

**BEFORE THE OHIO POWER SITING BOARD**

<b>In the Matter of the Application of</b>	)	
<b>Buckeye Wind, LLC, for a Certificate</b>	)	
<b>to Install Numerous Electricity</b>	)	<b>Case No. 08-0666-EL-BGN</b>
<b>Generating Wind Turbines in</b>	)	
<b>Champaign County to be Collected at</b>	)	
<b>an Electrical Substation in</b>	)	
<b>Union Township,</b>	)	
<b>Champaign County, Ohio</b>	)	

<b>In the Matter of the Application of</b>	)	
<b>Champaign Wind, LLC, for a Certificate</b>	)	
<b>to Install Numerous Electricity</b>	)	<b>Case No. 12-0160-EL-BGN</b>
<b>Generating Wind Turbines in</b>	)	
<b>Champaign County to be Collected at</b>	)	
<b>an Electrical Substation in</b>	)	
<b>Union Township,</b>	)	
<b>Champaign County, Ohio</b>	)	

**MEMORANDUM CONTRA OF BUCKEYE WIND LLC AND  
CHAMPAIGN WIND LLC TO THE APPLICATION FOR REHEARING OF  
LOCAL RESIDENTS**

In their Application for Rehearing, Terry and Phyllis Rittenhouse, Keith and Lori Forrest, Jon 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 (jointly and collectively “Local Residents”) raise substantive challenges to the Projects beyond the Board's denial of their request for intervention. The Local Residents, however, cannot raise those substantive challenges because consideration of their application for rehearing is limited to whether the Board properly denied the petition to intervene. *In re Application of 6011 Greenwich Windpark, LLC*, Case No. 13-990-EL-BGN, Entry on Rehearing dated Aug. 27, 2015 at ¶24 (holding that a party filing an out-of-time petition to intervene “is only permitted to file rehearing for the limited purpose of requesting reconsideration of the Board’s denial of [the] late-filed motion to intervene”).

On rehearing, the Board should find that it properly denied the Local Residents' petition to intervene. The Local Residents' petition to intervene was untimely filed given that the amendment applications were filed in Case No. 08-666-EL-BGN and Case No. 12-160-EL-BGN. The Local Residents thus were required to follow the Board's rule for an untimely petition to intervene and include a statement of good cause for not timely filing a petition to intervene. Ohio Adm.Code 4906-2-12(C)(1). Under the rule, an untimely petition will only be granted upon a finding of (1) extraordinary circumstances justifying granting the petition and (2) the intervenor(s) agree to be bound by agreements, arrangements, and other matters previously made in the proceeding. Ohio Adm.Code 4906-2-12(C)(1).

The Local Residents did not comply with the Board's rule, failing to make any statement showing good cause for the untimely intervention. Instead, they claimed that they relied on UNU to protect their interests in prior proceedings. Such a statement is insufficient to show extraordinary circumstances as it is not uncommon for stipulations and settlements to occur in cases. Indeed, the Board has traditionally found extraordinary circumstances to exist only when the petitioner alleged that they were not notified of the relevant proceedings, or of any deadline for intervention. *See In re Application of AEP Ohio Transmission Company*, Case No. 16-534-EL-BTX, Entry dated Feb. 2, 2017 at ¶9. The Local Residents cannot make that claim considering that many were involved in the initial proceedings in some fashion.<sup>1</sup>

The Local Residents also did not agree to be bound by matters previously decided in the cases as required by the rule. Ohio Adm.Code 4906-2-12(C)(1). For example, the Local Residents did not agree to be bound by the Board's prior determinations in the proceedings as

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<sup>1</sup> For example, many of the Local Residents submitted public comments on the project and at least one, Terry Rittenhouse, testified at the public hearings. *In re Buckeye Wind LLC*, Case No. 08-0666-EL-BGN, Transcript of Oct. 28, 2009 Public Hearing filed on docket Nov. 12, 2009 at 70 et seq.; *In re Champaign Wind LLC*, Case No. 12-0160-EL-BGN, Transcript of Oct. 25, 2012 Public Hearing (Part 1 of 3) filed on docket Dec. 3, 2012 at 141 et seq.

they continue to raise issues about shadow flicker and other alleged project impacts.<sup>2</sup> Given the Local Residents' knowledge that the Applicants filed the applications in these proceedings (and not in a new proceeding), the Local Residents were required to comply with the Board's rules on untimely intervention. They did not, and the Board appropriately denied their petition to intervene for that reason.

Finally, even if the Board does address the Local Residents' substantive arguments on setbacks and other matters, the Board should find the arguments unfounded. The Applicants addressed those arguments in their Memorandum Contra to the Petition to Intervene filed by the Local Residents to show that the new setback requirements in R.C. 4906.20 and 4906.21 should not apply, and that good cause supporting the extension does exist.<sup>3</sup>

Respectfully submitted,  
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<sup>2</sup> *In re Buckeye Wind LLC*, Case No. 08-0666-EL-BGN and *In re Champaign Wind LLC*, Case No. 12-0160, Application for Rehearing of Local Residents, Jun. 6, 2018 at 6.

<sup>3</sup> *In re Buckeye Wind LLC*, Case No. 08-0666-EL-BGN and *In re Champaign Wind LLC*, Case No. 12-0160, Memorandum Contra Petition to Intervene, Apr. 23, 2018 at 5-8.

## **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 18<sup>th</sup> day of June 2018.

/s/ Michael J. Settineri

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Summary: Response to Application for Rehearing of Champaign County Residents electronically filed by Mr. MacDonald W Taylor on behalf of Buckeye Wind LLC and Champaign Wind LLC