

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)
 of Certain Rules in Chapters 4906-1, 4906-5) Case No. 08-1024-EL-ORD
 and Rule 4906-7-17 of the Ohio)
 Administrative Code to Implement)
 Certification Requirements for Electric)
 Generating Wind Facilities.)

ENTRY

The Administrative Law Judge finds:

- (1) On September 15, 2008, the Board issued for comments and reply comments its Staff's proposal to adopt rules to implement certification requirements for electric generating wind facilities in Chapter 4906-17, Ohio Administrative Code (O.A.C.), and, in order to accommodate the adoption of Chapter 4906-17, O.A.C., Staff's proposal to amend certain rules in Chapters 4906-1 and 4906-5 and Rule 4906-7-17, O.A.C. Comments were due by September 29, 2008 and reply comments were due by October 7, 2008.
- (2) After evaluating Staff's proposal, the comments and reply comments, the Board issued its order adopting rules for the construction, operation, and maintenance of electric generating wind facilities on October 28, 2008.
- (3) Applications for rehearing were filed by Union Neighbors United (UNU) and Buckeye Wind, LLC (Buckeye) on November 26, 2008 and November 28, 2008, respectively. In its application for rehearing, UNU requests that the Board reconsider the adoption of minimum noise standards and measurement protocols as a part of Chapter 4906-17, O.A.C., in order that additional evidence may be developed to support regulatory criteria for noise measurement and mitigation.
- (4) Pursuant to Rule 4906-7-17, O.A.C., the Administrative Law Judge may grant an application for rehearing for the limited purpose of affording the Board additional time to consider the

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issues raised. Pursuant to Rule 4906-7-17, O.A.C., by entry issued December 17, 2008, the Administrative Law Judge granted UNU's and Buckeye's applications for rehearing for the purpose of affording the Board additional time to consider the issues raised. Accordingly, the Board will consider the merits of the applications for rehearing.

- (5) On January 13, 2009, UNU filed a request for a prehearing conference. More specifically, UNU requests, in light of the Administrative Law Judge's grant of the applications for rehearing, that a conference be scheduled for the purpose of discussing the scope of additional evidence, arguments or rebuttal, if any, to be offered.
- (6) Section 4903.10, Revised Code, applicable to Board proceedings in accordance with Section 4906.12, Revised Code, states in relevant part:

If the [board] does not grant or deny such application for rehearing within thirty days from the date of filing thereof, it is denied by operation of law.

If the [board] grants such rehearing, it shall specify in the notice of such granting the purpose for which it is granted. The [board] shall also specify the scope of the additional evidence, if any, that will be taken, but it shall not upon such rehearing take any evidence that, with reasonable diligence, could have been offered upon the original hearing.

- (7) Accordingly, pursuant to Sections 4903.10 and 4906.12, Revised Code, absent some action by the Board within 30 days after the applications were filed, the applications for rehearing would be denied by operation of law. As stated in the December 17, 2008 entry, the purpose for granting rehearing as to UNU's and Buckeye's applications for rehearing was merely to grant the Board additional time to consider the issues raised by the applications and to subsequently issue its decision on the merits of each application. The Administrative Law Judge notes that this case is on the Board's agenda to be discussed at its next scheduled meeting on January 26, 2009, where the

Board will consider the merits of the applications for rehearing and issue its entry on the rehearing applications. If the Board determines that further evidence or comments on a particular issue is appropriate, the Board will address the process for the submission of evidence or comments.

- (8) For these reasons, the Administrative Law Judge finds that UNU has misinterpreted the December 17, 2008, entry and, therefore, its request for a procedural conference is premature and should be denied. Accordingly, UNU's request for a procedural conference is denied.

It is, therefore,

ORDERED, That UNU's request for a procedural conference is denied. It is, further,

ORDERED, That a copy of this entry be served upon all commenters and all interested persons of record in this proceeding.

THE OHIO POWER SITING BOARD



By: Greta See
Administrative Law Judge

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vrm

Entered in the Journal

JAN 14 2009



Renee J. Jenkins
Secretary