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BEFORE THE OHIO POWER SITING BOARD

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

**CHAMPAIGN COUNTY BOARD OF COMMISSIONERS AND THE
BOARDS OF TRUSTEES OF GOSHEN, SALEM, UNION, URBANA AND
WAYNE TOWNSHIPS' RESPONSE TO BUCKEYE WIND, LLC'S
APPLICATION FOR REHEARING**

The six Champaign County political subdivisions, consisting of the Champaign County Board of County Commissioners and Boards of Trustees of Goshen, Salem, Union, Urbana and Wayne Townships ("Boards") request that the Ohio Power Siting Board ("OPSB") deny Buckeye Wind, LLC's ("Applicant") application for rehearing prior to the issuance of the Certificate of Environmental Compatibility and Public Need for the construction, operation and maintenance of a wind-powered electric generation facility in Champaign County ("Certificate") to Applicant for the following reasons:

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A. Condition 30 is not unreasonable or unlawful as written.

Applicant has set forth no actual legal basis for its contention that the Condition 30 to the Certificate is unreasonable or unlawful. Applicant solely offers its opinion that the Board of Trustees of Union Township does not want a screening plan and therefore, the Applicant should not be obligated to erect it. However, Applicant does indicate that it does not object to putting in screening, unless the landowners or the Union township trustees prefer it not to be screened. (Applicant's Motion for Rehearing at pg. 4).

Certainly, Applicant's current obligations set forth in Condition 30 could still be waived hereafter without rehearing at this time, as the OPSB's purpose for establishing such condition was to protect the cemetery and those visiting the cemetery from the impact of the turbines. If the owner of the cemetery was not in favor of a screen at the west and north boundary of its property, the Board of Trustees of Union Township along with the other adjacent landowner(s) could, hereafter, address a waiver or modification of the obligation of Condition 30. The OPSB noted in its Opinion and Order of March 22, 2010 ("Order") that, in accordance with R.C. § 4906.07, it is required to hold a hearing in the same manner as on the application, where the amendment of a certificate involves any material increase in any environmental impact or substantial change in the location of all or a portion of the facility. (Order at pg. 82) Therefore, an available procedure has been established for such a circumstance.

However, as the owner of the Fairview Cemetery, the Board of Trustees of Union Township, for the purpose of clarifying Condition 30 at this time, is agreeable to amending the condition to allow for delay of screening until a reasonable time after the turbines are erected or a waiver of the screening at the option of the Board of Trustees of Union Township. The trustees believe that a reasonable time in which to ascertain the need for a screening plan, as well as the placement, height and nature of the screen, would be within five (5) years after the turbine closest to the Fairview Cemetery is operable. This delay allows the trustees to develop the optimum screening plan for the cemetery and identify if there are any complaints regarding the effects of the turbine on funeral services held at said cemetery or on persons visiting grave plots within the cemetery which would be resolved by a screen. The Board of Trustees of Union Township is also not adverse to the possible waiver of Applicant's obligation to screen the cemetery if the trustees decide, after erection of the turbines in view of Fairview Cemetery and review of possible screening options within a reasonable time thereafter, that such a screen is unnecessary.

B. Applicant has provided no legal basis in which to conditionally approve turbines 46, 48, 50, 57, 58, 60, 61, 62, and 63 on the possible change in the status of the Weller airport in the future.

Applicant, in its Application for Rehearing, is asking the OPSB to allow for the possible construction of the nine enumerated turbines now prohibited in the OPSB's Order. The basis for the request is the possibility that Weller Airport may be privatized in the future. However, the OPSB clearly stated in its Order that it

was “not convinced . . . the privatization of Weller Airport would be sufficient to mitigate the FAA’s findings that there would be potential hazard to aviation” (Order at pg. 34).

In addition, this issue is not ripe for reconsideration. As it currently stands, the Weller Airport is a public use airport. Applicant’s presumption that Weller Airport’s change in use is a possibility in the future is not sufficient evidence to support a change in Condition 36 to make this an issue ripe for rehearing.

Again, the Applicant has the ability to alter or amend the Certificate hereafter if the new conditions warrant such a modification. With any subsequent privatization, the OPSB will be required to hold a hearing in the same manner as on the application, where the amendment of a Certificate involves any material increase in any environmental impact or substantial change in the location of all or a portion of the facility, pursuant to R.C. §4906.07(B).

C. Applicant has provided no legal basis to rehear the entire decommissioning bond condition.

There is ample rationale in the record of this case for requiring the decommissioning bond to be established at the time construction commences, rather than waiting one year or five years after commencement of operation. At the evidentiary hearing, the Applicant attempted to downplay the possibility that a proposed facility may not be financially viable prior to operation and within the first five years of operation. (Transcript 1 at pg. 192-193.) Specifically, Applicant witness Christopher Shears’ asserted that it was “inconceivable that that the

proposed facility would not operate during the first five years” at the evidentiary hearing. (Order at pg. 72). However, it is reasonable to conclude that the OPSB did not fully adopt Mr. Shear’s statement as the OPSB indicated in its Order that it “believes that some financial assurance is appropriate upon construction”. (Order at pg. 76) Applicant has not offered any further evidence for rehearing except the same testimony presented at the evidentiary hearing regarding the timing of the posting of the bond. Allowing the rehearing on the timing of the decommissioning bond is just another attempt by Applicant to sway the OPSB to modify its decision based solely upon evidence already presented to and discounted by the OPSB by virtue of the language set forth in its Order.

The Boards have previously requested rehearing on particular issues regarding decommissioning bonds as (1) there is no evidence before the board that the initial bond of \$5,000.00 is sufficient and (2) there was substantial evidence presented at the evidentiary hearing regarding volatile salvage values to find for a bond amount exceeding 100% of the net decommissioning cost, as had been approved in the two Hardin County cases.

However, the entire process should not be reheard solely due to the inconsistencies with the Hardin County cases. There was a lengthy evidentiary hearing in this matter at which time the Applicant presented its evidence regarding the amount and timing of the decommissioning bond. The underlying purpose of decommissioning bonds is, in essence, to “protect the public interest” (Order at pg. 76) by reducing the risk of a financial outlay if the local governmental entities or

the landowner need to remove the facility and if the developer is financially unable to do so. The Boards' position is that "sufficiency" in protecting the public interest should outweigh the "uniformity" in bonding requirements propounded by Applicant.

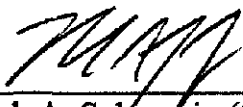
Applicant asserts that the OPSB should mirror the decommissioning fund requirement it adopted for the J.W. Great Lakes Energy and Hardin Wind Energy Certificates. (Applicant's Motion for Rehearing at pg. 13) Applicant does not address the fact that in those two Hardin County cases, the decommissioning process and bond conditions were ordered upon stipulation of the parties. Further, neither the Hardin County Commissioners nor any of the Hardin County townships where the wind turbines are to be located were intervenors in those cases. No representatives of the public were parties to the stipulated decommissioning process and bond to protect the "public interest". No evidence was presented therein regarding the sufficiency or timing of the posting of the decommissioning bond proposed. Therefore, there is no evidentiary value in the resulting stipulation as it applies to this Champaign County case.

For the following reasons, the Board of Commissioners of Champaign County and the Boards of Trustees of Goshen, Salem, Union, Urbana and Wayne Townships request that:


1. Condition 30 not be reheard but clarified as set forth herein,
2. The prohibition in constructing turbines 46, 48, 50, 57, 58, 60, 61, 62, and 63 set forth in Condition 36 not be reheard, and

3. That the Decommissioning Bond conditions, being Condition 69 and 70, not be reheard in its entirety, but solely on the two specific issues addressed in the Boards' Application for Rehearing and Reconsideration.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record via electronic mail on this 5th day of May, 2010:

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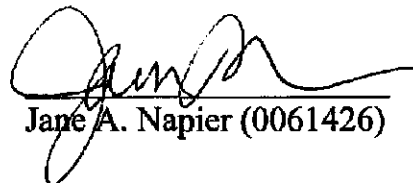
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