

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)	
Buckeye Wind LLC to Amend the)	
Certificate of Environmental)	Case No. 17-2516-EL-BGA
Compatibility and Public Need Issued)	
In Case No. 08-0666-EL-BGN)	

In the Matter of the Application of)	
Champaign Wind LLC to Amend the)	
Certificate of Environmental)	Case No. 17-2517-EL-BGA
Compatibility and Public Need Issued)	
In Case No. 12-0160-EL-BGN)	

**MEMORANDUM CONTRA OF BUCKEYE WIND LLC AND CHAMPAIGN WIND
LLC TO THE PETITION TO INTERVENE OF CHAMPAIGN COUNTY RESIDENTS**

I. INTRODUCTION

The “Local Residents¹,” as they jointly refer to themselves, each seek to intervene in this proceeding in their individual capacities. They are not a homogenous group with unified interests that justify granting the Petition to Intervene with respect to all of them. Rather, there are two distinct groups of petitioners within the Local Residents. The first group, composed of Apthorpe, Boles, Brenneman, Gaertner, and Halterman, reside and own property well outside the project areas for the Buckeye Wind and Champaign Wind projects, too distant from any turbine sites to justify intervention over the applications’ proposed new turbines. Their intervention should be denied.

The second group of petitioners own property within the project area but only raise a specific interest that may justify intervention with respect to the choice of turbine model options and the potential change in shadow flicker or noise resulting from that choice. The second group does not raise any issue with the minor shifts in collection lines, shifts in access roads, the

¹ “Terry and Phyllis Rittenhouse, Keith and Lori Forrest, John and Joy Mohr, Brent and Johnna Gaertner, Mark and Marisue Schmidt, Carrie Apthorpe, Jim and Georgianna Boles, Bill and Carmen Brenneman, T. Gary and Paula Higgins, Brian and Bayleigh Halterman, Rodney Yocom, Robert and Roberta Custer, and Mathew Earl”

proposed substation relocation or proposed meteorological tower changes. Instead they only focus on the new turbines in addition to their legal argument regarding the application of setback requirements, an argument that is outside the scope of these Applications. Thus, if granted, the second group's intervention request should be limited to the single turbine model choice issue, rather than a global re-litigation of setback requirement legal arguments that have been previously rejected by the Board.

II. BACKGROUND

Buckeye Wind LLC and Champaign Wind LLC (collectively, "Applicants") seek to amend the Certificates of Environmental Compatibility and Public Need issued in Case Nos. 08-0666-EL-BGN and 12-0160-EL-BGN, issued respectively to Buckeye Wind and Champaign Wind. The Supreme Court of Ohio has upheld the Board's issuance of both Certificates. *In re Application of Buckeye Wind LLC*, 131 Ohio St.3d 449 and *In re Application of Champaign Wind LLC*, 146 Ohio St.3d 489. In the matters at bar, the Applicants propose relocation of a substation, modification of access roads and collection lines, relocation of a single meteorological tower, and the option to use additional, more efficient turbine models with updated technology for both projects. The amendment, if approved, will result in an aggregate of 50 turbine locations between the two projects versus 108 turbine locations.

III. ARGUMENT

The standard for intervention in Board proceedings is a showing of good cause for the intervention. Ohio Adm.Code 4906-2-12(B)(1). In considering whether good cause exists, the Board or the administrative law judge may consider (a) the nature and extent of petitioners' interest, (b) the extent to which the petitioners' interest is represented by existing parties, (c) the petitioners' potential contribution to a just and expeditious resolution of the issues involved in

the proceeding, and (d) whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party. *Id.* The Board may also grant, under Rule 4906-2-12(D)(1), limited participation if a person has no real and substantial interest with respect to the remaining issues.

A. The Board should Deny the Intervention Requests of Apthorpe, Boles, Brenneman, Gaertner, and Halterman

As an initial matter, the Board should deny the intervention requests of Apthorpe, Boles, Brenneman, Gaertner, and Halterman because they do not own property within the project area and the property they do own is far from the Projects' turbine sites. With no property in the project area or near turbines, they have no interest that justifies intervention.

The following chart summarizes the distances at which these proposed intervenors own property from the nearest turbine:

Proposed Intervenor	Distance from Closest Owned Parcel
Carrie Apthorpe	1.5 Miles
Jim and Georgianna Boles	1.7 Miles
Bill and Carmen Brenneman	1.6 Miles
Brent and Johnna Gaertner	1.6 Miles
Brian and Bayleigh Halterman	2.9 Miles

See Aff. of Bonnie Pendergast attached as Exhibit A at ¶¶ 2 - 9.

The “closest” of this group of proposed intervenors is Carrie Apthorpe. She owns property approximately 1.5 miles from the nearest turbine site and therefore will not, and cannot, be affected by any noise or shadow flicker. Ms. Apthorpe does not reside in the shadow flicker study area of 1,400 meters (~.87 miles) from any turbine. *See* Applications Exhibit F at 2. She also does not reside in an area affected by noise from any turbine. *See* Applications Exhibit E at Plots 1-3. Similarly, none of the other proposed intervenors in this group, all of whom own

property and/or reside more than 1.5 miles away, could possibly be affected by a change in noise or shadow flicker caused by the addition of more efficient turbine model options, if any. These petitioners also do not raise any issue whatsoever with the substation relocation, access road and collection line modification, or meteorological tower relocation.

What remains after removing this purported justification for intervention is that these proposed intervenors are “consumers of electricity” and Champaign County property-owners, residents, and taxpayers. *See* Petition for Intervention at 2. These are not sufficient interests that justify intervention, especially when there are other petitioners, owning property closer to the turbine sites, who will represent petitioners’ interests. *See In re Black Fork* Case No. 09-546-EL-BGN, Entry (March 2, 2010) at ¶ 13 (“[i]t is not enough for a person seeking to intervene in a proceeding such as this to merely state that he or she resides in a county wherein the project under consideration is proposed to be sited”).

Finally, contrary to their implication, this group of petitioners is distinct from Union Neighbors United, Inc. (“UNU”), the non-profit corporation that opposed aspects of Applicants’ previous Applications to the Board. *See* Petition to Intervene at 3. UNU was permitted to intervene because its members lived adjacent to parcels of land on which turbines were proposed to be sited. *In re Buckeye Wind*, Case No. 08-666-EL-BGN, Entry (Jul. 31, 2009) at ¶¶ 6-7. Here, Apthorpe, Boles, Brenneman, Gaertner, and Halterman seek to intervene in this proceeding in their individual capacities, not as members of a single organization. Thus, each petitioner must meet the standard for intervention on their own merits, and more distant petitioners cannot rely on the relative proximity of the second group of Local Residents to justify their own intervention.

The petitions to intervene by Apthorpe, Boles, Brenneman, Gaertner and Halterman should be denied.

B. The Board should Limit the Scope of the Interventions of Rittenhouse, Forrest, Mohr, Schmidt, Higgins, Yocom, Custer, and Earl to Only the Addition of the New Turbine Model Options

Petitioners Rittenhouse, Forrest, Mohr, Schmidt, Higgins, Yocom, Custer and Earl also seek to intervene in their individual capacities in this proceeding. This group of petitioners attempts to raise two interests that they assert justify intervention. First, petitioners in this group assert an interest in ensuring the proper applicability of setback requirements to the projects. Second, petitioners assert general interests in opposition to the addition of more efficient, updated turbine models for the Projects, related to shadow flicker and noise. Petition to Intervene at 7. These petitioners do not raise any issue with the substation relocation, access road and collection line modification, or meteorological tower relocation elements of the Applications.

A large portion of the Petition to Intervene focuses on petitioners' legal argument that the Board must apply current statutory setbacks to the project solely because the Certificate is being amended. But a desire to re-litigate legal issues that the Board has already decided in favor of other applicants in the past is not a sufficient interest that allows for intervention on those issues in this proceeding. The Board has repeatedly taken the position that R.C. 4906.20 and R.C. 4906.201 are silent as to the definition of an "amendment to an existing certificate" that would trigger the enhanced setbacks, and has used its discretion to determine what qualifies as an amendment. Intervention on this issue is not appropriate in this proceeding given past Board precedent. *See e.g. In re Black Fork*, Case No. 10-2865-EL-BGN, Entry on Rehearing at ¶ 29 (Feb. 2, 2017); *In re Greenwich Windpark, LLC*, Case No. 15-1921-EL-BGA, Second Entry on

Rehearing (Aug. 17, 2017) at 7-8, ¶¶21-22 (addition of new turbine models do not constitute an amendment); *In re Black Fork*, Case No. 17-1148-EL-BGA, Order on Certificate (Dec. 7 2017) at 4, ¶17 (“The motions to intervene should be denied to the extent the Intervenor request intervention for the purpose of addressing irrelevant matters outside ...the identified scope of this application.”) (Limiting intervention to turbine model capacity change, when proposed intervenors also attempted to challenge the applicability of setback requirements).

Given this group’s holding of properties within the property area, the Applicants do not oppose their intervention on the limited issue of the more efficient turbine models proposed for the project. The petitioners, however, should not be allowed to intervene on matters that are not relevant to the Applications or matters not raised in their petition (access roads, collection lines, substation relocation and meteorological towers). If the Board determines that intervention is appropriate for this second group of petitioners, it should exercise its authority under Rule 4906-2-12(D) as it has done in other proceedings, and allow intervention only as to the addition of different updated turbine models, not the legal arguments regarding setbacks, or any other aspect of the Projects.

IV. CONCLUSION

For the foregoing reasons, the intervention petitions of Aphorpe, Boles, Brenneman, Gaertner, and Halterman should be denied as not having an interest in this proceeding and also because the remaining petitioners will adequately represent their interests. As to the remaining

petitioners, their intervention requests should be limited to the Applicants' proposals to add additional more efficient turbine models to each respective project.

Respectfully submitted,

/s/ Michael J. Settineri

Michael J. Settineri (0073369), Counsel of Record

Ryan D. Elliott (0086751)

MacDonald W. Taylor (0086959)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

(614) 464-5462

(614) 719-5146 (fax)

mjsettineri@vorys.com

rdelliott@vorys.com

mwtaylor@vorys.com

*Attorneys for Buckeye Wind LLC and
Champaign Wind LLC*

CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 6th day of February 2018.

/s/ Michael J. Settineri

Michael J. Settineri

Chad A. Endsley
Chief Legal Counsel
Leah F. Curtis
Amy M. Milam
Ohio Farm Bureau Federation
cendsley@ofbf.org
lcurtis@ofbf.org
amilam@ofbf.org

John F. Stock
Mark D. Tucker
Benesch, Friedlander, Coplan & Aronoff LLP
jstock@beneschlaw.com
mtucker@beneschlaw.com

Jane A. Napier
Champaign County Prosecuting Attorney's Office
jnapier@champaignprosecutor.com

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)
 Buckeye Wind LLC to Amend the)
 Certificate of Environmental) Case No. 17-2516-EL-BGA
 Compatibility and Public Need Issued)
 In Case No. 08-0666-EL-BGN)

In the Matter of the Application of)
 Champaign Wind LLC to Amend the)
 Certificate of Environmental) Case No. 17-2517-EL-BGA
 Compatibility and Public Need Issued)
 In Case No. 12-0160-EL-BGN)

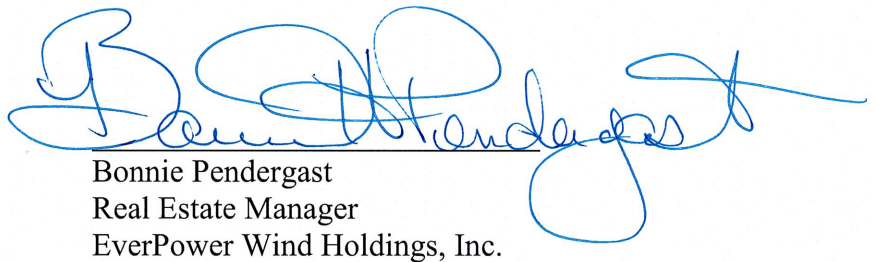
AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) SS:
 COUNTY OF ALLEGHENY)

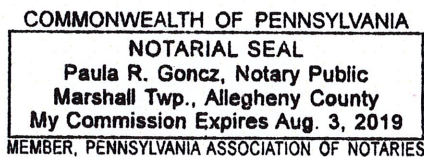
Now comes Bonnie Pendergast, Real Estate Manager, EverPower Wind Holdings, Inc.,
 having been first duly sworn, declares and states as follows:

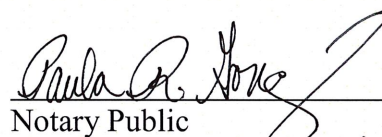
1. I am the real estate manager for the Buckeye Wind LLC Project originally certificated in Case No. 08-0666-EL-BGN and the Champaign Wind LLC Project originally certificated in Case No. 12-0160-EL-BGN. In that capacity, I have personal knowledge on leases for the project, the location of project turbine sites and the project boundary which represents the area bounded by the project facilities and associated setbacks.
2. Upon information and belief, Carrie Apthorpe resides at 5087 U.S. Highway 36, Urbana, Ohio which is outside the project boundary and approximately 1.5 miles from the nearest project turbine site.
3. Upon information and belief, James and Georgianna Boles reside at 6578 N. Ludlow Road, Urbana, Ohio 43078 and own three parcels of land.
4. Upon information and belief, the Boles' nearest parcel is outside the project boundary and approximately 1.7 miles from the nearest project turbine site.

5. Upon information and belief, William and Carmen Brenneman reside at 3409 Adell Drive, Urbana, Ohio 43078 and own two parcels of land.
6. Upon information and belief, the Brennemens' nearest parcel is outside the project boundary and approximately 1.6 miles from the nearest project turbine site.
7. Upon information and belief, Brent and Johanna Gaertner reside at 5133 Flatfoot Road, Cable, Ohio 43009 and own three parcels of land.
8. Upon information and belief, the Gaertners' nearest parcel is outside the project boundary and approximately 1.6 miles from the nearest project turbine site.
9. Upon information and belief, Bryan and Bayleigh Halterman reside at 2487 S. Ludlow Road, Urbana, Ohio 43078, which is outside the project boundary and approximately 2.9 miles from the nearest project turbine site.


Bonnie Pendergast
Real Estate Manager
EverPower Wind Holdings, Inc.

Sworn to before me and signed in my presence this 5 day of February, 2018.




Notary Public
My Commission Expires August 3, 2019

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/6/2018 4:27:13 PM

in

Case No(s). 17-2516-EL-BGA, 17-2517-EL-BGA

Summary: Memorandum Contra to Petition to Intervene of Champaign County Residents electronically filed by Mr. Michael J. Settineri on behalf of Champaign Wind LLC and Buckeye Wind LLC