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BEFORE
THE OHIO POWER SITING BOARD

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In the Matter of the Power Siting Board's)
Adoption of Chapter 4906-17 of the Ohio)
Administrative Code and the Amendment)
of Certain Rules and Chapters 4906-1, 4906-5)
and Rule 4906-7-17 of the Ohio)
Administrative Code to Implement)
Certification Requirements for Electric)
Generating Wind Facilities)

Case No. 08-1024-EL-ORD

APPLICATION FOR REHEARING
OF BUCKEYE WIND, LLC

Pursuant to Ohio Revised Code § 4903.10 and Rule 4906-7-17(D) of the Ohio Administrative Code, Buckeye Wind, LLC ("Buckeye Wind") submits this Application for Rehearing to the October 28, 2008 Opinion and Order ("Order") in this matter. Buckeye Wind submits this Application for Rehearing to seek clarification regarding Proposed Rule 4906-17-08(C)(1)(c)(iii). Specifically, Buckeye Wind requests that the Proposed Rule be revised to clarify that a developer seeking a waiver of the setback requirements only need the approval of the owners of the property affected by the location of a turbine within the setback area, i.e. the property nearest the turbine.

Accordingly, Buckeye Wind respectfully requests that the Board grant rehearing

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and make modifications to Proposed Rule 4906-17-08(C)(1)(c)(iii) consistent with this Application for Rehearing. A memorandum in support is attached hereto.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

I. Proposed Rule 4906-17-08(C)(1)(c)(iii)

Proposed Rule 4906-17-08(C)(1)(c)(iii) currently states that “[m]inimum setbacks may be waived in the event that all owners of property adjacent to the turbine agree to such waiver, pursuant to rule 4906-1-03 of the Administrative Code.” This Proposed Rule was written with the apparent intent of following the statutory language of Revised Code § 4906.20(B)(2). That statutory language states “[t]he 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 pursuant to a procedure the Board shall establish by rule[.]” Said another way, Section 4906.20(B)(2) allows the installation of a turbine within the minimum setback distance, provided that all owners of the affected property waive application of the setback.

Buckeye Wind believes that Proposed Rule 4906-17-08(C)(1)(c)(iii), as written, does not accurately reflect the intent of Section 4906.20(B)(2), making the Proposed Rule unlawful and unreasonable. As noted above, the Proposed Rule states that “[m]inimum setbacks may be waived in the event that all owners of property adjacent to the turbine agree to such waiver, pursuant to rule 4906-1-03 of the Administrative Code.” Buckeye Wind assumes that the reference in the Proposed Rule to the “owners of property adjacent to the turbine” means the property within the minimum setback, i.e., the property adjacent to the turbine. However, as written, the Proposed Rule could be interpreted as requiring the consent of every owner of property surrounding the property on which the turbine is located. If so, a property owner on the opposite side of a turbine property, whose property is not within the minimum setback of a proposed turbine, could block the installation of a turbine in a setback area even if the property

owner actually affected by the setback consents to the turbine location. This makes no sense and is contrary to the intent and language of Section 4906.20(B)(2).

Given the ambiguity in the Proposed Rule, Buckeye Wind believes that the Proposed Rule should be clarified to follow the intent of the statute. Specifically, Buckeye Wind recommends that the Board revise Proposed Rule 4906-17-08(C)(1)(c)(iii) to read, "[m]inimum setbacks may be waived in the event that all owners of property within the minimum setbacks to the turbine agree to such waiver pursuant to Rule 4906-1-03 of the Administrative Code." Although this clarification seems minor, it is critical that the Board clarify the Proposed Rule so wind farm developers in Ohio can proceed with their projects and seek the necessary waivers for turbine setbacks. If not clarified, turbine siting within setback areas could be left in the control of property owners on the opposite side of the turbine property, property owners who are not affected by the location of the turbine in the setback area. This would have a devastating effect on the development of wind farms in Ohio, especially as turbine siting in Ohio is site specific given the available wind resources in Ohio.

Accordingly, Buckeye Wind respectfully requests that its Application for Rehearing be granted and that the Board adopt Buckeye Wind's recommended revisions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 28th day of November 2008 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.



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