

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **BLUE CREEK**)
WIND FARM, LLC for a **Second** Amendment to its)
Certificate to Install a Wind-Powered Electric) Case No. 11-3644-EL-BGA
Generation Facility in the Counties of Van Wert and)
Paulding, Ohio.)

**BLUE CREEK WIND FARM LLC'S MEMORANDUM CONTRA
MILO SCHAFFNER'S REQUEST FOR HEARING**

I. INTRODUCTION/BACKGROUND

On July 14, 2011, the Staff of the Ohio Power Siting Board (“OPSB” or “Board”) filed a letter addressed to Mr. Milo Schaffner in response to his letter dated June 30, 2011 (“Request”)¹ in the above-captioned proceeding. Blue Creek Wind Farm LLC (“Blue Creek”) opposes the request of Mr. Schaffner for a hearing on this matter.

A brief background of the Blue Creek proceedings before the Board would be helpful in discussing the facts concerning the Blue Creek wind farm project. Blue Creek filed its application, Case No. 09-1066-EL-BGN (“Application Case”) on December 21, 2009 and the Board issued an Opinion, Order and Certificate (“Certificate”) on August 23, 2010 granting the application with conditions. On April 12, 2011, Blue Creek filed an amendment in Case No. 11-1995-EL-BGA (“First Amendment”) requesting the approval of 8 additional turbines to be located on property that was not previously proposed for turbines. At the same time, it submitted a new noise study that not only included the new turbines, but also was conducted to include the

¹ Mr. Schaffner’s letter for the first time was placed in the docket on July 14th and it was never served on Blue Creek.

area covered by the Certificate in the Application Case. A second amendment was filed in this proceeding on June 17, 2011 (“Second Amendment”) to clarify Conditions 42 and 43 in the Application Case.

II. ARGUMENT

A. The Board Should Deny Mr. Schaffner’s Request for a Public Hearing

Mr. Schaffner’s request for a hearing should be denied. Mr. Schaffner has neither alleged, nor met, the requirements in Ohio Administrative Code (“OAC”) Rule 4906-5-10(B)(1)(a), which state that a hearing shall be held only if there is a determination that the proposed change(s) in an Amendment:

would result in any significant adverse environmental impact of the certified facility, or [would result in] a substantial change in the location of all or a portion of such certified facility. . .

There are no changes proposed to the Application Case or the First Amendment: a clarification is sought with respect to the noise standard. Mr. Schaffner has neither addressed nor met the criteria to justify a public hearing.

Blue Creek’s Certificate was granted on August 23, 2010 and construction has been ongoing. Indeed, more than one third of the turbines have been installed. The Second Amendment merely asked for a clarification of Conditions 42 and 43. Blue Creek’s amended noise study in the Application Case was filed in April 2011. There has been no change in Blue Creek’s position since then. The sound levels predicted at residences within the project area have not changed, so there is no “significant adverse environmental impact.” The noise studies that were conducted in the Application Case, which studies, showing a maximum ambient noise level of 55 dBA at residences within one mile of the Project area, were recommended by the OPSB and referenced in the Opinion, Order and Certificate issued August 23, 2010 in the

Application case, Case No. 09-1066-EL-BGN (at 8, 16). It has been Blue Creek's understanding, however, that the upper noise boundary agreed to by the parties to the Stipulation was 50 dBA². This Second Amendment merely asks for a clarification of that understanding because the Condition 42 and 43 did not cite a specific noise standard (as have wind application cases which have followed). The Second Application did not contain any new information; indeed, it did not follow the standard amendment application format because Blue Creek was not proposing anything new or different than it had presented in the Application or its First Amendment.

Recognizing that the nature of the process is intended to allow the public to participate, in this case there is no new information and Mr. Schaffner has already had ample opportunity to publicly air his concerns, both before the OPSB and at public forums. He has been an active participant, though not a formal intervener, in the Blue Creek Application Case process. Most recently on April 29, 2011 Mr. Schaffner filed a request for a determination of issues raised by the Hoaglin and Tully Township Trustees in their communications filed March 22, 2011 to which Ms. Wissman responded on May 3, 2011. Prior to March, 2011, Mr. Schaffner had filed letters on August 11, 2010 and May 22, 2010. Mr. Schaffner testified against wind farms in general at the local public hearing held on July 8, 2010. By requesting a hearing in this Second Amendment which does not present anything new, but rather asks for a clarification stemming from ambiguity in the Application Case, Mr. Schaffner is seeking an unwarranted opportunity to express his opposition to wind farms in general and to the Blue Creek Wind Farm in particular. He has already had many opportunities to do so. Using this case as an excuse to repeat his opposition at a public hearing is unwarranted.

² Blue Creek acknowledges that the Staff does not necessarily agree with Blue Creek's understanding--- hence the need for clarification.

Because this Second Amendment does not present any new information or propose to make any changes in the previous Application or First Amendment, Mr. Schaffner's request for a public hearing should not be granted. His baseless request would delay this project and possibly jeopardize the continued construction of the project.

The Board's own rules compel that the OPSB deny a hearing in this matter. In addition, the history of Mr. Schaffner's participation in the Application case also compels a determination that a hearing is unnecessary.

III. CONCLUSION

For the reasons given above, Mr. Schaffner's request for a public hearing should be denied.

Respectfully submitted on behalf of
BLUE CREEK WIND FARM LLC



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon the following parties of record via regular U.S. Mail and/or by electronic mail this 19th day of July 2011.



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Summary: Memorandum Contra Milo Schaffner's Request for Hearing electronically filed by
Teresa Orahod on behalf of Blue Creek Wind Farm, LLC