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October 11, 2012

ELECTRONIC FILING

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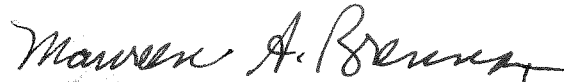
The Ohio Power Siting Board
180 East Broad Street
Columbus, Ohio 43215

Re: Case No. 12-0160-EL-GBN

Dear Sir or Madam:

Enclosed on behalf of Gamesa Wind US, LLC please find *Motion To Quash The Subpoena Duces Tecum Filed By Union Neighbors United, Inc. Et Al. And, In The Alternative For A Protective Order.*

Very truly yours,



Maureen A. Brennan

Enclosure

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of Champaign
Wind LLC for a Certificate to Install Electricity
Generating Wind Turbines in Champaign
County

Case No. 12-0160-EL-GBN

MOTION TO QUASH THE SUBPOENA DUCES TECUM FILED BY UNION NEIGHBORS UNITED, INC. ET AL. AND, IN THE ALTERNATIVE FOR A PROTECTIVE ORDER

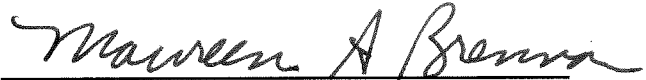
Gamesa Wind US, LLC, pursuant to Ohio Administrative Code (OAC) 4906-7-08(C), and by its counsel, respectfully requests that the Ohio Power Siting Board (Board) quash the *Subpoena Duces Tecum* filed by Union Neighbors United, Inc. (UNU) et al. purporting to compel a representative of Gamesa Wind US, LLC (Gamesa) to appear for oral examination on October 18, 2012 and to require Gamesa to provide certain documents for UNU's inspection and examination. The Subpoena should be quashed for the following reasons:

1. The Subpoena was untimely served;
2. The Subpoena is unduly burdensome and oppressive because it:
 - a. requests information that is publicly available and information that is not likely to lead to the discovery of admissible evidence;
 - b. is not limited in scope;
 - c. requests information which is confidential, proprietary and a trade secret without adequate and necessary protection;
 - d. creates a chilling effect on commerce.

Based on the foregoing and the arguments set forth in the accompanying Memorandum in Support, Gamesa moves the Board for an Order quashing UNU's *Subpoena Duces Tecum* and for a ruling that Gamesa need not appear nor produce any documents.

Alternatively, if the Board denies this Motion to Quash in whole or in part, Gamesa respectfully requests that the Board narrow the Subpoena appropriately, place a protective order on confidential, proprietary and trade secret information and condition the denial upon UNU's advancement of costs to produce a witness in Columbus and for the copying of documents to comply with the request.

Respectfully Submitted,

A handwritten signature in black ink that reads "Maureen A. Brennan". The signature is fluid and cursive, with the first name "Maureen" and last name "Brennan" clearly legible.

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MEMORANDUM IN SUPPORT

I. THE SUBPOENA WAS UNTIMELY SERVED

This Board should quash Union Neighbors United, Inc.'s (UNU) requested Subpoena because UNU waited ten (10) days to serve Gamesa Wind US, LLC (Gamesa) properly. By serving Gamesa on the afternoon of October 8, 2012, UNU has left Gamesa with barely 10 days to meet the October 18 response date. National Registered Agents, Inc. is Gamesa's authorized statutory agent and is empowered to accept service of process on its behalf. UNU served National Registered Agents, Inc. at 1:06 p.m. on October 8, 2012 even though the Ohio Power Siting Board (Board) issued the Subpoena on the day UNU requested it: September 28, 2012.

The Subpoena at issue requires Gamesa (1) to make available an oppressive set of records, and (2) to "provide deposition testimony.... on October 18" Subpoena page 1. See attached. Gamesa was only aware of UNU's filed Motion for *Subpoena Duces Tecum* and able to prepare this Motion to Quash in a timely manner because counsel for EverPower Wind Holding, Inc. informed counsel for Gamesa that such Motion was filed by UNU. This third party notice does not constitute proper service under either the Board's rules or the Ohio Rules of Civil Procedure. Service at this late date does not provide Gamesa with a reasonable time to respond, assuming, arguendo, that the remaining reasons herein are not a sufficient basis to quash.

II. THE SUBPOENA SHOULD BE QUASHED AS BEING OPPRESSIVE AND UNDULY BURDENSOME

A. UNU's Subpoena Requests Information that is Publicly Available and Information that is Not Likely to Lead to the Discovery of Admissible Evidence.

Pursuant to OAC 4906-7-08(C) the Board may quash a subpoena if it is unreasonable or oppressive. UNU's Subpoena to Gamesa is both unreasonable and oppressive because it

requires Gamesa to acquire and provide information that is outside of its possession and control. The Ohio Supreme Court has addressed this issue pursuant to Ohio's Crim. R. 17(C), which is analogous to OAC 4906-7-08(C), as it also states, "a court may quash a subpoena if compliance would be unreasonable or oppressive." The Ohio Supreme Court expressly adopted the Supreme Court of the United States' test to determine whether a subpoena *duces tecum* is unreasonable and oppressive. In, *In re Subpoena Duces Tecum Served Upon Atty. Potts*, the Ohio Supreme set forth this test to determine if a subpoena is unreasonable and oppressive:

(1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) the application is made in good faith and is not intended as a general 'fishing expedition'.

In re Subpoena Duces Tecum Served Upon Atty. Potts, 100 Ohio St. 3d 97, 100 (Ohio 2003) quoting *United States v. Nixon*, 418 U.S. 683, 699-700 (1974). Factors that other forums have used to determine whether the Subpoena is unreasonable or oppressive include:

1. the burden or cost of production;
2. the relevance of the materials sought to the proceeding;
3. the breadth of the materials sought;
4. the amount of time available to produce the materials;
5. the scope of the request and whether it impacts confidential information; and
6. whether the materials are already available to the movant.

See *In the Matter of the Complaint of Brenda Fitzgerald and Gerard Fitzgerald, Complainant, v. Duke Energy Ohio, Inc., Respondent.*, 2011 WL 1682213 (Ohio P.U.C., 2011) (quashing document production portions of subpoena that were too broad, unduly burdensome, asking for information that complainant already possessed and impacting confidential information); *Ping v.*

Payne, 1999 WL 1267023, 4 (Ohio App. 2 Dist., 1999) (subpoena requesting personal income tax returns, public records, and records pertaining to customers quashed: unreasonable and oppressive because, inter alia it would be too oppressive to require compliance on short notice.); *City of Toledo v. Enis*, 1987 WL 19477, 2 (Ohio App. 6 Dist., 1987) (subpoena quashed where information covered approximately seven areas, nine individuals, and spanned at least a two-year period; uncertain if information relevant to case and court found subpoena overly burdensome.).

Similar to the examples above, the Subpoena at issue here is unreasonable and oppressive. Specifically, Item 1 in the Subpoena requests Gamesa to provide "all documents relating to any blade failure or blade damage that occurred at any wind turbine." Since the request places no limits on what manufacturers' information UNU is targeting, much of what UNU is requesting will be found on the Internet, in the public filings of other proceedings regarding wind farms or wind farm permitting throughout the United States or in the public files of state and federal government agencies. To the extent that this information is publicly available, Gamesa should not be required to comb through the files of its world-wide operations for documents that UNU can find on its own.

Another example of the oppressive nature of the Subpoena is found in Item 2. Item 2 requests "all studies, reports, and other documents relating to the distance that turbine blades can fly when released from wind turbines." Once again, UNU wants Gamesa to conduct a search of its world-wide operations for data which UNU can find on the Internet, in public filings in other wind farm proceedings and in public agency files. Even if the Subpoena were limited to Gamesa turbines, it is a waste of the Board's time to hear extensive evidence on general information about possible turbine blade failures for turbines which have never been under consideration for this project.

In addition, OAC 4906-7-07(A)(2) sets forth the scope of discovery in proceedings before the Board, providing in relevant part, “any party to a Board proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of that proceeding. It is not grounds for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” On its face, UNU’s request imposes a search of the files of Gamesa’s world-wide operations for information on all sizes and models of any manufacturer’s wind turbines without any regard to whether the information could reasonably lead to the discovery of admissible evidence. The turbines that the applicant finally selects are the only turbines that are actually relevant. The applicant will have to use vendors that can meet the conditions set by the OPSB in its regulations and permit.

Even if the Subpoena was limited to the G97 Gamesa turbine, which is a possible turbine choice of the applicant, Champaign Wind LLC has not selected Gamesa as a vendor. Therefore, it is a waste of the Board’s time to hear extensive evidence on general information about a turbine which may never be selected for this project. The Board has set protective standards in its regulations and in the applicant’s permit which the applicant will find technology to meet.

Problems identical to those in Items 1 and 2 exist with Subpoena Items 5, 7, 8 and 9 and Item 4 to the extent it asks for records about other turbine models besides the G97. To the extent Item 4 asks for documents about the G97, since the G97 has not been selected, it is a waste of the Board’s time to hear evidence on it.

Regarding Subpoena Item 6, the request asks for all complaints about any Gamesa wind turbine. UNU has made no showing that information about turbines which have not and will not be considered for this project is calculated to lead to the discovery of relevant admissible evidence.

B. UNU's Subpoena is Not Limited in Scope.

The Subpoena is also unduly burdensome because the Subpoena is unreasonably broad in scope. Items 1, 2, 5, 7, 8 and 9 and 4 (to the extent it is not limited to the relevant Gamesa turbine model) all ask Gamesa to find and produce for UNU records from its world-wide files that relate to a laundry-list of wind turbine issues. UNU's request, as it pertains to this information, is overly broad. Such an unlimited request clearly is oppressive.

C. UNU's Subpoena Requests Information That is Confidential, Proprietary and a Trade Secret Without Adequate and Necessary Protection.

Gamesa responded to a Request for Proposal from Champaign Wind LLC for data on Gamesa's turbines that would be suitable for this Ohio project. Gamesa is in competition with other wind turbine manufacturers for this business. Subpoena Item 10 requests "all documents relating to communications with Champaign Wind LLC, Buckeye Wind LLC, or EverPower Wind Holding, Inc. relating to potential wind turbine projects in Champaign County, Ohio." Such documents contain confidential and proprietary business information and trade secrets that will clearly prejudice Gamesa in its bid to obtain this turbine contract if released to its competitors. Information shared with prospective customers with which Gamesa will have a confidential business relationship cannot be disclosed in a public forum without undue harm to Gamesa's economic interests. Only prospective business partners with a legitimate business need to know and need to act upon the information obtain that information from Gamesa.

Regarding Subpoena Item 3, Gamesa provides noise data to prospective customers. It does not distribute that information to the public. This information only goes to customers after confidentiality agreements are in place.

It is unreasonable and oppressive to compel the discovery of these documents in that it would cause irreparable damages to Gamesa's ability to negotiate contracts and conduct its

business in a competitive market place. Accordingly, the Board should quash UNU's Subpoena.

D. UNU's Subpoena is Burdensome and Oppressive Because It Creates a Chilling Effect on Commerce.

UNU's subpoena is burdensome and overboard because subpoenas to potential vendors for a project create a chilling effect on the procurement process for any wind farm developer. This alleged discovery tool thereby allow an intervenor opposed to the project to achieve its ends because of the cost to vendors of responding to or defending against such subpoenas will discourage vendors from bidding on these jobs. The cost to any prospective vendor is oppressive because the current scope includes information on any Gamesa turbine, in fact, any turbine at all even if such a turbine is no longer manufactured. Gamesa manufactures turbines to satisfy a myriad of U.S. and international regulations and a variety of physical and environmental factors. Having such information compiled and available to the public puts Gamesa at a competitive disadvantage. Wind Turbine manufacturing is a new and highly competitive industry. The Board should not allow opponents to abuse the discovery process in order to undermine it.

E. Subpoena Item 4.

Subpoena Item 4 requests "all studies, reports, and other documents relating to the amount of low frequency noise and/or its effects that are produced by wind turbines, including the Gamesa G97 turbine model." To the extent that this request identifies the G97, Gamesa does not have any records responsive to this request. See earlier discussion on the overbroad nature of the remainder of Subpoena Item 4.

F. Assistance to the Board on Confidential, Proprietary and Trade Secret Information.

At the Board's request and only if it will assist the Board in making a ruling regarding certain aspects of this Motion to Quash, Gamesa is willing to make the confidential, proprietary

and trade secret information covered by the Subpoena available to the Board for an *in camera* review. By this review, the Board can determine that these documents between Gamesa and third parties have nothing to do with the above-captioned matters, are inadmissible, and, therefore, are not properly subject to discovery.

Gamesa proposes the following methods for the *in camera* review, in order of Gamesa's preference:

1. Gamesa will make the confidential, proprietary and trade secret information available for the Board's *in camera* inspection and review at the Trevoze, Pennsylvania office of Gamesa; or
2. Gamesa will temporarily provide, but will not file, copies of these documents to the Board for its *in camera* inspection, subject to confidential trade secret protection, at a specific time and place at the Board's discretion. Counsel for Gamesa will wait while the Board reviews the documents to determine their relevancy to the above-captioned proceedings, and once the Board is through reviewing the documents, Gamesa will retain possession.
3. Gamesa will file the documents under seal with an accompanying Motion for Protection for the Board's *in camera* review.

If, after an *in camera* inspection, the Board determines, that these documents are relevant and admissible in the above-captioned proceedings, Gamesa will file the documents, in the above docket, under seal and subject to reasonable protections from public disclosure. Gamesa will also permit inspection by the parties to this proceeding only, pursuant to an executed confidentiality agreement with Gamesa.

III. ALTERNATIVE REQUEST FOR PROTECTIVE ORDER

For the reasons explained in this memorandum, UNU's Subpoena should be quashed. However, if the Board denies Gamesa's Motion to Quash, Gamesa respectfully requests that the Board view this as a Motion for a Protective Order pursuant to OAC 4906-7-07(H)(1). Gamesa respectfully requests that the Board waive the OAC 4906-7-07(H)(2) requirement that Gamesa's counsel exhaust all reasonable means to settle the discovery dispute and file an accompanying affidavit. Given the short time frame for response, the lack of proper service, the divergent interests of Gamesa and UNU, and the desire of the Board to expedite the entire proceeding, Gamesa anticipates that reaching an agreeable solution concerning the confidentiality of the documents with UNU will be problematic.

As explained above, information sought by UNU is confidential, proprietary and contains trade secrets. Such information, therefore, should only be produced pursuant to a protective order and a confidentiality agreement between Gamesa and UNU. Such a protective order and confidentiality agreement would limit information produced pursuant to the Subpoena for use by UNU in the above-captioned proceeding only. Gamesa further requests that any deposition of a Gamesa witness be conducted under seal in the presence of UNU and counsel for Gamesa only. Further, Gamesa requests that the transcript of such deposition be given confidential treatment, and if filed, be filed under seal and used only by UNU solely for purposes of the above-captioned proceedings.

Although Gamesa is not a party to the above-captioned proceedings it is a person from whom discovery is being sought pursuant to OAC 4906-7-07(H)(1)(a), (d), (e) and (g). Gamesa respectfully requests the Board issue a Protective Order that discovery not be had, or in the alternative, that certain matters not be inquired into, discovery be limited, and that any discovery provided be done pursuant to a confidentiality agreement.

Lastly, if the Board denies Gamesa's Motion to Quash, given that Gamesa is a non-party to the above-captioned proceedings, it is only reasonable that pursuant to OAC 4906-7-08(F), the Board condition the denial upon UNU's advancement of the reasonable costs for Gamesa to produce a witness, as well as make the copies of the requested documents. The deposition is scheduled to occur on October 18 at the offices of Jack VanKley, 132 Northwood Boulevard, Suite C-1 in Columbus, Ohio. Neither CEO Borja Negro Rua nor any other likely Gamesa witness to be produced in response to the Subpoena resides in Ohio, where both UNU's offices and the Board are located. Likely witnesses live in and around Philadelphia, Pennsylvania and Bilbao, Spain. Accordingly, it is only reasonable that UNU be required to compensate in advance the witness for his or her travel expenses and Gamesa for any copying expenses to be incurred.

IV. CONCLUSION

For the foregoing reasons, Gamesa respectfully moves the Board to immediately quash UNU's *Subpoena Duces Tecum* and any discovery requests sent to any Gamesa affiliate, which purport to request the same type of information from Gamesa. In the alternative, Gamesa requests the Board issue appropriate protective orders as outlined above.

Respectfully Submitted,



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Counsel for Gamesa Wind US, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following parties or record via e-mail and U.S. Mail this 11th day of October, 2012.

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Counsel for Gamesa Wind US, LLC

BEFORE THE OHIO POWER SITING BOARD

**In the Matter of the Application)
of Champaign Wind LLC for a)
Certificate to Install Electricity) Case No. 12-0160-EL-BGN
Generating Wind Turbines in)
Champaign County)**

SUBPOENA

TO:

Gamesa Wind US, LLC
c/o National Registered Agents, Inc.
145 Baker Street
Marion, OH 43302

Upon application of Union Neighbors United, Inc., Julie Johnson, and Robert and Diane McConnell, you are hereby required to provide deposition testimony and produce records to their counsel, Van Kley & Walker, LLC, in the following proceeding:

In the Matter of the Application of Champaign Wind LLC for a Certificate to Install Electricity Generating Wind Turbines in Champaign County, Case No. 12-0160-EL-BGN.

You are to appear at the offices of Van Kley & Walker, LLC, 132 Northwoods Blvd., Suite C-1, Columbus, Ohio, on October 18, 2012, at 1 p.m. You shall bring with you unredacted originals or accurate unredacted copies of the records listed below that are in the possession, custody, or control of Gamesa Wind US, LLC or its subsidiaries, parent companies, or sister companies. You need not appear at the office of Van Kley & Walker, LLC in person if you deliver the requested records by mail or other means to that office by October 17, 2012.²

1. All documents relating to any blade failure or blade damage that has occurred at any wind turbine.
2. All studies, reports, and other documents relating to the distance that turbine blades can fly when released from wind turbines.
3. All documents relating to the noise characteristics and noise estimates for the Gamesa G97 turbine model.
4. All studies, reports, and other documents relating to the amount of low frequency noise and/or its effects that are produced by wind turbines, including the Gamesa G97 turbine model.

² If you wish to communicate by telephone with Van Kley & Walker, LLC about this subpoena, you may contact Jack Van Kley at (614) 431-8900.

5. All studies, reports, and other documents relating to adverse effects caused or potentially caused by wind turbines on humans, wildlife, aviation, property values, or the environment through noise, shadow flicker, blade throw, blade icing, wildlife collisions with turbines, or other effects. All documents relating to any complaints that wind turbines have caused any of the foregoing effects.
6. All complaints about wind turbines that have been manufactured or sold by Gamesa.
7. All studies, recommendations, and other documents relating to precautions for wind turbines that can be taken, or equipment that can be installed, to reduce the frequency or amount of noise, shadow flicker, blade throw, blade icing, wildlife collisions with turbines, or other effects.
8. All documents relating to manufacturer's or anyone else's specifications or recommendations for designing, siting, or operating wind turbines in order to reduce the actual or potential adverse effects of wind turbines on the health, safety, comfort, or welfare of the public or neighbors (worker safety information need not be produced). All documents containing information used to develop the foregoing specifications and recommendations.
9. All documents relating to any manufacturer's specifications or recommendations for setbacks or buffers for wind turbines. All documents containing information used to develop the foregoing specifications and recommendations.
10. All documents relating to communications with Champaign Wind, LLC, Buckeye Wind, LLC, or EverPower Wind Holdings, Inc. relating to potential wind turbine projects in Champaign County, Ohio.

DEFINITIONS

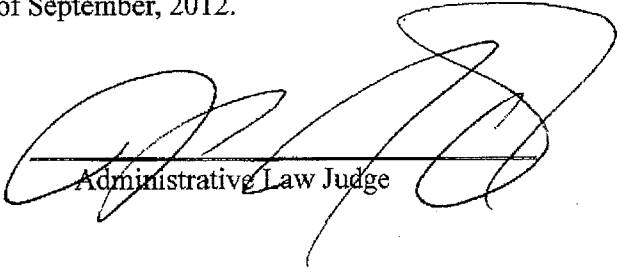
The following definitions apply to the language used in the foregoing document requests:

1. "And" and "or" are both conjunctive and disjunctive and shall be interpreted to call for the most comprehensive information available.
2. "Documents" include but is not limited to all writings, correspondence, memoranda, letters, summaries, notes, reports, studies, manuals, telephone logs, calendars, charts, analyses, papers, contracts, tables, invoices, graphs, books, lists, purchase orders, memoranda of conversations, sample analyses, sample submission forms, laboratory sheets, sketches, photographs, slides, movies, films, videotapes, audiotapes, microfiche, data sheets, chain of custody sheets, manifests, minutes of meetings, jottings, plans, drawings, blueprints, records, permit application records, cards, literature, articles, telegrams, schematics, graphs, tapes, computer

printouts, pamphlets, visual aids, and any other document as defined under the Board's rules. "Documents" is defined to the broadest extent permitted by OAC 4906-7-07 and includes, whenever applicable, the originals (absent any original, a copy) of any record of any intelligence or information (whether handwritten, typed, printed or otherwise visually or aurally reproduced) in your possession, custody or control. "Documents" include drafts and all copies which are not identical to the originals, such as those bearing marginal comments, alterations, notes or other notations not present on the original. "Documents" also includes e-mail and any other record in electronic form, including messages deleted or otherwise stored in any database or stored by any internet service provider.

3. "Gamesa" means Gamesa Wind US, LLC and its subsidiaries, parent companies, and sister companies.
4. "Include" or "including" means including but not limited to.
5. "Relating to" means directly or indirectly mentioning, describing, referring to, pertaining to, being connected with, or reflecting upon the stated subject matter.
6. Where the context herein makes it appropriate, each singular word shall include its plural and each plural shall include its singular.
7. Each of the following words include the meaning of every other listed word: "each", "all", and "any".

Dated at Columbus, Ohio, this 26 day of September, 2012.



Administrative Law Judge

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 12-0160-EL-BGN

Summary: Motion to Quash Subpoena Duces Tecum filed by Union Neighbors United, Inc. or in the Alternative Motion for a Protective Order and Memorandum in Support submitted by Maureen Brennan electronically filed by Mr. Daniel M. McClain on behalf of Gamesa Wind US, LLC