

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application                    )  
of Champaign Wind, LLC, for a  
Certificate to Construct a Wind-Powered)  
Electric Generating Facility in  
Champaign County, Ohio                    )

Case No. 12-160-EL-BGN

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REPLY BRIEF OF INTERVENORS CHAMPAIGN COUNTY AND GOSHEN,  
UNION AND URBANA TOWNSHIPS

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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

Attorneys for Champaign County  
and Goshen, Union and Urbana  
Townships

## **TABLE OF CONTENTS**

<b>I. OVERVIEW .....</b>	<b>3</b>
<i>A. The Ohio Power Siting Board must require the Applicant and its subcontractors to meet the requirements of the Ohio Department of Transportation, the County Engineer and representatives of the other appropriate public entities responsible for public roads and bridges in order to protect the Intervening Boards' interest.....</i>	<i>6</i>
<i>B. The Applicant must be required to furnish financial assurance to Champaign County for decommissioning in an amount sufficient to cover the costs of decommissioning from the commencement of construction without taking into account the estimated salvage value. ....</i>	<i>7</i>
<i>C. The Ohio Power Siting Board must require setbacks that adequately protect the "public interest" and meet the criteria set forth in R.C. §4906.10(a)(6). ....</i>	<i>8</i>
<i>D. The Ohio Power Siting Board must protect the cultural and economic value of the Grimes Airport to Champaign County.....</i>	<i>10</i>
<i>E. The Applicant must minimize any risk to local emergency communications now being used or to be used in the future and bear the financial cost of any specialized equipment or training that is required in order to effectively respond to an emergency at or near the Project's facility sites.....</i>	<i>11</i>
<b>III. CONCLUSION.....</b>	<b>14</b>

## **TABLE OF AUTHORITIES**

### **RULES**

Evid.R. 702 .....	13
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## **I. OVERVIEW**

The Boards of Champaign County Commissioners, and Goshen, Union, and Urbana Township Trustees (“Boards”) have reviewed the initial post-hearing review briefs of the parties to this action.

Champaign Wind, LLC (Applicant), in the introduction to its initial brief, states that “[w]ith the Buckeye I Wind project approved, the Board may also proceed to approve the Champaign Wind project, also known as Buckeye II Wind farm” (Pg. 1, Initial Brief of Champaign Wind, LLC). It is ironic that the Applicant now wishes for the Board to approve this project as, in essence, an extension of the Buckeye I project. Over the course of the evidentiary hearing herein, respective counsels for Applicant and Staff objected numerous times that questions posed regarding the Buckeye I project were “not relevant” to the Buckeye II project and the Administrative Law Judges sustained such objections. (See Tr. I, Pg. 162, lines 24-25, Pg. 170, lines 12-15; Tr. IV, Pg. 854, lines 13-16, Pg. 855, lines 6-12; Tr. IX, Pg. 2377 and 2412) At various times in its Initial Brief, however, Applicant now argues that the Buckeye I project and the Ohio Power Siting Board’s (OPSB) orders therein are somehow relevant to this project. (Pg. 1, 2 14, 29 and 58, Initial Brief of Champaign Wind, LLC) However, the OPSB’s order in the Buckeye I Project was not made a part of the record herein. Additionally, Applicant also neglects the OPSB’s more recent orders which are contrary to its argument. (See Pg. 45, Staff’s Post-hearing Brief)

In reply to the positions of the other parties hereto, the Boards:

(1) Are unsatisfied with the Applicant's and Staff's continued reliance on Road Use Maintenance Agreements to protect roads and bridges within Champaign County.

(2) Remain concerned as to Applicant's continued position that no decommissioning funds are necessary in the beginning of turbine operation without any evidence to support such position except to reiterate the OPSB's orders in the Buckeye I wind project. Both Staff and the Boards each called witnesses to support their position that there should be financial assurance from commencement of construction in an amount equal to the total decommissioning costs without taking into consideration estimated salvage value. The Boards believe that such financial assurance should not be calculated on a "per turbine basis" as recommended by Staff as such calculation may not result in adequate coverage of the cost of decommissioning when the number of turbines operating or under construction encompass only part of the total project and also that the decommissioning plan should be reviewed at least every three years not five years as recommended by Staff.

(3) Acknowledge that although the Staff has subsequently recommended a greater than minimum setback in certain circumstances, the Boards maintain that those suggested modifications still do not adequately protect the "public interest" and meet the criteria set forth in R.C. § 4906.10(a)(6) as the setbacks

recommended do not meet a proposed manufacturer's recommended "setback" in case of fire.

(4) Maintain that the OPSB should protect the cultural and economic value of Grimes Airport.

(5) Maintain that, to the extent that existing local emergency services are impacted by the Project, the Applicant should minimize any risk to communications now being used or to be used in the future and bear the financial cost of any specialized equipment or training that is required in order to effectively respond to an emergency at or near the Project's facility sites.

(6) Express concern that there was not opportunity to conduct meaningful examination into the wind energy project proposed in Champaign County as a result of the nature of investigative process used by the Staff and the evidentiary rulings made by the Administrative Law Judges.

Further, although Applicant argues that it has shown by witness testimony that the record of the proceedings supports finding and determinations under Section 4906.10(A), there was much conflicting and controverted testimony given at the evidentiary hearing held over eleven days. Several experts were called by the parties who gave significant conflicting testimony regarding noise levels, health effects, blade throw, aviation and property values impacts, as well as other subject matters important to the siting of this Project and the decision of the OPSB. Such conflicting testimony should be weighed to minimize the impact

upon Champaign County and serve the public interest, convenience and necessity in making any such finding and determinations under Section 4906.10(A).

**II. THE OHIO POWER SITING BOARD HAS THE RESPONSIBILITY TO ENSURE THE PROJECT WILL SERVE THE “PUBLIC INTEREST, CONVENIENCE, AND NECESSITY” AS REQUIRED BY R.C.§ 4906.10(A)(6).**

**A. The Ohio Power Siting Board must require the Applicant and its subcontractors to meet the requirements of the Ohio Department of Transportation, the County Engineer and representatives of the other appropriate public entities responsible for public roads and bridges in order to protect the Intervening Boards’ interest.**

The Boards urge the Ohio Power Siting Board to require the Applicant to meet the requirements of the Ohio Department of Transportation, the County Engineer and representatives of the other appropriate public entities responsible for public roads in lieu of relying on the parties to enter into lengthy negotiations for a Road Use Maintenance Agreement. The Boards disagree with Applicant’s assessment of the agreement in the project in Van Wert County, Ohio as “successful”. (Pg. 15, Initial Brief of Champaign Wind, LLC) The Van Wert County Engineer actually indicated that the negotiations took many months and it was a “headache”. (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) The City of Urbana is certainly concerned with the likelihood that many subcontractors may use roads not within the agreed transportation plan and travel through the City in supplying the Project and the Boards share in that concern for the county and townships. (Pg. 6-7, City's Initial Post-hearing Brief)

Therefore, the OPSB should require Applicant on its behalf and the behalf of all subcontractors to meet the requirements of the Ohio Department of Transportation, the County Engineer and representatives of the other appropriate public entities responsible for public roads. The use of agreements should be minimized to only items in which both parties believe are necessary.

**B. The Applicant must be required to furnish financial assurance to Champaign County for decommissioning in an amount sufficient to cover the costs of decommissioning from the commencement of construction without taking into account the estimated salvage value.**

With regard to decommissioning issues, the Boards find themselves sharing common ground with Staff as the Boards agree with the position of Staff that the Applicant's proposal of posting financial assurance in the first year of \$5,000.00 is not appropriate. (See Pg. 46, Staff's Post-hearing Brief) The Boards also agree that no other party endorsed such proposal.

The Boards are mostly in agreement with Staff that its recommended condition 55 would adequately protect Champaign County except that the Boards' witness, Mr. Knauth, indicated in his testimony that (1) the decommissioning plan should be reviewed more often than five years and suggested review of the decommissioning plan every two to three years would better protect Champaign County (Tr. VI, Pg. 1399-1400) and (2) dividing the total decommissioning into a "per turbine" figure is not an adequate formula to determine the financial assurance for decommissioning one turbine or less than the total project (Tr. VI, Pg. 1400-1401).

Mr. Knauth testified that if a "per turbine" cost method was used, the "per turbine" cost should be calculated as if it were a separate project which could actually result in an increase in the total amount of security needed. (Tr. VI, Pg. 1400-1401). As a result, Mr. Knauth stated that using the total decommissioning cost as a basis for financial assurance would be preferable. (Tr. VI, Pg. 1400-1401). No other witness contradicted Mr. Knauth's statements regarding the time period for reviewing the decommissioning plan or his preference for the total decommissioning costs to be used as the basis for posting the financial assurance.

**C. The Ohio Power Siting Board must require setbacks that adequately protect the "public interest" and meet the criteria set forth in R.C. §4906.10(a)(6).**

Applicant maintains that it complies with the minimum setbacks required. (Pg. 13, Initial Brief of Champaign Wind, LLC) However, the Staff disagreed



with Applicant and found that three of the proposed turbines did not meet such minimum setbacks. (Pg. 14-15, Staff's Post-hearing Brief)

Additionally, Staff has recommended greater than minimum setbacks as it now recommends a separate setback to gas pipeline. (Pg. 15, Staff's Post-hearing Brief) Further, it recommended greater than minimum setbacks along heavily travelled roads due to ice throw and blade shear, being a safety concern set forth in the GE safety manual. (Pg. 14-15, Staff's Post-hearing Brief) Although the Boards are encouraged by the Staff's consideration of risks which may increase the minimum setback set by OPSB's rules, the Boards do not believe that the Staff has gone far enough in its consideration of safety risks.

It seems contrary to common sense to allow a setback that is less than required by a turbine manufacturer in its safety manual. Specifically, Applicant has set forth that one of the manufacturers it proposes to use for this project is a Gamesa model. Gamesa's safety manual was included in Exhibit R to the Application. (See Exhibit 1, Application) Under Gamesa's safety manual, Section 7.2 – PROCEDURE IN THE EVENT OF FIRE, it states:

*"In the event there is any type of fire near the wind turbine, immediately contact the substation to disconnect the grid. The area must be cleared and cordoned off in radius of 400 m (1,300 ft) from the turbine."*

(Exhibit 1, Application, Exhibit R, Gamesa Safety Information, Pg. 42-43)

Certainly, the safety manual sets forth a "setback" or "clear zone" for the purpose of preventing risk from fire which the OPSB should take very seriously to

protect against personal injury and property damages within the 1,300 ft radius of a turbine. If so, then the OPSB must require a minimum setback of at least 1,300 ft from a neighboring non-participating landowner property line to protect the “public interest” and meet the criteria set forth in R.C. § 4906.10(a)(6) if Applicant considers turbines with dimensions similar to the Gamesa model and meet any other “setback” required by the manufacturer of the chosen turbine model.

**D. The Ohio Power Siting Board must protect the cultural and economic value of the Grimes Airport to Champaign County.**

The Boards agree with Intervenor City of Urbana that Grimes Field is central to Champaign County’s rich aviation history, provides current economic value to the community, hosts regional aviation events and holds promise as a viable asset to the continued growth and development of the City of Urbana. (Tr. VIII, Pg. 1979, line 3 to Pg. 1980, line 23)

Additionally, the Boards note that Grimes Field is located approximately 15 minutes away from the furthest townships to the east, and therefore could provide considerable economic value to businesses considering locating their facilities in those townships as well as within the City of Urbana.

While the Applicant spends a great deal of time discussing the findings of the FAA as the reason to determine that the turbines will not have an adverse effect on aviation activities taking place at Grimes Field, the Boards express

caution that “FAA determination” is only one piece of the analysis that should be considered by the Ohio Power Siting Board.

The Boards give positive deference to the testimony of City of Urbana witness, pilot Richard Rademacher, who uses the Grimes Airport routinely for business, personal and recreational interests and also participate in the cultural events that take place at Grimes Field. (Tr. VIII, Pg.1926-1929). That individual is uniquely situated to understanding the particularities of flying into Grimes Field, has particular knowledge of the aviation events that take place at Grimes Field and has expressed concern for placement of the turbines as it relates to being able to use the airport as most pilots use it now. In sum, his experience and working knowledge of flying into that venue cannot be discounted especially as Applicant’s witness, Mr. Marcotte, indicated he had not flown to Grimes Field or landed among wind turbines. (Tr. IV, Pg. 663, lines 2-8, Pg. 665, lines 15-18)

In conclusion, the Boards want to see that the current airport uses of Grimes Field are not adversely impacted by the placement of wind turbines within the contemplated Project footprint and the OPSB should set a condition to prevent such impact.

**E. The Applicant must minimize any risk to local emergency communications now being used or to be used in the future and bear the financial cost of any specialized equipment or training that is required in order to effectively respond to an emergency at or near the Project’s facility sites.**

Any interference in the timely response to emergencies within Champaign County is of the utmost concern to the Boards. Certainly, the OPSB would agree.

The Boards also share in the City's concerns that emergency response providers would be unable 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) and that adequate hands-on training for the emergency responders would be necessary. (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 prevent such potential interference to the countywide 9-1-1 system currently used or to be used in the future and to provide the necessary equipment and training to safely and effectively respond to emergencies at the turbine sites.

**F. 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).**

The public interest cannot be served if the residents of Champaign County do not have confidence that the public officials put in charge of evaluating the merits of the Application gave a "less-than-comprehensive" effort into fairly and objectively assessing the Application.

The Boards urge the Ohio Power Siting Board to examine the practices of its Staff in order to ensure that this investigation and future Staff investigations of

wind-powered electric generation facility applications are comprehensively focused and that Staff is given the sufficiency of time and resources so as to be able to promote public confidence in its recommendations.

Since it will impact the manner in which fact-finding hearings are held and the evidentiary conclusions that are reached, the Boards also share the concern represented by Intervenor United Neighbors United (UNU) that the Application should not have been admitted upon the sponsoring testimony of Applicant's first witness because he was not qualified as an "expert witness" on the information contained in certain contested exhibits that in turn, supported the Application. (UNU Post-Hearing Brief, pages 52-56)

At the conclusion of the testimony of Applicant's first witness, Michael Speerschneider, the Applicant moved to admit his direct testimony, the Application and all of its accompanying exhibits into evidence. Several intervenors objected to the admission of portions of Witness Speerschneider's direct testimony, the corresponding portions of the Application and certain accompanying exhibits on the basis that there had not been a foundation laid for those evidentiary materials.

Witness Speerschneider, although most certainly knowledgeable and experienced with regard to some portions of the Application, was not "qualified as an expert [through] specialized knowledge, skill, experience, training, or education regarding the subject matter of the [cited] testimony [or materials]." *Ohio R. Evid. 702(B)*. No testimony was adduced, however, by Applicant's counsel that Witness

Speerschneider was an expert qualified with specified knowledge in all the fields represented by the objectionable exhibits.

### III. CONCLUSION

For the reasons set forth herein, the Boards of Champaign County Commissioners and Goshen, Union, and Urbana Township Trustees reiterate their 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  
[jnapier@champaignprosecutor.com](mailto:jnapier@champaignprosecutor.com)

Attorneys for Champaign County  
and Goshen, Rush, Salem, Union,  
Urbana and Wayne Townships

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Brief was served upon the following parties of record via electronic mail on this 28th day of January, 2013:

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

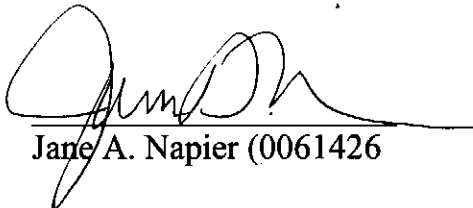
Chad A. Endsley, Esq.,  
Ohio Farm Bureau Federation,  
280 N. High Street,  
P.O. Box 182383,  
Columbus, Ohio 43218-2383

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

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

Summer Koladin-Plantz, Asst. AG  
Sarah Bloom Anderson, Asst. AG  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215

  
Jane A. Napier (0061426)

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Summary: Brief - Reply Brief of Intervenors Champaign County and Goshen, Union and Urbana Townships 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