

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Republic Wind, LLC for a Certificate to)	Case No. 17-2295-EL-BGN
Site Wind-Powered Electric Generation)	
in Seneca and Sandusky Counties, Ohio)	

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

I. INTRODUCTION

This matter is before the Board on the Petition to Intervene in these proceedings filed by Chris & Danielle Zeman, Carol Burkholder, Duane & Deb Hay, Gary & Dawn Hoepf, David Hoover, Jeff Hoover, Greg & Laura Jess, Mike & Tiffany Kessler, Doug & Jennifer Myers, Kevin & Jennifer Oney, Duane Robinson, and John & Lisa Wilson, and the subsequent petition to intervene filed by Rita & Jerry Cantu and Tom & Lori Scheele (collectively, the “Local Residents”). By its Memorandum Contra filed on July 3, 2018, Applicant Republic Wind LLC (“Applicant”) acknowledges that Local Residents Duane & Deb Hay, Gary & Dawn Hoepf, Greg & Laura Jess, Mike & Tiffany Kessler, Kevin & Jennifer Oney, and Tom & Lori Scheele (the “Admitted Group”) should be permitted to intervene. See Memo Contra at 4 n.2 (“Although Republic is not opposing intervention of all of the Residents”). Applicant, however, seeks to prevent Local Residents Chris & Danielle Zeman, Carol Burkholder, David Hoover, Jeff Hoover, Doug & Jennifer Myers, Duane Robinson, John & Lisa Wilson, and Rita Owen¹ (the “Opposed Group”) from intervening because, in Applicant’s judgment, these local homeowners do not live “in the project area.” Memo Contra at 4. In addition, Applicant seeks an order

¹Rita Owen, referenced in Applicant’s Memorandum Contra, has recently remarried and petitioned to intervene as Rita Cantu.

limiting the scope of all Local Residents' intervention to "preclude any evidence" regarding electricity prices. Memo Contra at 8.

Neither objection is meritorious, and both must be rejected by the Board. 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.

II. ARGUMENT

A. Members of the Opposed Group Should be Permitted to Intervene.

Applicant's only assertion with regard to the Opposed Group is that they "have no interest in this proceeding because they do not live in the project area." Memo Contra at 3. Applicant implicitly acknowledges, however, that some members of the Opposed Group live in close proximity to the "project area," even if they do not reside in the artificially-designated "project area" itself.² Indeed, while Applicant mentions several members of the Opposed Group and the distance that they live from proposed turbine locations, Attachment A to Applicant's Memo Contra firmly establishes that Jeff Hoover, David Hoover, Chris & Danielle Zeman, and Doug & Jennifer Myers live immediately adjacent to the project area, thereby justifying their intervention. *In the Matter of the Application of Buckeye Wind LLC*, No. 08-666-EL-BGN, slip op. at 2, ¶7 (Sep. 1, 2009) ("As owners of property adjacent to the proposed turbine site, the McCormells and Ms. Johnson have demonstrated the nature and extent of their respective interests in the proposed project, which interests are sufficient to warrant intervention.") (emphasis added). See also *In the Matter of the Application of Buckeye Wind LLC*, No. 08-666-EL-BGN, slip op. at 3, ¶6 (July 31, 2009) (granting motion to intervene of nonprofit group

²Applicant states that "a number of these 'outside the project area' Residents live a substantial distance away from any of the proposed turbine locations." Memo Contra at 4 (emphasis added), thereby implying that "a number" of the Opposed Group do not live a substantial distance from the proposed turbine locations.

whose members “own residential real estate adjacent to parcels of land where Buckeye proposes to site turbines”); *In the Matter of the Application of Columbus Southern Power Co.*, No. 01-2153-EL-BTX, slip op. at 2-3, ¶¶7-8 (Ohio Power Siting Bd. Jan. 29, 2004) (granting motion to intervene of Neighbors for Responsible Power Line Placement,” a non-profit corporation representing home and property owners living in residential areas along one of the “proposed routes,” which “could depress their property values, expose them to hazards of the line, and deprive them enjoyment of their homes”).

Furthermore, the “project area” as defined by Applicant appears to be nothing more than an outline of the exterior boundary lines of the properties for which Applicant has obtained a lease to site proposed turbines. It is not reflective of the proximity of the Local Residents’ properties to proposed turbine locations. Indeed, many in the Opposed Group live closer to proposed wind turbines than residents “within” the project area. Doug and Jennifer Myers live only 850m from the closest proposed turbine; Chris & Danielle Zeman live only 1020m from the closest proposed turbine; David Hoover lives only 790m from the closest proposed turbine; and Jeff Hoover lives only 1,100m from the closed proposed turbine—all closer to turbines than many residences within the project area. All of these Local Residents—both the Admitted Group and the Opposed Group—will be adversely affected by Applicant’s wind turbines.

Moreover, as noted in the Local Residents’ Petition to Intervene, the World Health Organization has determined that 40dBA is the threshold for nighttime wind turbine noise that causes deleterious health effects. And when one adds the 3dBA margin of error applicable to Applicant’s own sound modeling calculations, the WHO 40 dBA health threshold is exceeded at the residences of those in the Opposed Group: Chris & Danielle Zeman residence (43 dBA); Jeff

Hoover residence (41 dBA); David Hoover residence (45 dBA); and Doug & Jennifer Myers residence (43 dBA).

Contrary to Applicant's argument, members of the Opposed Group do not "live far away from any potential turbine locations." Rather, they live in close proximity to the proposed wind turbines and will be directly affected by the noise and shadow flicker created by the turbines. Moreover, all of the Local Residents will have their beautiful rural viewsheds marred. All of the Local Residents enjoy the local wildlife—including endangered bald eagles and Indiana bats—that risks substantial harm from Applicant's 591 foot tall wind turbines. And all of the Local Residents, including the Opposed Group, present far more than "generalized claims regarding potential impacts." Memo Contra at 5. They present real and direct interests that will be detrimentally affected by Applicant's project. Therefore, all of the Local Residents must be permitted to intervene in this case.

Finally, Applicant makes the nonsensical assertion that allowing the intervention of members of the Opposed Group will not contribute to a just and expeditious resolution of the issues in the case, but instead will unduly delay the proceeding. How? All of the Local Residents—both the Admitted Group and the Opposed Group—are represented by the same counsel. They do not intend to submit duplicate discovery requests, or to seek the separate presentation of evidence or examination of witnesses. All of the Local Residents have committed to the just and expeditious resolution of issues, and have agreed to be bound by the Board's deadlines and determinations. Quite simply, the intervention of the Opposed Group will have no effect on the length or cost of these proceedings.

B. The Board Should Not Limit the Scope of Intervention.

Applicant asserts that the Board should limit the scope of intervention for all Local Residents—members of the Admitted Group and members of the Opposed Group alike—to prevent the introduction of evidence regarding the price of electricity. Memo Contra at 7-8. Applicant, in effect, seeks a premature ruling on the admissibility of evidence before such evidence has been developed, much less proffered at hearing. The Board should deny the request to limit the scope of the Local Residents’ intervention.

While the Local Residents’ offer concerns as to the price of electricity as one of the many interests that justify their intervention, they have yet to develop or offer such evidence in these proceedings. Contrary to Applicant’s assertion, such evidence, if offered, would be relevant to the factors the Board must consider in making a decision to grant or deny a siting certificate—see R.C. 4906.10(A)(4) & (6) (“The board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility . . . unless it finds and determines all of the following: (4) In the case of a[] . . . generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility *will serve the interests of electric system economy* and reliability; . . . (6) That the facility will serve the public interest, convenience, and necessity;”) (emphasis added).

In *In the Matter of the Application of Columbus Southern Power Co.*, No. 06-0309-EL-BTX (Nov. 20, 2006), cited by Applicant is supported of its request to limit the scope of intervention, the price of electricity was the only interest offered to support the proposed intervention of the Industrial Energy Users of Ohio. The Board ruled that such an interest, standing alone, was insufficient to justify intervention in that case. In contrast, in this case, the

increased cost of electricity (“electric system economy” under R.C. 4906.10(A)(4)) is but one of the many interests justifying the Local Residents’ intervention. The Board has never held that it may limit the scope of intervention as a means for ruling on the admissibility of evidence or as a substitute for a motion *in limine*. A ruling on such evidence at this early stage of these proceedings would be entirely premature and inappropriate.

III. CONCLUSION

For the foregoing reasons, and for the reasons set for in their Memorandum in Support of the Petition to Intervene, all of the Local Residents request the Board to grant their Petition to Intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Summary: Reply SENECA COUNTY RESIDENTS' REPLY MEMORANDUM IN SUPPORT OF PETITION TO INTERVENE electronically filed by John F Stock on behalf of Chris Zeman and Danielle Zeman and Carol Burkholder and Duane Hay and Deb Hay and Gary Hoepf and Dawn Hoepf and David Hoover and Jeff Hoover and Greg Jess and Laura Jess and Mike Kessler and Tiffany Kessler and Doug Myers and Kevin Oney and Jennifer Oney and John Wilson and Lisa Wilson and Rita Cantu and Jerry Cantu and Tom Scheele and Lori Scheele and Jennifer Myers and Duane Robinson