

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)	

POST-HEARING BRIEF OF INTERVENORS CHAMPAIGN COUNTY AND
GOSHEN, UNION AND URBANA TOWNSHIPS

KEVIN S. TALEBI (0069198)
CHAMPAIGN COUNTY
PROSECUTING ATTORNEY

Jane A. Napier (0061426)
Assistant Prosecuting Attorney
jnapier@champaignprosecutor.com

200 N. Main Street
Urbana, Ohio 43078
(937) 484-1900
(937) 484-1901 FAX

Attorneys for Champaign County
and Goshen, Union, and Urbana
Townships

TABLE OF CONTENTS

I.	INTRODUCTION.	4
II.	LAW AND ARGUMENT.	6
A.	Unless the Ohio Power Siting Board sets forth a condition of the Certificate that prior to the commencement of the initial construction of the Project, Applicant shall comply with the requirements of the relevant township, the Champaign County Engineer and the Director of the Ohio Department of Transportation regarding the use of the roads and bridges utilized in construction or decommissioning of the Project, the Project will not serve the public interest, convenience, and necessity as required by R.C. 4906.10 (A)(6).	8
B.	Unless the Ohio Power Siting Board sets forth a condition of the Certificate that upon the commencement of initial Project construction, Applicant is required to post financial assurance for decommissioning the Project in an amount sufficient to cover the total decommissioning costs of the Project without taking into consideration salvage value, the Project will not serve the public interest, convenience, and necessity as required by R.C. 4906.10 (A)(6).. . . .	11
C.	Unless the Ohio Power Siting Board sets forth a condition of the Certificate that probable adverse effect on certain viable economic interests, such as maintaining current public airport uses and the inhibition on future residential and commercial growth, will be mitigated, the Project will not serve the public interest, convenience, and necessity as required by R.C. 4906.10 (A)(6). . . .	13
D.	Anticipated tax revenue should not be a determining factor in deciding whether the “public interest” is served or whether the Application should be granted.	14
E.	Unless the Ohio Power Siting Board sets forth a condition of the Certificate to address setbacks from the turbines to non-participating landowners’ property lines in accordance with the manufacturers’ setback recommendations, the Project will not serve the public interest, convenience, and necessity as required by R.C. 4906.10 (A)(6).. . . .	15
F.	Unless the Ohio Power Siting Board sets forth a condition of the Certificate to address the possible impact of the Project upon the 9-1-1 communications within Champaign County to respond to emergencies at the Project’s facility sites and in and around the footprint of the Project and the financial burden imposed on the local subdivisions to adapt and provide the necessary equipment and training to safely and effectively respond to emergencies at the turbine sites, the Project will not serve the public interest, convenience, and necessity as required by R.C. 4906.10 (A)(6).. . . .	16

G. Unless the Ohio Power Siting Board conducts its proceedings to ensure the completeness of the Staff Investigation and to afford the parties “due process” in its hearings, the Ohio Power Siting Board cannot address whether the Project will meet the requirements of R.C. 4906.10 (A)(6). 17

IV. CONCLUSION 21

TABLE OF AUTHORITIES

CASES

City of Columbus v. Ohio Power Siting Commission,
58 Ohio St. 2d 435 (1979) 7

City of Columbus v. Teater, 53 Ohio St. 2d 253, 260-61 (1978). 7

Ohio Edison Co. v. Power Siting Commission,
56 Ohio St. 2d 212,214-215 (1978) 7

STATUTES (OHIO REVISED CODE)

§ 4906.03(D) 6, 7

§4906.10(A).. 6, 7

ADMINISTRATIVE RULES

§4906-7-09(F). 7

§4906-17-01(C) 7

I. INTRODUCTION

The undersigned represents four Champaign County political subdivisions, consisting of one Board of County Commissioners and three Boards of Township Trustees (“Boards”) within the footprint of the Champaign Wind Project or also commonly known as the Buckeye Wind II Project (“Project”) . Champaign Wind, LLC (“Applicant”) proposes to construct the second wind-powered electric generation facility in Champaign County within those townships and other adjacent townships within Champaign County. Applicant has sought authority to construct the “Project” by filing an application (“Application”) with the Ohio Power Siting Board.

The Boards have been granted intervenor status by the Ohio Power Siting Board to comment prior to the decision whether to issue a “Certificate of Environmental Compatibility and Public Need” (“Certificate”) for the construction, operation and maintenance of a wind-powered electric generation facility in Champaign County.

The Boards’ members are significantly concerned with the evident failure of the Ohio Power Siting Board Staff (“Staff”) and the submitted Application to jointly set forth adequate protection for Champaign County’s infrastructure and its economic, health and safety interests as it relates to wind energy development. Although the Applicant and Staff would like to have this Application judged as a stand-alone project, the Application herein is an additional Project with additional

turbines for the Champaign County community and the Boards want the OPSB to consider it as such.

The Boards are collectively or singularly concerned with the Project Application's (1) foreseeable structural impact that the construction phase and decommissioning phase of the Project will have upon the roadways and bridges in Champaign County, (2) foreseeable financial impact that the decommissioning phase of the Project will have (separate and apart from roads and bridges) and the need to provide adequate financial assurance to remove the structures from the lands within the Project footprint, (3) probable adverse effect on certain viable economic interests, such as maintaining current public airport uses and the inhibition on future residential and commercial growth, (4) the true economic benefit of the Project to Champaign County (5) the proposed setbacks from the proposed turbines to non-participating landowners' boundaries which may impede on the landowners' full use of their property and (6) the possible impact of the Project upon the County's 9-1-1 communications to respond to emergencies at the Project's facility sites and in and around the footprint of the Project and the financial burden imposed on the local subdivisions to adapt and provide the necessary equipment and training to safely and effectively respond to emergencies at the turbine sites and in and around the footprint of the Project.

Further, the undersigned lacks confidence in the investigation and recommendation process utilized by Staff to evaluate the Application. Specifically, the undersigned question whether the Staff's evaluation of the

Application content was sufficiently thorough in order for the Staff to conclude that the criteria for certification as set forth in Ohio Revised Code Section 4906.10(A) has been met. Finally, the undersigned lacks confidence in the hearing process as a fair redress for the Boards and the public.

The rationale for such positions is set forth below.

II. LAW AND ARGUMENT

R.C. 4906.10(A) requires that, in order to grant a Certificate, the Ohio Power Siting Board must make each of the following findings:

"(1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline;

(2) The nature of the probable environmental impact;

(3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;

(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 systems 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) That 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. Rules adopted to evaluate impact under division (A)(7) of this section shall not require the compilation, creation, submission, or production of any information, document, or other data pertaining to land not located within the site and alternative site.

(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.” *R.C. 4906.10(A)* (Emphasis added).

Applicant bears the burden of proving that the statutory criteria set forth in R.C. 4906.10 for certification have been satisfied. *O.A.C. §4906-7-09(F)*.

The Ohio Power Siting Board may deny, grant, or grant upon such terms, conditions, or modifications as the board considers appropriate for a certification application for a major utility facility, pursuant to the requirements set forth in R.C. §4906.10 of the Revised Code. *OAC §4906-17-01(C)*.

The Ohio Power Siting Board has the authority to modify Applicant's proposal in order protect the public interest. *R.C. §4906.10(A)*. In order to protect the public interest, it is proper for the Ohio Power Siting Board to require an evaluation of the impacts of the proposed wind facility as set forth, and to deny certification or modify the proposal if the identified need could be satisfied with fewer adverse impacts. *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).

The Ohio Power Siting Board has well recognized authority to deny certification where the statutory standards for certification have not been satisfied. *R.C. § 4906.03(D)*; *Ohio Edison Co. v. Power Siting Commission*, 56 Ohio St. 2d 212,214-215 (1978) (upholding denial of certification due to adverse recreational impacts).

In order to serve the “public interest, convenience, and necessity” as required by R.C. 4906.10 (A)(6), the Ohio Power Siting Board must address the following areas of county and township Board concern before issuing the Certificate:

A. Unless the Ohio Power Siting Board sets forth a condition of the Certificate that prior to the commencement of the initial construction of the Project, Applicant shall comply with the requirements of the relevant township, the Champaign County Engineer and the Director of the Ohio Department of Transportation regarding the use of the roads and bridges utilized in construction or decommissioning of the Project, the Project will not serve the public interest, convenience, and necessity as required by R.C. 4906.10 (A)(6).

It is the position of each Board that only the proper local governmental official or board has the expertise and legal authority to establish requirements to transport materials over such roads. For instance, the County Engineer would have the expertise to establish the requirements to transport materials over the county roads, including adequate financial assurance to cover the cost of the damage to the roads due to the construction and the decommissioning associated with the Project. (Tr. IX, pg. 2319, line 23 to pg. 2320, line 17)

The Staff has stated that most road concerns will be addressed through a negotiated road use agreement after the Certificate herein is granted. (Tr. X, pg. 2610, lines 5-7) However, although there was significant testimony from the Van Wert County Engineer as to shortcomings in the road agreement process, Staff continues to state that an agreement between the necessary parties is a good resolution for road use issues. (Tr. X, pg. 2610, lines 5-7) Unfortunately, the Staff

seems to have some difficulty understanding even the parties who may be necessary to such an agreement. The Staff Witness testifying regarding road issues, Derek Collins, refused to acknowledge that a township would be a necessary party to an agreement regarding township roads and specifically indicated that the Staff's recommended conditions regarding road agreements were to be solely between the County Engineer and the Applicant. (Tr. X, pg. 2614, lines 8-25, pg. 2615, lines 1-8) The Boards were not trying to confuse or embarrass the Staff but it is (and was) frustrating to argue such a point as clearly the Staff should be acutely aware through its investigation that (1) R.C. §5571.02 provides that "[T]he board of township trustees shall have control of the township roads of its township and . . . shall keep them in good repair", and (2) this is not the first Project investigated by the Staff which would have involved the use of township roads and the authority of the township trustees over such roads. Both Kyle Wendel, the Van Wert County Engineer, and Milo Shaffner, a Hoaglin Township Trustee in Van Wert County, Ohio, who testified at the hearing and was involved in a prior Project, indicated that a board of township trustees were responsible for township roads. (Tr. IX, pg. 2319, lines 1-8 and Tr. VI, Pg. 1307, lines 9-18)

The Van Wert County Engineer testified that negotiations for the road use agreement were lengthy and, basically "a headache" for the parties to the agreement. (Tr. IX, pg. 2325, line 8 to pg. 2339, line 7) Further, he indicated that there were several unforeseen problems with subcontractors of the developer

which caused significant problems for Van Wert County even after lengthy negotiations and ultimate agreement between the parties. (Tr. IX, pg. 2339, line 8 to pg. 2340, line 8)

Additionally, the undersigned asked the Staff witness what would occur if the parties to the road use agreement could not ultimately agree on the terms of a road use agreement. (Tr. X, pg. 2616, lines 13-25) The Staff witness acknowledged that an agreement is a “voluntary meeting of the minds” of the parties entering into it. (Tr. X, Pg. 2607, lines 3-6) However, Staff witness Collins could not answer, under cross-examination, the resulting process if the parties to the agreement could not come to a “meeting of the minds” (Tr. X, Pg. 2614, lines 8-25, Pg. 2615, lines 1-8) The Van Wert County Engineer answered a similar question under cross-examination and agreed that if an agreement could not be successfully negotiated and an agreement entered into then a project could be, hypothetically, stopped. (Tr. IX, pg. 2329, line 19 to pg. 2330, line 21) That possible result does not appear to be the intention of the OPSB. However, if the Applicant and the respective township, county engineer or the Director of the Ohio Department of Transportation cannot agree to the terms of a road use agreement, then the result would be that the public officials are actually in the position of mandating the requirements for use of the subject roads and bridges.

Therefore, for clarity to all the participants involved, and in order to serve the “public interest, convenience and necessity” for the maintenance of the roads and bridges within Champaign County during construction and upon

decommissioning of the Project, each Board strongly urges the OPSB to set a condition requiring the Applicant to meet the requirements of the relevant township, the Champaign County Engineer and the Director of the Ohio Department of Transportation regarding use of roads and bridges in transporting materials for the Project. Certainly some form of “agreement” or written letter of understanding, if necessary or advantageous, can be executed by the participants in order to have a written record of the requirements for use of roads and bridges for the Project.

B. Unless the Ohio Power Siting Board sets forth a condition of the Certificate that upon the commencement of initial Project construction, Applicant is required to post financial assurance for decommissioning the Project in an amount sufficient to cover the total decommissioning costs of the Project without taking into consideration salvage value, the Project will not serve the public interest, convenience, and necessity as required by R.C. 4906.10 (A)(6).

Applicant sets forth in its Application that a decommissioning bond will be “in the amount of \$5,000.00 prior to construction of each turbine until such time that the Facility has been operational for one year. After the first year of operation, an independent and registered surveyor, licensed to practice engineering in the state of Ohio, will estimate both the total cost of decommissioning and the net decommissioning costs (less the salvage value of the equipment.” (Champaign Wind, LLC’s Application, Exhibit 1, pg. 159-160)

Applicant’s only rationale for its proposal for financial assurance is that the OPSB had previously ordered such in a prior case. (Tr.I, pg. 132, line 24 to pg. 134, line 11) However, Applicant failed to present any other testimony or

evidence as to why such a nominal amount is sufficient to protect the citizens of Champaign County from the expected damage that will be incurred from construction or decommissioning the proposed facility.

The Boards believe that the Staff's proposed conditions regarding decommissioning are acceptable except as follows: (1) that the financial assurance posted and maintained should be in an amount equal to the total Decommissioning Costs and not on a per turbine basis calculated on the number of turbines constructed and under construction and (2) that the facility owner and/or facility operator should be required to file a revised decommissioning plan to the Staff and the County Engineer every three (3) years not five (5) years from the commencement of construction. The Boards believe that these revisions are consistent with the testimony of their own witness, Jonathan Knauth. (Tr. VI, pg. 1377, line 2 to pg. 1391, line 11) Contrary to the Applicant, the Staff in its *Report of Investigation*, also recommends the posting of financial assurance without taking into consideration salvage value although for different reasons from the Boards. (Staff *Report of Investigation*, pg. 36)

The testimony gleaned at hearing does not support reducing the financial assurance required to be posted and maintained by the estimated salvage value. Therefore, it is the position of each Board that the OPSB require the posting of financial assurance for decommissioning the Project in an amount sufficient to cover the total costs of decommissioning without taking into consideration salvage

value from the commencement of initial construction through the end of the Project's decommissioning phase.

C. Unless the Ohio Power Siting Board sets forth a condition of the Certificate that probable adverse effect on certain viable economic interests, such as maintaining current public airport uses and the inhibition on future residential and commercial growth, will be mitigated, the Project will not serve the public interest, convenience, and necessity as required by R.C. 4906.10 (A)(6).

The Boards are apprehensive about the possible adverse impact of the Project on existing businesses within the county and future development near the Project footprint. Even though the OPSB may find that the Project itself would have a positive economic impact on Champaign County, adverse impacts on other business or growth in the county could lessen such positive economic impact.

One example raised as a concern for adverse impact was Grimes Airport located on the north side of the City of Urbana. (Tr. VII, pg 1980, line 24 to pg. 1981, line 1) The Mayor of the City of Urbana testified at length about the history of the airport as well as some of the many events held by or at Grimes Airport which draw people (and revenue) to Champaign County each year. (Tr. VIII, pg. 1979, line 23 to pg. 1980, line 23) Mayor Bean also indicated that in order for the City of Urbana to grow, residential and commercial development must move to the east of the City of Urbana toward the Project area as there are limitations to growth for the city in other directions. (Tr. VIII, pg. 1980, line 24 to pg. 1981, line 18)

Therefore, the Boards request that the OPSB take into consideration the possible adverse impacts on existing business concerns within Champaign County and for the likelihood of inhibiting future residential and commercial growth within the City of Urbana and in the townships within the footprint of the Project.

D. Anticipated tax revenue should not be a determining factor in deciding whether the “public interest” is served or whether the Application should be granted.

The matter of taxation for this Project is still unsettled. The Application states that the Applicant anticipates paying an amount in lieu of taxes (PILOT) attributed to the Project, as set forth under R.C. §5727.75, which would be much less than the estimated tax liability attributed to the Project. However, Applicant’s corporate witness stated that the Applicant is aware that the Champaign County Board of Commissioner would have to approve the payment of the reduced PILOT but Applicant has not taken such action to date in order to make a request for such PILOT. (Tr. 1, pg. 69, lines 20-25) Applicant’s witness further seemed to indicate that obtaining approval for the PILOT might be a prerequisite to constructing the Project. (Tr. 1, pg. 68, lines 1 to pg. 69, line 19)

Also, Nick Selvaggio, then Champaign County Prosecuting Attorney, questioned the Staff on the interpretation of “local” in the Staff Report regarding economic benefits. (Tr. X, pg. 2641, line 22 to pg. 2651, line 2) The Staff member was unable to affirmatively indicate whether “local” meant within Champaign County rather than a seven county area. (Tr. X, pg. 2665, line 12 to pg. 2667. Line 17)

Therefore, the Ohio Power Siting Board should not embrace the perception that Applicant is ready and willing to construct the Project at this time or in the near future or that Champaign County will automatically enjoy an “economic windfall” through tax revenues if the Project is constructed.

E. Unless the Ohio Power Siting Board sets forth a condition of the Certificate to address setbacks from the turbines to non-participating landowners’ property lines in accordance with the manufacturers’ setback recommendations, the Project will not serve the public interest, convenience, and necessity as required by R.C. 4906.10 (A)(6).

The Applicant has proposed that the setbacks for the Project be the minimum standard allowed, being 541 feet to a non-participating landowners property line and 919 feet from the non-participating residence. (Exhibit 1, Application, Pg. 83-84). The Staff did not recommend any greater setbacks than proposed by Applicant.

Applicant has attached to its Application several exhibits necessary to support its Application, including Exhibit R-Turbine Safety Manuals. (See Exhibit 1, Application). The turbine safety manual for the Gamesa model (one of the turbines proposed) sets forth that, in the event of a fire near the turbine, the area must be cleared and cordoned off in a radius of 400 meters (1,300 feet) from the turbine. (Exhibit 1, Application, Exhibit R, Pg. 42 of 44 of the Gamesa safety manual) Clearly, the area required by the subject safety manual to be cleared and cordoned off in the event of a fire near the turbine is greater than the setbacks proposed by Applicant. As a result, an occupied residence could be located within the area to be cleared and cordoned off per this safety manual. Although the

Applicant's witness, Christopher Shears, testified that the Applicant would follow the recommendations set forth, he would not commit to greater setbacks of 400 meters (1,300 feet) recommended in the subject safety manual. (Tr. IV, Pg. 907, line 9 to Pg. 912, line 20)

F. Unless the Ohio Power Siting Board sets forth a condition of the Certificate to address the possible impact of the Project upon the 9-1-1 communications within Champaign County to respond to emergencies at the Project's facility sites and in and around the footprint of the Project and the financial burden imposed on the local subdivisions to adapt and provide the necessary equipment and training to safely and effectively respond to emergencies at the turbine sites, the Project will not serve the public interest, convenience, and necessity as required by R.C. 4906.10 (A)(6).

1. 9-1-1 communication

Mindy North, Director of the Champaign Countywide Communications/ 9-1-1 Dispatch Center testified that she was concerned about potential interference for wireless phone signals. (Tr. IX, pg. 2182 line 1 to pg. 2184, line 1) Any interference in the timely response to emergencies within Champaign County is of the utmost concern to the Boards. Therefore, we request that a specific condition of the Certificate be set forth by the OPSB in order to prevent such potential interference to the countywide 9-1-1 system.

2. Emergency equipment and training

Mark Keller, Chief of the Urbana Fire Department, testified that he did not believe that his department (being the only full-time department in the county) would be able to handle high angle rescues needed for turbine emergencies as the department did not have the equipment to adequately respond to such rescues (Tr.

IX, pg. 2218, lines 1-8). Additionally, he indicated that adequate hands-on training for the emergency responders would be necessary, in his opinion. (Tr. IX, pg. 2220, line 22 to pg. 2221, line 2) Therefore, we request that a specific condition of the Certificate be set forth by the OPSB in order to provide the necessary equipment and training to safely and effectively respond to emergencies at the turbine sites.

G. Unless the Ohio Power Siting Board conducts its proceedings to ensure the completeness of the Staff Investigation and to afford the parties “due process” in its hearings, the Ohio Power Siting Board cannot address whether the Project will meet the requirements of R.C. 4906.10 (A)(6).

1. Staff is not conducting an investigation as required by law.

During several phases of the adjudicatory hearing, testimony presented by Staff members gave the intervenors the impression that their published report was no more than an “executive summary” of the Application. (Tr. IX, pg. 2409, lines 1-25) Some Board members are concerned with this “less-than-comprehensive” approach taken by the Staff in its merit review of the Application.

The basis for this concern can be best illustrated through the following testimonial examples:

(1) Staff members testified that, upon learning that some of the information received may be inaccurate or incomplete, stated that they would not revise the Staff recommendations. (Transcript IX, pg. 2367, line 4 to pg. 2368, line 5),

(2) Staff members indicated that they did not have adequate resources to conduct their own study regarding contested issues in the field of wind energy

development, nor did they express the belief that additional resources would have made a difference in their recommendation (as example, Economics- Tr. X, pg. 2656, line 10 to pg. 2657, line 11)

(3) Much hearing time was expended in Staff's refusal to acknowledge incorrect or misleading conclusions set forth in the Staff Report of Investigation. One egregious example is the adamant refusal of Staff witness Stuart Siegfried to admit that Applicant's "local" office in Bellefontaine, Ohio was in Logan County not Champaign County, (Tr. IX, P. 2378, lines 11-12, to P. 2383, lines 1-14), although it appears that he actually did not know that Bellefontaine is the county seat of Logan County, Ohio.

(4) Staff failed to use independent analysis to confirm or corroborate scientific results as set forth in portions of the Application. (as example, Economics Tr. X, pg. 2657, lines 12-18).

(5) Staff failed to consider turbine manufacturer's specifications regarding recommended setbacks even though one of the proposed manufacturers of the Applicant's proposed turbines had a greater safety setback recommendation than the setback mandated under Ohio law. (Transcript X, pg. 2453, line 22 to pg. 2454, line 1)

From the examination of the aforementioned examples and many other examples throughout the hearing not specifically identified here, it is reasonable to conclude that Staff operated in a culture where they did not take, nor did they feel the need to take, into consideration other available information to be thorough and

comprehensive in its evaluation of the Application. The only exception we could find to the lack of investigation was in the Staff's recommendation regarding decommissioning bonds, which we do admit appears to be the result of a thorough review of that subject.

Due to such incomplete and inadequate review of the Application by Staff, the undersigned recommends that if granted, the Certificate should be conditioned upon requiring the Staff to address its investigative inadequacies and permit the intervenors to engage in further examination into any subsequent Staff modification of an amended *Report of Investigation*. The Boards should have the opportunity for further examination should the Boards themselves conclude that the Staff's modified recommendations adversely affect the respective local political subdivisions or do not serve the "public interest, convenience or necessity" as required by R.C. §4906.10 (A).

2. The intervenors are not afforded due process by the evidentiary hearing.

During the adjudicatory hearing, the Applicant used a corporate executive to "sponsor" the Application. Through the sponsor's testimony, the Applicant sought to establish the foundational basis for the admissibility of the Application. Upon this sponsor's testimony, the Application, Exhibit 1, was immediately admitted into evidence after the sponsor's testimony over the objection of multiple intervenors. (Tr. II, pg. 419, line 22 to pg. 424, line 22) However, there was some genuine dispute between the parties whether the corporate executive was ever

qualified as an expert witness to give testimony on the varied reports submitted as exhibits in support of the Application. Several intervenors addressed the issue at the beginning of the hearing, including then Champaign County Prosecuting Attorney, Nick Selvaggio, who was attempting to ask questions on cross-examination of the Application's "sponsor", Michael Speerschnider. After Mr. Speerschnider could not answer such questions, the following statement was made by Prosecutor Selvaggio:

"Judge, I will certainly follow the Court's order, but may I respectfully suggest that I think that's the whole argument that the parties have -- well, at least that Union Neighbors United have presented, which is, either he has the expertise or he doesn't, and that my question goes to the conclusion that he has made through his own testimony." (Tr.I, Pg. 86, lines 9-16)

Indeed, Mr. Speerschnider indicated that he could not answer specifics about some of the subject set forth in the exhibits. (See Tr. 1, pg. 168, line 1 to pg. 170, line 2)

On at least one other occasion, subsequent intensive cross-examination of an expert called by Applicant to authenticate an exhibit showed that neither the expert nor the sponsor had expertise or personal knowledge of the subject matter of the exhibit. Specifically, the undersigned questioned Applicant's witness, Hugh Crowell, on Exhibit E of the Application. Mr. Crowell was called by Applicant to testify as an expert as to the four studies, including a transportation study, which was set forth in Exhibit E of the Application. However, upon cross-examination, it was shown that Mr. Crowell did not have the requisite expertise to answer even

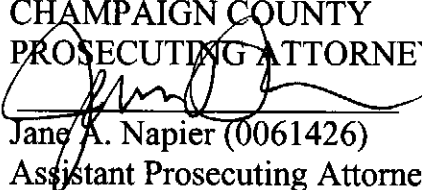
the simplest of questions regarding the transportation study nor was he present at the time the information was gathered for said study (See Tr.VI, pg. 1601, line 1 to pg. 1602, line 6). In fact, Mr. Crowell could not answer most of the questions asked upon cross-examination. (Tr. VI, pg. 1611, line 13 to pg. 1618, line 9). Upon conclusion of the cross-examination, the undersigned moved to strike Exhibit E as the exhibit had not been properly authenticated as the sponsor of the Application had deferred testimony on the exhibit to Mr. Crowell and Mr. Crowell clearly did not have the expertise nor personal knowledge of the subject matter of the exhibit in order to lay the proper foundation for admission of Exhibit E. (Tr. VI, pg. 1607, lines 2-12). However, shockingly, the Attorney Examiners denied the motion to strike Exhibit E from the record or reconsider the prior admission of Exhibit E as a part of the Application.

IV. CONCLUSION

For the reasons set forth herein, the Boards of Champaign County Commissioners and the Townships Trustees of Goshen, Union and Urbana, as Intervenors, request that the Ohio Power Siting Board mandate that the issues presented by the aforementioned Boards be addressed and conditionally met before it determines that the “public interest, convenience and necessity” will be served by the granting 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.

Respectfully submitted,

KEVIN S. TALEBI (0069198)
CHAMPAIGN COUNTY
PROSECUTING ATTORNEY



Jane A. Napier (0061426)
Assistant Prosecuting Attorney
200 N. Main Street
Urbana, Ohio 43078
(937) 484-1900
(937) 484-1901 FAX
jnapier@champaignprosecutor.com

Attorneys for Champaign County
and Goshen, Union, and Urbana Townships

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Brief was served upon the following parties of record via electronic mail on this 16th day of January, 2013:

Miranda R. Leppla, Esq.,
Vorys, Sater, Seymour & Pease,
52 East Gay Street, P.O. Box 008,
Columbus, Ohio 43216-1008,

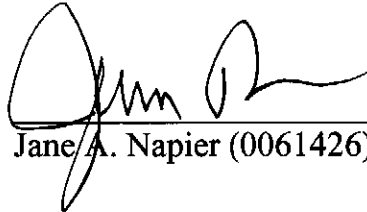
Chad A. Endsley, Esq.,
Ohio Farm Bureau Federation,
280 N. High Street,
P.O. Box 182383,
Columbus, Ohio 43218-2383,

Christopher A Walker, Esq.,
Van Kley & Walker LLC,
137 North Main Street, Suite 316,
Dayton, Ohio 45402,

Gil S. Weithman,
City of Urbana Law Director,
205 S Main St., Urbana, Ohio 43078

Mr. Stephen A. Reilly
Mr. Werner L. Margard III
Mr. Devin D. Parram
180 East Broad Street
Columbus, Ohio 43215-3793

Ms. Summer J. Koladin Plantz
Ms. Sarah Bloom Anderson
30 East Broad Street, 25th Floor
Columbus, Ohio 43215



Jane A. Napier (0061426)

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/16/2013 3:42:01 PM

in

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

Summary: Brief electronically filed by Jane A. Napier on behalf of Champaign County Board of Commissioners and Goshen Township Board of Trustees and Union Township Board of Trustees and Urbana Township Board of Trustees