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BEFORE  
THE OHIO POWER SITING BOARD

In the Matter of the Power Siting Board's )  
Adoption of Chapter 4906-17 of the Ohio )  
Administrative Code and the Amendment ) Case No. 08-1024-EL-ORD  
Of Certain Rules in Chapters 4906-1, )  
4906-5, and Rule 4906-7-17 of the Ohio )  
Administrative Code to Implement )  
Certification Requirements for Electric )  
Generating Wind Facilities )

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UNION NEIGHBORS UNITED'S MEMORANDUM CONTRA  
APPLICATION FOR REHEARING OF BUCKEYE WIND, LLC

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Union Neighbors United opposes Buckeye Wind, LLC's application for rehearing concerning the Ohio Power Siting Board's Rule 4906-17-08(C)(1)(c)(iii), because the revision sought by Buckeye Wind is contrary to the requirements of R.C. § 4906.20(A)(2).

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." For purposes of comparison, R.C. § 4906.20(A)(2) provides in relevant part:

The rules also shall prescribe a minimum setback for a wind turbine of an economically significant wind farm. . . .  
The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property

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waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the Board determines that a setback greater than the minimum is necessary.

Buckeye Wind asks the Board to revise Rule 4906-17-08(C)(1)(c)(iii) to permit waiver of the minimum setback where all owners of property *within the minimum setback to the wind turbine* agree to the waiver. Such a revision would be inconsistent with R.C. § 4906.20(A)(2), which allows waiver of the minimum setback applicable to the wind farm property only by all owners of property adjacent to the wind farm property. The statute does not state that the waiver requirement is limited only to those landowners within the setback distance.

It is well-established that where the language of a statute is clear and unambiguous, the statute must be enforced as written, neither adding to or subtracting from the statute. *Howard v. Miami Twp. Fire Div.*, 119 Ohio St.3d 1, 4 (2008); R.C. § 1.49. If the statute is unambiguous, there is no need to interpret the statute; it must simply be applied. *Howard* at 4, citing *State v. Hairston*, 101 Ohio St.3d 308 (2004).

Though Buckeye Wind urges revision of § Rule 4906-17-08(C)(1)(c)(iii) based on suggestions of legislative intent, such interpretive arguments are not appropriate in this case because R.C. § 4906.20(A)(2) is clear and unambiguous on the subject of minimum setback waivers. Waivers may only be granted where all owners of property *adjacent to the wind farm property* agree to waive the setback for that property. The term “adjacent” means “near or close (to something); adjoining.” Webster’s New World College

Dictionary (4<sup>th</sup> ed. 1999). The term “adjoining” means “touching at some point or along a line; contiguous.” *Id.* Since these meanings are simple and clear, the Board should not resort to considerations of legislative intent or other means of statutory interpretation.<sup>1</sup> On the subject of minimum setback waivers, current Rule 4906-17-08(C)(1)(c)(iii) is consistent with the relevant provisions of R.C. § 4906.20(A)(2).

For these reasons, Buckeye Wind, LLC’s Application for Rehearing should be denied.

Respectfully submitted,



Christopher A. Walker (0040696)  
VAN KLEY & WALKER, LLC  
137 N. Main St., Suite 316  
Dayton, OH 45419  
(937) 226-9000  
(937) 226-9002 fax  
[cwalker@vankleywalker.com](mailto:cwalker@vankleywalker.com)

Counsel for Union Neighbors United

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<sup>1</sup> Even if legislative intent was a relevant and appropriate consideration for the Board, the legislative history of Am. Sub. H.B. 562 does not support Buckeye Wind’s application for rehearing. The Legislative Services Commission’s Revised Bill Analysis on Am. Sub. H.B. 562 is silent on the subject of minimum setback waivers. Legislative Services Commission, Bill Analysis of Am. Sub. H.B. 562(as passed by the General Assembly) at 146-46.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Application for Rehearing was served upon the following parties of record by Regular U.S. Mail on this 5<sup>th</sup> day of December, 2008.



Christopher A. Walker  
Counsel for Union Neighbors United

## SERVICE LIST

Sally Bloomfield  
Marie J. Armstrong  
Terrence O'Donnell  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215

Matt S. White  
Chester Willcox & Saxbe  
65 E State Street  
Columbus, OH 43228

Elizabeth H. Watts  
Duke Energy Ohio  
155 East Broad Street  
Columbus, OH 43215

Howard Petricoff  
Stephen Howard  
Michael J. Settineri  
Vorys, Sater, Seymour and Pease LLP  
P.O. Box 1008  
Columbus, OH 43216-1008

Audubon Ohio  
692 N High Street Suite 303  
Columbus, OH 43215

BQ Energy LLC  
20 Jon Barrett Road  
Patterson, NY 12563

E-Coustic Solutions  
P.O. Box 1129  
Okemos, MI 48805

U.S. Fish & Wildlife Service  
Ecological Services  
6950 Americana Parkway, Suite H  
Reynoldsburg, OH 43068-4127

Marc Gerken, P.E., President  
American Municipal Power-Ohio Inc  
2600 Airport Drive  
Columbus, OH 43219-2226

Buckeye Wind LLC  
52 E Gay Street  
Columbus, OH 43215

Selwyn J. R. Dias  
American Electric Power  
88 E. Broad Street Suite 800  
Columbus, OH 43215-3550

Dona Seger-Lawson  
Dayton Power & Light Company  
1065 Woodman Drive  
Dayton, OH 45432

Michael D. Dortch  
Kravitz, Brown, & Dortch, LLC  
65 E. State Street Suite 200  
Columbus, OH 43215-4277

FPL Energy Power Marketing Inc  
700 Universe Boulevard CTR/JB  
Juno Beach, FL 33408

David E. Nash  
McMahon DeGulis LLP  
812 Huron Road E. Suite 650  
Cleveland, OH 44115-1168

JW Great Lakes Wind LLC  
7870 Olentangy River Road, Suite 209  
Columbus, OH 43235

Harvey Wagner, VP and CON  
FirstEnergy Corp  
76 S. Main Street  
Akron, OH 44308

Dale Arnold  
Ohio Farm Bureau Federation, Inc.  
P.O. Box 182383  
Columbus, OH 43218

Ohio Valley Electric Corporation  
D.E. Jones  
3932 U.S. Route 23 P.O. Box 468  
Piketon, OH 45661

Urbana Country Club  
4761 East US Hwy 36  
Urbana, OH 43078