

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)	

INITIAL POST-HEARING BRIEF of CITY OF URBANA, OHIO

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I. INTRODUCTION

The City of Urbana hereby submits its brief in above-titled matter as an Intervenor, pursuant to the schedule established by the Administrative Law Judges at adjudicatory hearing on December 6, 2012.

The City, as the owner and operator of Grimes Field Municipal Airport, as the operator of the Urbana Fire Division, and as a member of the Council of Governments responsible for countywide emergency communications and 911 dispatch, may be adversely affected by decisions of the Ohio Power Siting Board (“OPSB”) related to the Champaign Wind proceeding. Champaign Wind filed its application with the OPSB on May 15, 2012. The City’s Motion to Intervene was granted October 22, 2012. OPSB staff recommended a Certificate be granted for Champaign Wind with certain conditions.¹

In accordance with the directive of the Administrative Law Judges, this brief does not include a detailed procedural history. However, to avoid confusion the City must clarify references to “Champaign Wind” and “Buckeye Wind” as those terms are used in this brief. “Buckeye Wind” refers to an earlier application filed in 2008,² and “Champaign Wind” to the pending application. Just as it was impossible to avoid asking relevant questions about

¹ Staff Report of Investigation, filed October 10, 2012.

² Case No. 08-EL-BGN-0666.

Champaign Wind's "sister project" during the adjudicatory hearing, this brief must also include limited references to Buckeye Wind.

Buckeye Wind was permitted by the OPSB in 2010, a decision affirmed by the Supreme Court of Ohio upon appeal in March 2012. As Champaign Wind's witnesses testified, the project area for Champaign Wind and Buckeye Wind is substantially the same, consisting of the six townships in the eastern half of Champaign County, Ohio.³ The application itself officially designates Champaign Wind as the "Buckeye II" project.⁴ Both projects have the same developer and corporate parent, Everpower Renewables.⁵ While Champaign Wind and Buckeye Wind were filed as separate applications with the OPSB, from the City's perspective, they are simply two phases of one wind development project in the same geographic boundaries.

Therefore, the City's concern is the potential adverse impact of Champaign Wind's development on the City's airport, fire, and emergency medical service operations, as well as communications, economic development, and future growth plans. The City is also troubled by the cumulative impact of Champaign Wind and Buckeye Wind concentrating more than 100 turbine sites in eastern Champaign County, as the proposed structures would dramatically alter the community.

II. SUMMARY OF CONCERNS

The City's Motion to Intervene initially outlined several concerns with the Champaign Wind Application as follows: (1) Champaign Wind's failure to address inadequacies of local first responders to effectively respond to turbine site emergencies for fire and rescue incidents; (2) the

³ Tr. Vol. IV at 887.

⁴ The townships are Goshen, Salem, Rush, Union, Urbana, and Wayne. *See* Application to the Ohio Power Siting Board for a Certificate of Environmental Compatibility and Public Need for the Buckeye II Wind Farm, dated May 15, 2012 (the "Application"); Tr. Vol. IV at 894.

⁵ Tr. Vol. IV at 889.

foreseeable structural impact on the City's streets by subcontractors during construction, without financial assurance to repair damages; (3) the potential for adverse impacts on 911 communications and dispatching, particularly as more individuals rely on wireless devices and other new technology to report emergencies; (4) the probable adverse impact of 492-foot tall wind turbines built in proximity to Grimes Field on general aviation traffic and tourism events at the airport; and (5) adverse impacts on emergency medical helicopter service in the project area.

The City raises additional concerns based on information revealed during cross-examination as follows: (1) potential adverse impact to the City's drinking water supply; (2) the inhibition of future residential and commercial growth of the City in spite of the historic development trend to the east due to the presence of turbines; (3) the inadequacy of the statutory minimum setbacks to protect the public from blade shear, ice shed and fires (and thus, another issue for emergency first responders); and (4) the veracity of the figures forecast for jobs and local government revenue.

III. LAW AND ARGUMENT

To grant a Certificate under Ohio Revised Code 4906.10(A), the OPSB must find:

- (1) The basis of the need for the facility ...;
- (2) The nature of the probable environmental impact;
- (3) The facility represents the minimum adverse environmental impact ...;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric system serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) That the facility will comply with Chapters 3704, 3734, and 6111 of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code;

- (6) The facility will serve the public interest, convenience, and necessity;
- (7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the Revised Code that is located within the site and alternative site of the proposed major utility facility ...;
- (8) That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

Champaign Wind bears the burden of proving that the statutory criteria set forth in R.C. §4906.10 for certification have been satisfied.⁶ The City urges the OPSB to find that Champaign Wind has failed to meet its burden for Criteria 5 and Criteria 6 for reasons set forth below.

The OPSB may also impose conditions on a Certificate for Construction, Operation and Maintenance. The City proposes minor modifications to several conditions submitted in the OPSB Staff Report to further protect the City's interests. The City also proposes additional conditions to protect the City with respect to issues unanticipated by OPSB Staff.

The City proposes these modifications and additional conditions because the OPSB has statutory authority to modify siting certificates in order protect the public interest. R.C. §4906.10(A) requires the OPSB to evaluate impacts of the proposed Champaign Wind project, and to deny certification or modify the certificate if the project can be permitted with fewer adverse impacts.⁷ R.C. § 4906.03(D) also allows the OPSB to disapprove projects due to adverse impacts that outweigh the benefits of the project and other factors.⁸

The City requests the following modifications and new conditions.

⁶ O.A.C. §4906-7-09(F).

⁷ *E.g. City of Columbus v. Ohio Power Siting Commission*, 58 Ohio St. 2d 435 (1979); *City of Columbus v. Teater*, 53 Ohio St. 2d 253, 260-61 (1978).

⁸ For example, denial has been based on adverse recreational impacts. *Ohio Edison Co. v. Power Siting Commission*, 56 Ohio St. 2d 212, 214-215, 217 (1978) (construction of a new transmission line along an easement over a golf course "would effectively turn an already crowded, public, eighteen-hole facility serving expanding urban areas into a nine-hole course").

A. Conditions for the Champaign Wind project must be modified to be at least as protective as those of the Buckeye Wind project by requiring an 800 number for complaints and emergencies and inclusion of the turbines on 911 maps.

It defies common sense for Champaign Wind to have conditions less protective than those of its predecessor sister project, Buckeye Wind, as Michael Speerschneider indicated simultaneous construction could occur for both projects.⁹ The OPSB required Buckeye Wind to mark all turbines with a 24-hour emergency contact number for the public.¹⁰ Condition 5 proposed by OPSB staff for Champaign Wind references complaint procedures,¹¹ and therefore is the logical choice for inclusion of an 800-number requirement. Alternatively, Condition 18 proposed by OPSB staff for Champaign Wind deals with signage restrictions for turbines and could include language mirroring the 800-number condition from Buckeye Wind.¹²

The Champaign County Engineer does not charge a fee for creation of a street address for a new parcel or driveway access.¹³ New addresses are added to the engineer's Geographic Information System ("GIS") weekly to be shared with the 911 Dispatch Center.¹⁴ Therefore, Champaign Wind should also be required to obtain street addresses for every turbine access road from the Champaign County Engineer's Office to ensure updates to the 911 mapping system and timely emergency responses. This language could be framed as a separate condition or wrapped into Condition 59 relating to access roads.

⁹ Tr. Vol. I at 75.

¹⁰ Buckeye Wind Opinion, Order and Certificate, p. 89, Condition 28 (March 22, 2010).

¹¹ *Supra* n.1, at 51.

¹² *Id.* at 53.

¹³ Tr. Vol. VII at 1841.

¹⁴ *Id.* at 1842.

B. Conditions 31, 32, and 33 for the Champaign Wind project must be modified to include the City Engineer due to the likelihood that subcontractors will haul construction materials for the project through the City.

The preliminary route plan in the Champaign Wind application shows turbine components will not be transported through the City.¹⁵ Speerschneider testified the company has no plans to use City streets,¹⁶ but also admitted Champaign Wind’s lack of direct supervision of subcontractors hired by a general contractor.¹⁷ Van Wert County Engineer Kyle Wendel testified as to the problems he encountered dealing with subcontractors who were not covered under the road use agreement in place with a wind developer in the Van Wert project area.¹⁸ Wendel noted the City of Van Wert also entered road use agreements with subcontractors, but not the developer.

However, Champaign County Engineer Fereidoun Shokouhi testified about subcontractors damaging public roads due to repetitive hauling of materials such as concrete, sand and gravel.¹⁹ Shokouhi also noted that the largest vendors of those materials in Champaign County are on the west side of Urbana and would require transit on City streets to deliver materials to the project area north and east of the City.²⁰

Conditions 31 through 33 focus on Champaign Wind collaborating with the county engineer and OPSB staff, but Condition 33 also uses broad language to protect “government-maintained” roads and bridges during construction.²¹ Therefore, references to the “county

¹⁵ Application at Ex. E, Appendix 1 map.

¹⁶ Tr. Vol. I at 118.

¹⁷ *Id.* at 188.

¹⁸ *Id.* Vol. IX at 2307.

¹⁹ *Id.* Vol. VII at 1870.

²⁰ *Id.* at 1875-1876.

²¹ *Supra* n.1 at 56.

engineer” in Conditions 31, 32 and 33 proposed in the OPSB Staff Report should also include “city engineer” language to implement the OPSB’s goal of protecting public roads via the final traffic plan, delivery route plan, and road repair plan. Otherwise, the City anticipates that Champaign County and the townships will more fully address the issue of road repair and road use agreements in their brief.

C. Condition 41 or 42 must be modified to require Champaign Wind to provide turbine safety manuals to local first responders.

As noted in Section III-A of this brief, any Certificate for Champaign Wind should include conditions at least as protective as those mandated for Buckeye Wind. The OPSB required Buckeye Wind to provide “fire and emergency management service personnel with turbine layout maps, tower diagrams, schematics, turbine safety manuals, and an emergency 24-hour toll-free phone number.”²² Therefore, Champaign Wind should be required to provide those items as well, particularly as Speerschneider testified Champaign Wind’s turbine models could differ from those selected for Buckeye Wind under certain circumstances.²³ Champaign Wind witness Christopher Shears described turbine fires as rare occasions, but noted “accepted practice is best just to let the nacelle burn,” because of the height exceeding the capability of ladder trucks and high-power hoses.²⁴

Even though Speerschneider described fires as “rare events, regardless of the model,”²⁵ differences in turbines such as transformer location (ground-based vs. nacelle, for example) and access points to the nacelle and tower interiors have the potential to impact responses by public safety personnel for not just fires, but emergency medical and rescue situations.

²² *Supra* n.7 at 90, Condition 35.

²³ Tr. Vol. I at 75.

²⁴ Tr. Vol. IV at 924.

²⁵ Tr. Vol. II at 312.

D. Conditions 42 and 43 must be modified for Champaign Wind to provide both training and equipment to local fire and EMS departments, at its own expense.

Chief Mark Keller testified regarding the Urbana Fire Division's lack of a high-angle rescue team or equipment and his own participation in a training exercise at one of Everpower's wind facilities in Pennsylvania.²⁶ Keller noted the need for regular "hands on" training for first responders to fires and emergency medical situations at turbine sites. Even though the Pennsylvania site has been operational since 2009, Keller noted that the exercise he attended was a classroom critique of the first exercise sponsored and coordinated by Everpower in conjunction with first responders in that area. Keller also visited turbines sites on his own initiative, which was not part of the company-sponsored training session. Even though Speerschneider attempted to characterize the Pennsylvania exercise as "common practice," he admitted his company did not offer adequate training to emergency departments before construction commenced on projects, but only after projects were operational.²⁷

The City requests Conditions 42 and 43 include language to require Champaign Wind to provide annual training and equipment to local emergency first responders at its own expense. Champaign Wind should reimburse entities for overtime expenses for any individuals who require overtime scheduling in order to attend the training. Without these additional requirements to protect first responders, any fire protection and medical emergency plans for the construction and operation phases of the project would be ineffectual, as Champaign Wind would not be obliged to engage the first responders outside of "consultation" for the plans. OPSB Staffer

²⁶ Tr. Vol. IX at 2210.

²⁷ Tr. Vol. I at 42-43.

Andrew Conway admitted the company could unilaterally adopt a plan to the OPSB's satisfaction after just one meeting, without local first responder approval.²⁸

E. Condition 52 language must be modified to correct terminology. Condition 53 must include language for the eventuality of MARCS implementation by the Champaign Countywide Communications 911 Dispatch Center, and should require Champaign Wind to mitigate any interference with public safety communications.

Conditions 52 and 53 proposed by OPSB Staff relate to possible communications interference. Speerschneider admitted turbines generate electromagnetic fields and that the company did not study potential interference to global positioning satellite ("GPS") technology,²⁹ but Champaign Wind contracted with Comsearch to perform communications impact studies in the project area.³⁰ Comsearch's analysis reveals "electric service providers" are not exclusive operators of microwave communications systems in the project area. Therefore, the reference in the condition should be changed to "microwave system operators." In addition to known microwave paths, Comsearch analyzed potential impacts to TV and AM/FM radio station broadcasts and mobile phones, but not public safety communications. Champaign Countywide 911 Director Mindy North noted that Champaign Wind has never contacted the dispatch center to address the potential for cell phone or radio repeater interference in the project area.³¹

At some point in the future, Champaign Countywide 911 Dispatch will be switching to "narrow band" frequencies due to an FCC mandate to relieve the overcrowded radio spectrum.³² As North testified, the Ohio Department of Administrative Services has implemented a statewide Multi-Agency Radio Communications System (MARCS) in the 800 MHz range in conjunction

²⁸ Tr. Vol. X at 2484.

²⁹ Tr. Vol. I. at 222.

³⁰ Application at Ex. T.

³¹ Tr. Vol. IX at 2182.

³² FCC Order 05-9, WT Docket No. 96-86, January 7, 2005.

with the mandate, but Champaign County has not switched to MARCS yet for voice communications even though it uses MARCS for data transmissions.³³ MARCS is a lower frequency than the 900 MHz in the microwave range that Comsearch studied. Exhibit T identifies the cellular service providers operating in Champaign County and shows all four FCC licensed cell tower sites, including the Verizon tower on Jackson Hill Road used by the Countywide 911 Dispatch Center for MARCS data transmissions.

While Comsearch noted that cellular phone service suffers little interference near turbines if a phone can connect with a tower, the study failed to note the low number of cell towers in northeast Champaign County often leads to spotty reception, even without the added interference of turbines. Milo Schaffner, a township trustee from the Van Wert area, testified residents have complained to him about mobile phone interference since wind turbines became operational in his township.³⁴ Comsearch recommends mobile phone users who experience interference from turbines to move about 10 feet, which usually resolves the problem. This distance is miniscule given the 492-foot height of the turbines proposed, but if a worker is injured at the base of the turbine or stuck in a tower, or some other situation occurs that prevents movement to obtain signal reception in order to call for help, the interference could delay an emergency response.

Comsearch also failed to account for technological innovations that could pose new problems, such as the use of mobile devices to replace police and EMS radios. Witness Tom Music, responsible for the microwave system operated by Pioneer Rural Electric Cooperative, testified the technology for communications systems is rapidly evolving.³⁵ So did 911 Director Mindy North. Even Speerschneider acknowledged the fast pace of advances in communications

³³ Direct Testimony of Mindy North, A.6.

³⁴ Tr. Vol. VI at 1296.

³⁵ Tr. Vol. VII at 1884.

devices, comparing the latest turbine technology to Apple iPhone upgrades.³⁶ At this juncture, given the unknown impact of the turbines on public safety communications and the state of flux due to the MARCS mandate and new equipment developments, the OPSB should require Champaign Wind to perform an updated analysis of communication impacts every two years and require Champaign Wind to mitigate any impacts to public safety communications.

F. Condition 64 should require Champaign Wind to notify airports within 20 miles of the project area regardless of whether operations would be altered. The City supports Conditions 65 through 69 as proposed by OPSB staff but notes compliance with FAA requirements may not adequately protect navigable airspace, as the FAA has no authority to prohibit construction.

As Grimes Field was at issue in the Buckeye Wind proceeding, Champaign Wind should have had the foresight to know that the placement of additional turbines in the same project area would affect the City's airport. Speerschneider indicated he "would have no problem" with notifying Grimes Field pilots of the exact locations for proposed turbine sites, but admitted the company has not provided such notice.³⁷ Speerschneider said, "I don't think there's anything that would prevent us from providing a map to the airport,"³⁸ but Champaign Wind has failed to give pilots even the most basic notice of its plans.

Speerschneider said he was "not directly" involved with Champaign Wind's interaction with the Federal Aviation Administration ("FAA") and therefore was unable to answer questions on how the determinations of no hazard were made.³⁹

³⁶ Tr. Vol. II at 311.

³⁷ Tr. Vol. I at 46.

³⁸ *Id.* at 47.

³⁹ Tr. Vol. II at 407.

The City notes serious flaws with Champaign Wind’s aeronautical report, contained in the application as Exhibit S, as determinations for 19 turbines the FAA designated as “no hazard” were not circulated for public comment, even though they exceed obstruction standards for navigable airspace.⁴⁰ Navigable airspace includes approaches used by pilots to airports for takeoff and landing.

In 1991, the legislature adopted the Ohio Airport Protection Act, sometimes referred to as the Ohio Tall Structures Law. R.C. § 4561.31 would normally require Champaign Wind to obtain a permit from the Ohio Department of Transportation (“ODOT”) Division of Aviation prior to building structures affecting airport operations. According to Exhibit S, Champaign Wind did confer with ODOT, but submitted just 28 of 56 turbines.⁴¹ Moreover, the letter from ODOT notes authorization for construction of those 28 turbines expired on November 1, 2012.⁴²

Ohio law requires economically significant wind farms to obtain OPSB certificates. Certificate holders are not required to apply for an ODOT permit under sections 4561.30 to 4561.39 of the Revised Code.⁴³ But Champaign Wind has not yet been granted a certificate, and any certificate granted by the OPSB “shall be conditioned upon the facility being in compliance with standards and rules adopted under ... [R.C.] 4561.32.”⁴⁴

When ODOT reviews proposed projects for airspace obstructions, “the consideration of safety shall be paramount to considerations of economic or technical factors.”⁴⁵ ODOT reviews

⁴⁰ Ex. S, determinations for Turbine Numbers 75, 81, 82, 83, 87, 105, 106, 107, 108, 109, 110, 112, 113, 118, 119, 122, 123, 125 and 133.

⁴¹ Ex. S, letter from Mark C. Justice, May 1, 2012.

⁴² Ex. S.

⁴³ R.C. § 4561.31(E).

⁴⁴ R.C. § 4906.10.

⁴⁵ R.C. § 4561.34.

submissions based on obstruction standards set by the FAA, as federal law pre-empts state and local standards due to exclusive sovereignty over airspace.⁴⁶

Away from airports and densely populated areas, FAR 91.119(c) prescribes a minimum flight altitude of 500 feet. But to provide a safety margin, FAR 77.13(a)(1) requires notice to the FAA of the construction of anything taller than 200 feet above the ground and higher than the surrounding structures or natural features. Navigable airspace around public use airports slopes down to ground level in an imaginary “bowl” shape to provide for safe takeoff and landing without obstructions in a radius of five miles from runways, as Rick Rademacher described.⁴⁷

For the 19 turbines that exceed obstruction standards under Part 77 of the *Objects Affecting Navigable Airspace* for Grimes Field, three turbines also penetrate protected airspace for Mad River Airport north of Tremont City in Clark County.⁴⁸ All 19 turbines are listed here:

<u>Turbine Number</u>	<u>Distance to Grimes Field</u>	<u>Distance of penetration into protected airspace</u>	<u>FAA maximum height for structures (AGL)</u>
75	5.90 NM east	5 feet	487 feet
81	5.14 NM east	81 feet	411 feet
82	5.22 NM east	72 feet	420 feet
83	5.31 NM east	63 feet	429 feet
87	4.17 NM east	177 feet	315 feet
105	5.37 NM east	57 feet	435 feet
106	5.49 NM east	46 feet	446 feet
107	4.69 NM east	125 feet	367 feet
108	5.37 NM east	57 feet	435 feet
109	5.29 NM east	65 feet	427 feet
110	3.98 NM east	197 feet	295 feet
112	5.52 NM east	40 feet	452 feet
113	5.65 NM east	27 feet	465 feet
118	5.83 NM east	9 feet	483 feet
119	5.76 NM east	16 feet	476 feet
122	4.54 NM south	139 feet	353 feet

⁴⁶ *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 365 (C.A.3, 1999) (finding “implied federal preemption of the entire field of aviation safety”).

⁴⁷ Tr. Vol. VIII at 1935.

⁴⁸ Ex. S.

	(5.75 NM NE of Mad River)	18 feet (for Mad River)	474 feet (for Mad River)
123	5.13 NM south (5.65 NM east of Mad River)	80 feet 28 feet (for Mad River)	412 feet 464 feet (for Mad River)
125	4.43 NM south (5.53 NM NE of Mad River)	150 feet 40 feet (for Mad River)	342 feet 452 feet (for Mad River)
133	3.87 NM east	207 feet	285 feet

With no public notice by the FAA and no company contact with the affected airports, the City questions how pilots would be able to learn of these obstructions without exhaustive research using the Internet. Therefore, it supports the OPSB's proposed condition to require Champaign Wind to provide Notices to Airmen ("NOTAMs") with more stringent guidelines than those required by the FAA during the construction phase, rather than after turbines are built.

Both pilots who testified on behalf of the City have many years of experience flying and their opinions pertain directly to Grimes Field as "home base." In contrast to Champaign Wind's aviation witness, Rademacher and Airport Manager Carol Hall have both flown using visual flight rules ("VFR") near modern industrial turbines and chose to avoid airports near wind facilities due to safety concerns.⁴⁹ Rademacher noted that if flying at pattern altitude of 800 feet on approach to Grimes, he would have less than 300 feet of clearance for a 500-foot tall turbine because the turbines are on higher ground than the airport.⁵⁰

An FAA determination of no hazard does not ensure safety. Many issues that may affect VFR operations are not addressed by FAA analysis. The FAA issued determinations of no hazard for Champaign Wind's turbines, but it is undisputed that the clearance required to fly above turbines at a minimum safe distance would require a change to minimum descent altitudes

⁴⁹ Tr. Vol. VIII at 1920, 1955, 1965.

⁵⁰ *Id.* at 1942.

for pilots approaching Grimes Field from Delaware or Columbus.⁵¹ It is the role of the both the City and the state to strive for the highest level of safety.

Hall and Mayor Bill Bean both spoke about planned expansion of the airport including runway improvements and land acquisition.⁵² Because Grimes Field receives federal funding, the City is under a federal obligation to preserve and maintain the airport in a safe condition, and has a duty to keep the airport open for public use. The FAA also requires the City to protect airspace, including established minimum flight altitudes, around the airport by using zoning in the City to prevent establishment of obstructions in the aerial approaches to the runways. The City has no zoning authority outside its municipal boundaries. Even if the City could zone to protect airspace in the townships, the OPSB has exclusive authority in industrial turbine siting cases.

Courts agree that the FAA has no authority to prevent the construction of an obstruction to air navigation, but can merely issue a hazard or no-hazard determination which has "no enforceable legal effect."⁵³ Because the FAA lacks authority to prohibit a construction or alteration even if it believes the obstruction to be hazardous to air navigation, because Grimes Field is essential to the continued growth and development of the City, and because it has exclusive authority to do so, the OPSB must impose conditions more protective of the airport.

1. Champaign Wind should also agree to shut down turbines in close proximity to Grimes Field during events such as MERFI and the Hot Air Balloon Festival.

Like the utility line over a golf course in *Ohio Edison*, the Champaign Wind project has the potential to disrupt the use of a major recreational attraction at Grimes Field. Bean, Hall and Rademacher testified to the popularity of the airport with pilots of vintage, recreational and

⁵¹ *Id.* at 1911.

⁵² *Id.* at 1907, 1979.

⁵³ *Aircraft Owners & Pilots Association v. FAA*, 600 F.2d 965, 966, (D.C. Cir. 1979).

experimental aircraft, and the airport's contributions to the community as a tourist destination of historical significance with an on-site museum and B-17 restoration.

MERFI and the hot air balloon festival are just two events at the airport that are in danger of interference from the Champaign Wind project. Champaign Wind should take a "good neighbor" approach to shut down turbines in the flight paths for Grimes Field during specified hours for these events, especially the hot air balloon festival, as the prevailing winds are west to east and balloon aeronauts have less control over the direction of travel than pilots of motorized aircraft. Because the airport's events are planned months in advance, Champaign Wind would be able to schedule routine maintenance for the time periods turbines are not operational. If organizers for either MERFI or the Hot Air Balloon Festival permanently cancel or change venues from Grimes Field to avoid turbine dangers, Champaign Wind should be required to mitigate the economic loss to the City.

G. The City agrees with Condition 70 but the language must include CareFlight, MedFlight, and other airlift operators that regularly respond to the project area.

Speerschneider admitted Champaign Wind has "no particular concerns" about Condition 70 but merely seeks "clarification" regarding proper procedures for shutdown of turbines to ensure safe transit of EMS helicopters through the project area.⁵⁴ Condition 70 as proposed by the OPSB should be addressed not just to CareFlight but other regional air ambulance providers.

CareFlight, operated as a joint venture by Miami Valley Hospital and Air Methods Corp., has a helicopter base at Grimes Field in Urbana, and subleases a custom-built hangar owned by the City. MedFlight also transports patients from Champaign County,⁵⁵ but does not have a contractual relationship with the City's lessee for the hangar. If CareFlight terminates its

⁵⁴ Tr. Vol. I. at 39, Vol. II at 411-413.

⁵⁵ Tr. Vol IX at 2179.

sublease with the lessee for the hangar at Grimes Field, citing the proximity of Champaign Wind turbines as a reason why Urbana is no longer a desirable base of operations, Champaign Wind should be required to compensate the City for economic loss.

Neither CareFlight nor MedFlight have independently commented on Champaign Wind. Speerschneider admitted Champaign Wind has had no contact with those providers to date.⁵⁶ The City lacks confidence that Champaign Wind would ever attempt to work with those providers without a specific condition from the OPSB.

The City attempted to obtain voluntary testimony from a CareFlight representative, as it did for the Buckeye Wind proceeding, but was unsuccessful. Therefore, the testimony of CareFlight program manager John Holland from the Buckeye Wind proceeding remains a cause of concern for the City. In 2009, Holland noted wake turbulence from spinning blades and other turbine-related hazards could increase patient transport times as CareFlight pilots would avoid landing near turbines or flying through turbine installations due to visual flight rules.⁵⁷ Any decline in airlift support would increase requests for ground-based ambulances to either rendezvous with helicopters at a safer location for critical patient transport, or to make full round trips to hospitals outside the county.

Champaign Wind presented testimony from a veteran helicopter pilot who admitted he has no experience flying near modern industrial turbines and no experience flying in Champaign County.⁵⁸ Francis Marcotte opined that speed of response is not “top priority” for emergency

⁵⁶ Tr. Vol. II at 412.

⁵⁷ Buckeye Wind Tr. Vol. IX at 2151-2153, available at: <http://dis.puc.state.oh.us/TiffToPDF/A1001001A09L07B25755G66311.pdf>.

⁵⁸ Tr. Vol. IV at 663-666, 688, 693. Marcotte also admitted the closest he had ever landed in proximity to a wind turbine was half-a-mile. *Id.* at 705.

medical missions, in contrast to Holland.⁵⁹ Marcotte testified he believed a “clear zone” along U.S. Route 36 could be used by helicopter pilots responding into the project area, but admitted the two-lane highway has turbine sites less than 2,000 feet from the roadway.⁶⁰ Marcotte indicated “experienced pilots” could operate helicopters with less than 30 feet of clearance,”⁶¹ but also noted pilots are bound by their operations manuals in addition to FAA rules.⁶²

Although Marcotte acknowledged he was not speaking on behalf of CareFlight or any other EMS provider, Marcotte’s testimony as a witness for Champaign Wind was premised on his critique of Condition 70, which would require turbines to be shut down for EMS responses in the project area. Marcotte said he believed it is not economically desirable or feasible for turbines to be shut down to facilitate safer helicopter landings, because he assumed pilots would have to wait for company personnel to travel to each turbine to manually shut them down.⁶³ As Speerschneider testified to the feasibility of remote shutdown of individual turbines by either a manufacturer control center or Champaign Wind personnel,⁶⁴ Marcotte’s assumption was either based on a flawed premise or evidence of his bias based on the Champaign Wind’s bottom line.⁶⁵ However, Marcotte agreed that removing random factors to improve flight consistency would be beneficial, including a designated rendezvous spot for ground ambulances to transfer patients to helicopters if pilots cannot land safely near turbines.⁶⁶

⁵⁹ *Id.* at 675.

⁶⁰ *Id.* at 682-683, 698.

⁶¹ *Id.*

⁶² *Id.* at 669.

⁶³ *Id.* at 690, 725.

⁶⁴ Tr. Vol. I at 192, 195.

⁶⁵ Tr. Vol. IV at 700: Marcotte said “there’s no need to disrupt power generation,” even though he admitted his “ignorance” of turbine design and the capability for remote shutdown. *Id.* at 726.

⁶⁶ Tr. Vol. IV at 691.

Testimony from 911 Director North established that helicopters frequently respond to automobile accidents and other incidents in the project area.⁶⁷ Union Neighbors United witness Julia Johnson testified that she observed one such response from her own residence for a serious crash at the intersection of Ludlow Road and U.S. Route 36 just weeks before the adjudicatory hearing.⁶⁸ As North indicated, the Urbana Fire Division and other fire departments establish landing zones at the scenes of emergency incidents.⁶⁹ North produced a map that displayed the locations of helicopter calls for service in relation to the turbine sites for both Champaign Wind and Buckeye Wind to illustrate the high volume of helicopter responses in the project area.⁷⁰

Because of the need to protect helicopter EMS service in the project area, the City encourages the OPSB staff to modify Condition 70 to include all local air ambulance providers. Furthermore, if first responders can agree on appropriate locations, Champaign Wind should construct one or two helipads on company-leased property in the project area to improve safety if pilots must rendezvous with ground-ambulances at a safer distance from turbine sites.

H. The Recommended Staff Conditions do not adequately address the City's other concerns. Therefore, the OPSB should consider additional conditions.

1. **Blasting may disrupt and contaminate groundwater supplies.**

The City was unable to ascertain if Conditions 36 and 62 adequately protect the buried aquifer that is the source of the City's drinking water supply during cross examination. The City was deprived of the opportunity to examine a competent witness on the issue of groundwater and wellhead protection. Speerschneider "sponsored" Exhibit F of the application without being qualified as an expert in hydrology or hydrogeology, taking the position the project would have

⁶⁷ Tr. Vol. IX at 2194.

⁶⁸ Tr. Vol. V at 959-960.

⁶⁹ Tr. Vol. IX at 2180.

⁷⁰ City Ex. 8.

no material impact on groundwater.⁷¹ Hugh Crowell of Hull and Associates testified that he supervised the work performed by his company as a consultant and spoke about the karst topography of the project area, but said he was not qualified to speak to the issue of groundwater protection and did not know the source of Urbana's water supply.⁷² Likewise, OPSB staffer Donald Rostofer indicated he did not know the source of Urbana's drinking water.⁷³

The main wellfield for the City is six miles due west from the nearest turbine, located near the intersection of state Routes 29 and 296. While Hull and Associates did identify the buried aquifers in the project area,⁷⁴ the study failed to note the City's use of the Mad River Aquifer and instead focused solely on individual wells in the project area.⁷⁵ Ohio recognizes a cause of action for unreasonable interference with the use of groundwater.⁷⁶ Therefore, the City requests an additional condition requiring Champaign Wind to post an escrow amount to be determined by the City Water Superintendent. This would ensure protection of the City's wellfield during turbine construction from temporary effects such as increased sedimentation which could damage equipment, as well as any permanent contamination.

2. The City's residential and commercial growth trend has been to the east, therefore turbine sites in Salem, Union and Urbana Townships may restrict future development.

Mayor Bean testified about the City's growth trends in residential and commercial development, including a planned extension of sewer service to a local manufacturer in Urbana Township along U.S. Route 36.⁷⁷ Bean also testified about the geographic constraints that

⁷¹ Tr. Vol. I at 109.

⁷² Ex. F.

⁷³ Tr. Vol. VIII at 2052-2053.

⁷⁴ As required by O.A.C. § 4906-17-05(A)(5)(c).

⁷⁵ Ex. F.

⁷⁶ *Cline v. Am. Aggregates Corp.* 15 Ohio St.3d 384, 387 (1984).

⁷⁷ Tr. Vol. VIII at 1981-1982.

prevent future development, particularly in the floodplains north and west of the City.⁷⁸ Neither Champaign Wind's Application nor the Staff Report acknowledges that the project, as currently configured, is directly in the path of planned growth of the City. Speerschneider admitted that he never spoke with the City about the Champaign Wind project.⁷⁹ Speerschneider and OPSB staffer Stuart Siegfried instead testified as to economic and population trends and predicted generalized effects of Champaign Wind on a seven-county region, not limiting focus to Champaign County and the communities within its borders.

4. The statutory minimum setbacks to roads, property lines and structures are inadequate to protect public safety from the risk of blade shear, ice throw and fire.

The City fears the OPSB will “rubber stamp” this project without concern for its physical danger to the local community, particularly motorists on local roads. As Mayor Bean noted, in operating the City like a business, sometimes the safety risks for residents and personnel outweigh the potential economic benefits of a project, and must be weighed accordingly. The state-mandated minimum setback of 541 feet to roads is of concern to local first responders, as testimony from William Palmer and Milo Schaffner demonstrated that minimum is inadequate to protect public safety for motorists in instances of blade shear and ice throw.

Palmer characterized the impact of a broken blade or chunk of ice hitting a vehicle or structure as having the force of a full-size police cruiser crashing over Niagara Falls.⁸⁰ Schaffner noted that he personally took measurements of turbine debris just days after a blade failure in April 2012, and calculated that the pieces had flown more than 1,500 feet from the turbine. Schaffner observed debris about 30 feet from the roadway and indicated the road and right of

⁷⁸ *Id.* at 1997.

⁷⁹ Tr. Vol. I at 34.

⁸⁰ Tr. Vol. VI at 1419.

way had been cleared of debris if any had landed in those areas.⁸¹ Even Conway admitted that the OPSB's official measurement of debris thrown from the Paulding County turbine exceeded the statutory setback by some 200 feet.⁸²

Champaign Wind witness Christopher Shears testified that in the event of fire, one turbine manufacturer recommends evacuations to a distance of 1,300 feet around the turbine.⁸³ Speerschneider admitted the Champaign Wind application does not provide a detailed analysis of setbacks to roads or property lines for each turbine site.⁸⁴ Champaign Wind witness Robert Poore testified one reason for setbacks is "to reduce the probability of anything that left the turbine landing on the road" for situations such as tower collapse, blade breakage and ice shedding as well as fires.⁸⁵ Poore testified in the event of turbine "overspeed" situations, nearby residents would probably need to be evacuated even if they live outside the minimum setback.

The Urbana Fire Division's territory includes one third of the project area and the department is also the only full-time firefighting and EMS force in the county. Therefore, Urbana personnel respond to many requests for mutual aid from adjacent departments. Because of the inadequate statutory setback and the probability that UFD personnel would be responsible for responding to incidents involving damage to vehicles and structures as well as any injuries to persons from turbine blade shear, ice throw or fires, not to mention evacuation of local residents during overspeed and fire scenarios, the City encourages the OPSB to scrutinize each turbine site proposed by Champaign Wind more thoroughly to ensure public safety.

⁸¹ *Id.* at 1301-1303.

⁸² Tr. Vol. X at 2486.

⁸³ Tr. Vol. IV at 908.

⁸⁴ Tr. Vol. I. at 218-221.

⁸⁵ Tr. Vol. II at 543.

5. The City will derive no tax revenue from the turbines under the current taxation structure. Under a PILOT, it is unlikely the City would share in revenues from Champaign Wind. Champaign Wind also pays no Urbana income tax.

Siegfried authored the staff report section on Public Interest, Convenience and Necessity, but he was unable to ascribe any benefits to the City from the project with relation to public interaction, liability insurance, lease agreements, the state's alternative energy portfolio standard, or state and local taxation. Siegfried testified to the presence of Everpower's office in Bellefontaine as evidence of public interaction.⁸⁶ But Siegfried and Conway both incorrectly identified the location of Bellefontaine, with Siegfried under the impression that Bellefontaine is in Champaign County,⁸⁷ and Conway believing it to be less than a mile north of Champaign County.⁸⁸ Bellefontaine is located in Logan County, approximately eight miles north of the Champaign County line and 18 miles north of Urbana. Given such blatant disregard for simple geography demonstrated by the testimony of OPSB staff, the City lacks confidence in the OPSB's investigation process, as it also revealed the OPSB has not dedicated adequate resources to safely siting turbines or educating staff about the particulars of project areas.

Speerschneider and Siegfried both relied heavily on Exhibit G of the application. But Champaign Wind did not produce a witness from Camiros to testify. Siegfried did not know the basis for the job creation estimates, did not know how many construction workers would be employed locally and had no understanding of the basis for the multipliers used to derive the employment predictions in Exhibit G.⁸⁹ Although Exhibit G makes sweeping claims about the impact of the project on taxation, property values, and commercial and industrial development, neither Speerschneider nor Siegfried were qualified as experts in those fields. Speerschneider

⁸⁶ Tr. Vol. IX at 2366

⁸⁷ *Id.* at 2378.

⁸⁸ Tr. Vol. X at 2502-2503.

⁸⁹ Tr. Vol. IX at 2402-2409.

admitted that the projected distributions of payments in lieu of taxes under Senate Bill 232 (“PILOT”) did not include any revenue for the City because Champaign Wind does not seek to build turbines within the municipal boundaries.⁹⁰ Speerschneider also admitted that the dollar amount forecast in Exhibit G for purchase of goods and services in the “local economy” was not attributable to such transactions in the City but instead a “regional impact” spread over seven counties.⁹¹

Stanley Bialczak of the Ohio Department of Taxation testified that under the current taxation system, the City would receive no revenue, but under a PILOT, other local entities would “maybe” decide to split funding with the City.⁹² As Champaign Wind has no Urbana office and the project area is outside the City in the six townships, workers would not be subject to Urbana income tax unless they are City residents. Speerschneider estimated Champaign Wind would employ up to 86 workers directly during construction and seven full-time personnel for operation and noted they need only be “Ohio-domiciled” for the company to get tax breaks.⁹³

The City has no desire to impose residency requirements on Champaign Wind employees. However, given that Champaign Wind will have such a substantial impact on the local community and will no doubt generate complaints and inquiries from city and county residents unwilling or unable to drive to Bellefontaine, Everpower should be required to have a permanent office presence in Urbana and withhold income tax for any Champaign Wind employees based at that office.

⁹⁰ Tr. Vol. I at 37.

⁹¹ *Id.*

⁹² Tr. Vol. IX at 2235.

⁹³ Tr. Vol. I. at 73, 188.

IV. CONCLUSION

For the above reasons, the City asserts the Champaign Wind Project, as proposed in the Application, does not serve the public interest, convenience and necessity in light of the considerable adverse impacts to the City in the context of aviation, communications, public safety and future growth. Based on Exhibit S of the Application, Champaign Wind also apparently failed to submit a complete list of turbine sites to the Ohio Department of Transportation Division of Aviation for review. Therefore, Champaign Wind's application for a certificate should be denied. In the alternative, the City requests any certificate by the Board include all modifications of conditions and additional conditions proposed the City to make those conditions more protective for the safety of Champaign Wind's neighbors, motorists, pilots and the general public.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breanne N. Parcels", written in a cursive style.

Breanne N. Parcels (0089370)
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served via electronic mail on January 16, 2013, to the following individuals:

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