonably allow any single nearby

property owner to interfere with the property rights of participating landowners. OFBF respects the property rights of both participating and non-participating landowners. OFBF also supports the Board's thorough process which considers and balances the rights of all landowners, the economic, environmental, and aesthetic impacts on the community, and the public need for the project. Omega's interpretation would allow a single landowner to block not just a turbine on an immediately-adjacent parcel, but to block the entire project, in complete disregard for the rights of other landowners, the needs of the community, and the public interest.

In addition, OFBF agrees with and supports Greenwich's memorandum contra urging the Board to dismiss Omega's second application for rehearing.

II. Argument

A. Omega's application for rehearing should be denied because it is not a proper party to this case.

Omega filed its initial petition to intervene 125 days after the filing deadline.¹ As noted by the Board in its denial of Omega's late-filed motion to intervene, Omega failed to set forth any statement of good cause for failing to timely intervene, with no showing that extraordinary circumstances justified granting the motion.² The Board permitted Omega to file an application for rehearing for the limited purpose of contesting the Board's decision to deny Omega's late-filed motion to intervene.³

After reviewing Omega's application for rehearing, the Board affirmed its decision to deny Omega's late-filed motion to intervene.⁴ Specifically, the Board noted that Omega had actual and constructive notice of Greenwich's application, intervention deadline, and hearings

¹ Entry on Rehearing, Case No. 13-990-EL-BGN (August 27, 2015), at ¶ 20.

² *Id.*

³ *Id.*, at ¶ 19.

⁴ *Id.* at ¶ 23.

and that it was Omega who delayed its efforts to pursue intervention.⁵

OFBF policy strongly supports the process established by the OPSB and the rights of all participants utilizing that process to put forth their views.⁶ In fact, OFBF has extensive member-developed policy, approved by the delegate body at OFBF's annual meeting, pertaining to wind energy development and the OPSB process. The OPSB process largely mirrors OFBF's policies. While it is always the right of an individual to disagree with the outcome, the process itself should be respected. Where procedural rules have been put in place, they must be followed in order to ensure a fair playing field for all those parties involved. Specifically, adherence to the Board's rules for intervention prevents undue delay of proceedings and facilitates the orderly flow of business before the Board.

The Board rightfully denied Omega's request for intervention, twice. As such, Omega is not a party to the proceeding. It cannot now bring a second application for rehearing to raise issues that have nothing to do with the issue of intervention. Allowing this second application for rehearing would undermine the Board's rules and previous decisions and will create additional undue delay to the project and its participating landowners. Thus, OFBF strongly urges the Board to immediately deny Omega's second application for rehearing.

B. Omega requests an interpretation of the setback waiver that would allow property owners unaffected by the placement of a wind turbine to unreasonably interfere with other parties' right to contract.

As stated above, OFBF strongly urges the Board to reject Omega's second application for rehearing because Omega is not a party to this case. However, even if the Board were to address Omega's arguments, the Board should deny Omega's argument in its second application for

⁵ *Id.*

⁶ Ohio Farm Bureau Federation, *2015 State Policies* Policy 143: Wind and Solar, p. 11 (Dec. 2014) available at http://ofbf.org/uploads/OFBFPolicyDocument_2015.pdf.

rehearing because Omega fails to raise any new issues that were not already thoroughly considered by the Board.

Further, the arguments raised in Omega's second application for rehearing lack merit. In particular, OFBF is concerned with Omega's proposed interpretation of the minimum setback waiver in R.C. 4906.20. This statutory provision states:

The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property

Omega argues that the language of R.C. 4906.20(B)(2)(c) that "all owners adjacent to the wind farm property" must waive the setback means that every property owner adjacent to the entire wind farm project footprint must waive the setback, regardless of their proximity to the particular turbine setback at issue.⁷ This interpretation ignores the use of the singular term "that property" in the statute. In contrast, the Board's interpretation of R.C. 4906.20(B)(2)(c), codified in 4906-17-08(C)(1)(c)(iii), allows the minimum setback from property lines and residences to be waived "in the event that all owners of property adjacent to the turbine agree to such waiver. The Board correctly interprets the statute to mean that all the owners adjacent to a particular wind farm property must execute a waiver, not that all owners adjacent to the entire project must execute a waiver regardless of adjacency to a particular turbine.

In effect, Omega argues that every property owner adjacent to any part of the entire project area should have veto power over the ability of another property owner to waive the setback requirements applicable to his or her own property, even if the objecting party's property is not adjacent to the particular wind farm property seeking a waiver. Omega's proposed interpretation would impede the rights of other parties to enter into a contractual agreement.

⁷ Omega's Second Application for Rehearing, at 16.

Specifically, under Omega's proposed interpretation of the setback waiver, wind developers and property owners' rights to enter into contracts, including the right of a landowner to contract to waive the setback distances applicable to his or her own property, would be impeded. Not only does such a request offend well-established principles of contract law, but such an outcome would be against public policy because it would enable unaffected landowners to interfere with the ability of the affected landowner and wind developer to enter into a contract.

Omega cites that 16 of the 25 project's turbines are within the minimum property line setback.⁸ In each instance, a waiver has been executed.⁹ Notably, the adjacent landowners of each of these turbines are participating landowners in the project, *who have leased turbine sites to Greenwich*.¹⁰ Omega's proposed interpretation of R.C. 4906.20(B)(2)(c) would allow interference with this exercise of property rights.

In some cases, the owner of the adjacent property who executed the waiver *also owns the property with the turbine*. Again, Omega's proposed interpretation of R.C. 4906.20(B)(2)(c) would completely destroy the efficacy of a waiver executed by a property owner relating to a turbine *on his own adjacent property*.

Farmers and other property owners need to be able to waive property line setbacks so turbines can be placed at the edges of fields and not in the middle of the fields, where they would have a greater disturbance to farming operations or other uses of the property. It would be illogical to prevent this edge of field placement when the adjacent property is willing to execute a waiver.

Omega's proposed interpretation of R.C. 4906.20(B)(2)(c) would allow an adjacent

⁸ Omega's Second Application for Rehearing, at 10.

⁹ Onion, Order, and Certificate, Case No. 13-990-EL-BGN (August 25, 2015), at ¶ 18.

¹⁰ *Id.*

landowner outside of the minimum property line setback to veto the waivers executed by those landowners actually within the minimum property line setback. This was certainly not the intention of the drafters of the statute, and this absurd result should not be allowed.

To be clear, OFBF policy supports wind turbine setback requirements that ensure safety and which are based on scientific research. But the law does not and should not allow a nearby landowner to block the placement of a turbine that he is not even adjacent to, when the landowner actually affected by that particular setback has waived the setback.

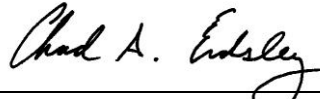
The Board's interpretation regarding the application of setback waivers is reasonable and better effectuates Ohio law. The Board's current rule interpreting the setback waiver requires a wind farm developer to obtain consent from a property owner adjacent to the turbine in order to construct that turbine if it does not meet the setback distance.¹¹ The Board's interpretation is reasonable because property owners who stand to be affected by a wind turbine adjacent to their property that does not meet the statutory setback requirements have the ability to withhold their consent to a waiver, while also allowing these property owners to exercise their right to waive the setback requirements. However, the Board's interpretation does not require the developer to obtain a waiver from a property owner whose property is in no way situated near the wind turbine.

The Board's application of R.C. 4906.20(B)(2)(c) achieves a proper balance between protecting landowners neighboring turbines while also protecting the rights of landowners to make their own decisions about their property. For these reasons, Omega's second application for rehearing should be denied.

¹¹ See OAC 4906-1-03; 4906-17-08(C)(1)(c)(iii).

For the reasons set forth above, the Ohio Farm Bureau Federation urges the Board to dismiss in its entirety the second application for rehearing filed by Omega.

Respectfully Submitted,



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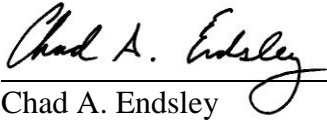
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon the following parties listed below by electronic mail, this 5th day of October 2015.

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Summary: Memorandum Ohio Farm Bureau Federation's Memorandum Contra
Second Application for Rehearing of Omega Crop Co., LLC
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