

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of	)	
Buckeye Wind LLC to Amend	)	Case No. 17-2516-EL-BGA
Its Certificate Issued in	)	
Case No. 08-0666-EL-BGN	)	

In the Matter of the Application of	)	
Champaign Wind LLC to Amend	)	Case No. 17-2517-EL-BGA
Its Certificate Issued in	)	
Case No. 12-0160-EL-BGN	)	

**CHAMPAIGN COUNTY RESIDENTS' REPLY MEMORANDUM IN SUPPORT OF  
PETITION TO INTERVENE**

**Introduction**

This matter is before the OPSB on the Petition to Intervene in these proceedings filed by Champaign County residents 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 Matthew Earl (the “Local Residents”). By a Memorandum Contra filed on February 6, 2018, Buckeye Wind LLC and Champaign Wind LLC (together, EverPower”<sup>1</sup>): (1) acknowledge that Local Residents Rittenhouse, Forrest, Mohr, Schmidt, Higgins, Yocom, Custer, and Earl (the “Admitted Group”) should be permitted to intervene (“[g]iven this group’s holding of property within the [project] area, the Applicants do not oppose their intervention . . . ,” Memo. Contra at 6), but seek to prevent the Admitted Group from asserting their legally-valid claim that the “new” setback requirements of R.C. 4906.20 and 4906.201 apply to the combined Buckeye Wind project (the “Project”) as a result of EverPower’s pending Applications to Amend their certificates for the

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<sup>1</sup> Buckeye Wind LLC and Champaign Wind LLC are owned by EverPower Wind Holdings, Inc., headquartered in Pittsburgh, Pennsylvania.

Project; and (2) seek to prevent Local Residents Apthorpe, Boles, Brenneman, Gaertner, and Halterman (the “Opposed Group”) from intervening because, in EverPower’s judgment, these local homeowners do not live close enough to where EverPower plans to site its turbines. Neither objection is meritorious. Both must be rejected by the OPSB. All of the Local Residents must be permitted to intervene in these proceedings to protect all of their interests that will be adversely affected by the Project.

### **The Admitted Group**

The Admitted Group has the legal right to assert their valid claim that the setback requirements of R.C. 4906.20 and 4906.201 apply to EverPower’s pending “amendments” to its certificates. EverPower acknowledges that the setback requirements of R.C. 4906.20 and 4906.201 apply to an “amendment to an existing certificate.” Memo Contra at 5. Pending before the OPSB are EverPower’s “Applications to *Amend*” (emphasis added) its certificates for the Project. This is plain English. By its choice of a common English word, EverPower seeks amendments to its certificates for the Project. R.C. 4906.20 and 4906.201 apply to the Project as a result of any amendments to the certificates granted by the OPSB. Indeed, by its settlement with Union Neighbors United, LLC (“UNU”) EverPower implicitly admits the veracity of this legal fact. UNU asserted in its Ohio Supreme Court case against EverPower that the setback requirements of R.C. 4906.20 and 4906.201 apply to the Project as a result of amendments made to EverPower’s certificates after the effective date of those statutory requirements. And EverPower apparently settled that case by amending the Project to remove all but one (1) turbine from Union Township in Champaign County -- removing more than fifty (50) turbines from the Project.

Finally, EverPower asserts that the Admitted Group “does not raise any issue with the minor shifts in collection lines, shifts in access roads, the proposed substation relocation or proposed meteorological tower changes,” apparently suggesting that the Local Residents should be foreclosed from raising any issues with respect to these aspects of the Project upon their intervention in these proceedings. Memo Contra at 2. However, the Local Residents do have interests that are implicated by these aspects of the Project. The Local Residents’ Petition to Intervene has identified their primary interests justifying intervention under R.C. 4903.08(A); they are not required to submit their entire evidentiary case with their Petition to Intervene. Indeed, the OPSB already has ruled, with respect to this very Project, that UNU, representing a group local residents, would not have its participation limited upon intervention, rejecting Champaign Wind LLC’s request that the local residents’ “participation should be limited to the issues for which Petitioners have claimed an interest -- including noise, shadow flicker, visual impacts, and property values. . . .” *In the Matter of the Application of Champaign Wind, LLC*, No. 12-160-EL-BGN, slip op. 3-6, ¶¶19-23, 25 (Ohio Power Siting Bd., Aug. 2, 2012).

The Admitted Group has the right to assert their meritorious setback claim, in addition to claims concerning the noise and shadow flicker they would be compelled endure by the Project, and all other claims they possess concerning the Project’s adverse effects upon their personal interests.

### **The Opposed Group**

The members of the Opposed Group are residents of Champaign County who established their homesteads in rural areas -- the Project area generally is zoned “U-1 Rural District”<sup>2</sup> by the relevant townships -- long before EverPower sought to construct its enormous industrial wind turbines in their quiet rural community. The OPSB’s award of certificates for the construction of

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<sup>2</sup> “U-1 Rural District” permitted uses primarily are agricultural and very low density residential.

the Project supersedes local zoning restrictions. In effect, the certificates wrest all local land use control from Champaign County residents and their elected local government representatives. Thus, the peaceful rural surroundings of the residents' homes can, as here, be completely altered without any local input or consent. The residents' only recourse in response to such fundamental altering of their homestead community is to seek redress through intervention in proceedings before the OPSB, and in the courts. This is a seminal reason that it is eminently proper for all of the Local Residents, including the Opposed Group, to be permitted to intervene in these proceedings.

The Opposed Group possess substantial personal interests that will be detrimentally affected by construction of the Project. While they may not reside as close to EverPower's wind turbines as members of the Admitted Group, nonetheless they will be subjected to continual, disruptive noise from the turbines -- noise to which they previously have not been subjected. Furthermore, their beautiful rural viewscapes and property values will be diminished. The Local Residents in the Opposed Group have vital personal interests to be protected in these proceedings.

Moreover, it is a cornerstone principle of American jurisprudence that an independent tribunal can best make an informed decision when interested parties on both sides of a dispute present their positions for adjudication. See *Greenlaw v. United States*, 554 U.S. 237 at 243 (2008) ("In our adversary system, in both civil and criminal cases, . . . we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign courts the role of neutral arbiter of matters the parties present."); *Laurent v. Laurent*, Third Dist. App. No. 92-LW-4677 (3rd), 1992 WL 293061 (October 16, 1992) at \*3 (" . . . The adversarial system works best when there are two adversaries. Trial courts and courts of appeal alike benefit

from the informed argument of counsel.”). The Champaign County residents who are members of the Opposed Group deserve to be permitted to intervene in these proceedings to protect their personal interests that will be directly affected by EverPower’s Project.

For the foregoing reasons, and for the reasons set forth in the Local Residents’ Petition to Intervene, all of the Local Residents are entitled to intervene in these proceedings to protect all of their personal interests that will be adversely affected by EverPower’s Project.

Respectfully submitted,

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### 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 on 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 was served upon the following persons via email this this 13th day of February, 2018.

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

Summary: Reply CHAMPAIGN COUNTY RESIDENTS' REPLY MEMORANDUM IN SUPPORT OF PETITION TO INTERVENE electronically filed by John F Stock on behalf of Rittenhouse, Terry and Rittenhouse, Phyllis and Forrest, Lori and Forrest, Keith and Mohr, John and Mohr, Joy and Gaertner, Johnna and Schmidt, Mark and Schmidt, Marisue and Apthorpe, Carrie and Boles, Jim and Boles, Georgianna and Brenneman, Carmen and Higgins, T. Gary and Higgins, Paula and Halterman, Brian and Halterman, Bayleigh and Yocom, Rodney and Custer, Robert and Custer, Roberta and Earl, Mathew and Gaertner, Brent and Brenneman, Bill