

FILE

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application )  
of Buckeye Wind LLC to Amend its )  
Certificate Issued in )  
Case No. 08-666-EL-BGN )

Case No. 13-360-EL-BGA

PUCO

2013 FEB -6 AM 9:19

RECEIVED-DOCKETING DIV

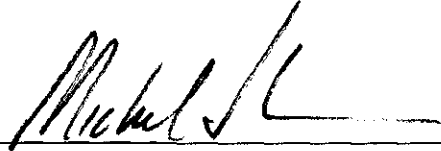
MOTION FOR WAIVER

Pursuant to Section 4906.06(A)(6), Revised Code, and Rule 4906-1-03 of the Ohio Administrative Code, Buckeye Wind LLC ("Buckeye"), moves the Ohio Power Siting Board (the "Board") to grant waivers from certain provisions of Chapter 4906-17 of the Ohio Administrative Code. Buckeye will be filing an application with the Board to amend the Buckeye Wind Farm certificate issued in Case No. 08-666-EL-BGN. Buckeye is not proposing to amend the certificate in order to change, relocate or add turbines to the project; rather Buckeye is proposing to shift a large portion of the project's collection line system and all three construction staging areas to the same locations and areas that will be utilized by the Buckeye II Wind Farm, Case No. 12-160-EL-BGN. The proposed amendment to the collection line system will greatly reduce the amount of overhead collection lines in public right-of-ways by placing the collection lines underground on leased properties. Given the scope and nature of the sought amendment, Buckeye seeks waivers from the application requirements that have no bearing on the proposed changes to the certificate. Accordingly, Buckeye Wind respectfully requests that for the reasons presented in the attached memorandum in support, the Board grant waivers in

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business  
Technician AND Date Processed 2/6/13

part or whole from the following rules of the Ohio Administrative Code: 4906-17-02; 4906-17-03; 4906-17-04; 4906-17-05; 4906-17-06; 4906-17-07 and 4906-17-08.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Settineri", written over a horizontal line.

M. Howard Petricoff (0008287)

Michael J. Settineri (0073369)

Miranda R. Leppla (0086351)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

(614) 464-5414

(614) 719-4904 (fax)

[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)

[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)

[mrleppla@vorys.com](mailto:mrleppla@vorys.com)

Attorneys for Buckeye Wind LLC

## **MEMORANDUM IN SUPPORT**

### **I. Introduction**

In 2009, Buckeye Wind LLC, a wholly owned subsidiary of EverPower Wind Holdings, Inc. (hereafter referred to as “Buckeye”) filed an application with the Ohio Power Siting Board (the “Board”) to construct the Buckeye Wind Farm (the “Project”) to be located in Champaign County. Buckeye’s application proposed constructing 70 wind turbine generators and associated infrastructure including access roads, collection lines, construction staging areas, an operations and maintenance facility and a substation. The Board approved Buckeye’s application, in part, on March 22, 2010 and issued a certificate to Buckeye for the construction and operation of 54 wind turbines. The Board’s decision was appealed and subsequently affirmed by the Supreme Court of Ohio. *See In re Buckeye Wind, LLC*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869.

The current design for the Project calls for a series of collection lines to carry the electric current generated by the turbines to the Project’s substation. Recently, Buckeye acquired leases from another developer on land near and within the Project area. As a result, Buckeye is now able to route a majority of the collection lines on leased property rather than routing a sizeable portion of the collection lines through public right-of-ways. Also due to this development, Buckeye Wind is able to bury the majority of the collection lines underground instead of running them overhead, as originally planned.

In addition to improving the collection line design, the location of all three staging areas has changed. Instead of being located at the intersection of State Route 814 and U.S. Route 36, one construction staging area will be relocated to the intersection of U.S. Route 36 and Three Mile Road on a parcel previously identified for a wind turbine. The two other construction

staging areas will be relocated within the same parcel in which they were previously located. One construction staging area will remain 3.4 acres while the other two staging areas will be 9.5 and 10 acres in size. The three construction staging areas will be used by both the Buckeye I and Buckeye II projects.

Although Buckeye is not making any changes to the current turbine design, it is submitting the change in collection line design and the relocation of the construction staging areas to the Board for approval. Rule 4906-5-10(B) requires that an application to amend a certificate be submitted in the same manner as if the application was for a certificate. Buckeye's proposed design changes, however, are not substantial and will have little impact on the information previously reviewed by the Board in Case No. 08-666-EL-BGN.<sup>1</sup> Accordingly, Buckeye respectfully requests that the Board grant the following requested waivers from the Board's rules.

## **II. Rule 4906-17-02 Project Summary and General Instructions**

Rule 4906-17-02 requires a summary and overview of the proposed project, including a statement of the general purpose and description of the facility. Specifically, the Rule states as follows:

- (A) An applicant for a certificate to site a wind-powered electric generation facility shall provide a project summary and overview of the proposed project. In general, the summary should be suitable as a reference for state and local governments and for the public. The summary and overview shall include the following:
  - (1) A statement explaining the general purpose of the facility.
  - (2) A description of the proposed facility.

---

<sup>1</sup> Buckeye's application in Case No. 08-666-EL-BGN was submitted under Chapter 4906-13 before Chapter 4906-17 was effective. Buckeye, however, included the Chapter 4906-17 information requirements in its application.

- (3) A description of the project area selection process, including descriptions of the primary factors considered.
  - (4) A discussion of the principal environmental and socioeconomic considerations of the preferred project area and any alternate project area sites.
  - (5) An explanation of the project schedule (a bar chart is acceptable).
- (B) Information filed by the applicant in response to the requirements of this rule shall not be deemed responses to any other section of the application requirements.
- (C) If the applicant has prepared the required hard copy maps using digital, geographically referenced data, an electronic copy of all such data, excluding data obtained by the applicant under a licensing agreement which prohibits distribution, shall be provided to the board staff on computer disk concurrently with the filing of the application.
- (D) If the applicant for a wind-powered electric generation facility asserts that a particular requirement in Chapter 4906-17 of the Administrative Code is not applicable, the applicant must provide an explanation of why the requirement is not applicable. Further, the applicant shall provide in its application all relevant technological, financial, environmental, social, and ecological information that is generally known in the industry to be of potential concern for the particular type of facility proposed.

Given the nature of the proposed design changes, Buckeye requests a waiver in part from the requirements of this rule. Specifically, Buckeye proposes that it not be required to provide the Board with information concerning the certificated facilities that are not related to the collection lines or construction staging area (for example turbines and the substation) and that it be permitted to provide the following information: (1) a summary and overview of the proposed changes to the collection line system and construction staging areas under Rule 4906-17-02(A)(2); (2) a description of how the revised collection line system and relocated construction staging areas were selected pursuant to Rule 4906-17-02(A)(3); (3) a discussion of the principal environmental considerations for the revised collection line design pursuant to Rule 4906-17-02(A)(4); and (4) an explanation of the current Project schedule, including turbine construction

pursuant to Rule 4906-17-02(A)(5). Information relating to the turbines and other facilities unrelated to the collection lines was previously reviewed by the Board in Case No. 08-666-EL-BGN. Accordingly, for good cause shown, Buckeye respectfully requests that it be granted a waiver, in part, from the requirements of Rule 4906-17-02.

### **III. 4906-17-03 Project Description in Detail and Project Schedule in Detail**

Rule 4906-17-03 requires the applicant to submit detailed information on the type of wind turbines for the project, the number of turbines, capacity figures, land area requirements and a detailed project schedule. The Rule states:

(A) An applicant for a certificate to site a wind-powered electric generation facility under this chapter shall provide a detailed description of the proposed facility.

(1) For its proposed project area and any alternative project area(s), the applicant shall submit:

(a) Type(s) of turbines or, if a specific model of turbine has not yet been selected, the potential type(s), estimated number of turbines, estimated net demonstrated capability, annual capacity factor, hours of annual generation, and the project developer to be utilized for construction and operation of the facility, if different than the applicant.

(b) Land area requirement or, for off-shore projects, the off-shore boundaries, the construction impact area in acres and the basis of how such estimate was calculated, and the size of the permanent project area in acres.

(2) The applicant shall submit a description of the major equipment including, but not limited to, the footprint of the turbine, the height of the turbine measured from the tower's base, excluding the subsurface foundation, and the blade length.

(3) The applicant shall submit a brief description of any new transmission line(s) required for the proposed project.

(B) Detailed project schedule.

(1) Schedule. The applicant shall provide a proposed schedule in bar chart format covering all applicable major activities and milestones, including:

- (a) Acquisition of land and land rights.
- (b) Wildlife surveys/studies.
- (c) Preparation of the application.
- (d) Submittal of the application for certificate.
- (e) Issuance of the certificate.
- (f) Preparation of the final design.
- (g) Construction of the facility.
- (h) Placement of the facility in service.

- (2) Delays. The applicant shall describe the impact of critical delays on the eventual in-service date.

Buckeye respectfully requests a general waiver in part from the requirements of this rule that do not relate to the collection lines and construction staging areas. Under the proposed waiver, Buckeye would not be required to provide information related to the previously approved turbines, capacity, foundations or project delays as that information is not relevant to the proposed changes in the collection line system and the proposed shift in the construction staging area. Moreover, Buckeye provided this information to the Board for its review and approval in Case No. 08-666-EL-BGN. Buckeye will provide the following information: (1) a detailed description of the changes to the collection line system and the relocation of the construction staging areas under Rule 4906-17-03(A); (2) updated land area requirements including any changes to the construction impact areas pursuant to Rule 4906-17-03(A)(1)(b); and (3) an updated detailed schedule for the Project pursuant to Rule 4906-17-03(B). Accordingly, for good cause shown, Buckeye respectfully requests that it be granted a waiver, in part, from the requirements of Rule 4906-17-03.

#### **IV. Rule 4906-17-04 Project Area Analysis**

Rule 4906-17-04 relates to the selection of the project area for the wind generation facility. Information under this rule is not applicable as siting of the Project was completed and approved in Case No. 08-666-EL-BGN. The Rule states:

- (A) The applicant shall conduct a project area site selection study prior to submitting an application for a wind-powered electric generation facility. The study shall be designed to evaluate all practicable project area sites for the proposed facility.

(1) The applicant shall provide the following:

- (a) A description of the study area or geographic boundaries selected, including the rationale for the selection.
- (b) A map of suitable scale which includes the study area and which depicts the general project areas which were evaluated.
- (c) A comprehensive list and description of all qualitative and quantitative siting criteria, factors, or constraints utilized by the applicant, including any evaluation criteria or weighting values assigned to each.
- (d) A description of the process by which the applicant utilized the siting criteria to determine the proposed project area and any proposed alternative project area site(s).
- (e) A description of the project area sites selected for evaluation, their final ranking, and the factors and rationale used by the applicant for selecting the proposed project area site and any proposed alternative project area site(s).

(2) The applicant shall provide one copy of any constraint map showing setbacks from residences, property lines, and public rights of way utilized for the study directly to the board staff for review.

- (B) The applicant shall provide a summary table comparing the project area sites, utilizing the technical, financial, environmental, socioeconomic, and other factors identified in the study. Design and equipment alternatives shall be included where the use of such alternatives influenced the siting decision.

- (C) The applicant may provide a copy of any project area site selection study produced by or for the applicant for the proposed facility as an attachment to the application. The study may be submitted in response to paragraphs (A) and (B) of this rule, provided that the information contained therein is responsive to the requirements of paragraphs (A) and (B) of this rule.

The Board approved the location for the Project in Case No. 08-666-EL-BGN, and the proposed redesign of the collection line system and the relocation of the construction staging areas have no bearing on the overall location of the Project's generating equipment.



Accordingly, Buckeye respectfully requests that it be granted a waiver in full from the requirements of Rule 4906-17-04.

**V. 4906-17-05 Technical Data**

Rule 4906-17-05 requires the applicant to submit a wide range of information on the location for the facility, including the features, geology and hydrology of the project area site.

The Rule requires the applicant to also provide maps, aerial photographs and topographic maps.

The Rule states:

- (A) Project area site. Information on the location, major features, and the topographic, geologic, and hydrologic suitability of the proposed project area site and any proposed alternative project area site(s) shall be submitted by the applicant. If this information is derived from reference materials, it shall be derived from the best available and current reference materials. The applicant shall provide the following for each project area site alternative.
  - (1) Geography and topography. The applicant shall provide a map(s) of 1:24,000 scale containing a five-mile radius from the proposed facility and showing the following features:
    - (a) The proposed facility.
    - (b) Major population centers and geographic boundaries.
    - (c) Major transportation routes and utility corridors.
    - (d) Bodies of water which may be directly affected by the proposed facility.
    - (e) Topographic contours.
    - (f) Major institutions, parks, and recreational areas.
    - (g) Residential, commercial, and industrial buildings and installations.
    - (h) Air transportation facilities, existing or proposed.
  - (2) An aerial photograph containing a one-mile radius from the proposed facility, indicating the location of the proposed facility in relation to surface features.
  - (3) A map(s) of 1:12,000 scale of the project area site, showing the following existing features:
    - (a) Topographic contours.
    - (b) Existing vegetative cover.
    - (c) Land use and classifications.
    - (d) Individual structures and installations.

- (e) Surface bodies of water.
  - (f) Water and gas wells.
  - (g) Vegetative cover that may be removed during construction.
- (4) Geology and seismology. The applicant shall provide a map(s) of suitable scale and a corresponding cross-sectional view, showing the geological features of the proposed project area and the location of proposed test borings. The applicant shall also:
- (a) Describe the suitability of the site geology and plans to remedy any inadequacies.
  - (b) Describe the suitability of soil for grading, compaction, and drainage, and describe plans to remedy any inadequacies.
- (5) Hydrology and wind. The applicant shall:
- (a) Provide the natural and the man-affected water budgets, including the ten-year mean and critical (lowest seven-day flow in ten years) surface flows and the mean and extreme water tables during the past ten years for each body of water likely to be directly affected by the proposed facility.
  - (b) Provide an analysis of the prospects of floods and high winds for the project area, including the probability of occurrences and likely consequences of various flood stages and wind velocities, and describe plans to mitigate any likely adverse consequences. Identify any portion of the proposed facility to be located in a one hundred-year flood plain area.
  - (c) Provide existing maps of aquifers which may be directly affected by the proposed facility.
- (B) Layout and construction. The applicant shall provide information on the proposed layout and preparation of the proposed project area site and any proposed alternative project area site(s) and the description of proposed major structures and installations located thereon.
- (1) Project area site activities. The applicant shall describe the proposed project area site preparation and reclamation operations, including:
- (a) Test borings, including closure plans for such borings.
  - (b) Removal of vegetation.
  - (c) Grading and drainage provisions.
  - (d) Access roads.
  - (e) Removal and disposal of debris.

(f) Post-construction reclamation.

(2) Layout. The applicant shall supply a map(s) of 1:12,000 scale of the proposed wind-powered electric generation facility, showing the following features of the proposed (and existing) facility and associated facilities:

- (a) Wind-powered electric generation turbines.
- (b) Transformers and collection lines.
- (c) Construction laydown area(s).
- (d) Transmission lines.
- (e) Substations.
- (f) Transportation facilities and access roads.
- (g) Security facilities.
- (h) Grade elevations where modified during construction.
- (i) Other pertinent installations.

(3) Structures. The applicant shall describe, in as much detail as is available at the time of submission of the application, all major proposed structures, including the following:

- (a) Estimated overall dimensions.
- (b) Construction materials.
- (c) Color and texture of facing surfaces.
- (d) Photographic interpretation or artist's pictorial sketches of the proposed facility from public vantage points within five miles of the proposed facility.
- (e) Any unusual features.

(4) Plans for construction. The applicant shall describe the proposed construction sequence.

(5) Future plans. The applicant shall describe any plans for future additions of turbines to the proposed facility (including the type and timing) and the maximum electric capacity anticipated for the facility.

(C) Equipment.

(1) Wind-powered electric generation equipment. The applicant shall describe the proposed major wind-powered electric generation equipment for the proposed project area and any proposed alternative project area(s).

(2) Safety equipment. The applicant shall describe:

- (a) All proposed major public safety equipment.
- (b) The reliability of the equipment.

- (c) Turbine manufacturer's safety standards. Include a complete copy of the manufacturer's safety manual or similar document.
- (3) The applicant shall describe any other major equipment not discussed in paragraphs (C)(2)(a) to (C)(2)(c) of this rule.
- (D) Regional electric power system. The applicant shall provide the following information on interconnection of the facility to the regional electric power grid.
  - (1) Interconnection queue(s). The applicant shall provide the following information relating to its generation interconnection request:
    - (a) Name of queue.
    - (b) Web link of queue.
    - (c) Queue number.
    - (d) Queue date.
  - (2) System studies. The applicant shall provide system impact studies on its generation interconnection request. The studies shall include, but are not limited to, the following:
    - (a) Feasibility study.
    - (b) System impact study.

Buckeye provided information required by this rule in Case No. 08-666-EL-BGN and the proposed changes in the collection line system and relocation of the construction staging areas have little relevance to the information required by this subsection. Accordingly, Buckeye requests a waiver from the requirements of Rule 4906-17-05 with the exception that Buckeye will provide the following information and items: (1) an updated map of 1:12,000 scale of the Project area site pursuant to Rule 4906-17-05(A)(3); (2) a description of Project area site activities related to the collection line and staging area relocations pursuant to Rule 4906-17-05(B)(1); and (3) an updated Project layout map of 1:12,000 scale as required by Rule 4906-17-05(B)(2) with the exception that grade elevations where modified during construction will not be shown. Grade elevations to be modified during construction will be shown on the Project's detailed design drawings. In addition, although not required by rule, the Applicant will provide

- (1) information on how the proposed change in collection line design relates to the collection line system for the proposed Buckeye II Wind Farm, docketed as Case No. 12-0160-EL-BGN; and,
- (2) information on the construction staging areas for the Project and the proposed shift of the construction staging areas.

**VI. Rule 4906-17-06 Financial Data**

Rule 4906-17-06 requires the applicant to submit ownership status of the project area, capital costs for the project, operation and maintenance expenses, and an estimate of the cost of any delays. The Rule states:

(A) The applicant shall state the current and proposed ownership status of the proposed project area, including rights of way, structures, and equipment. Such information shall include type of ownership.

(B) Capital and intangible costs. The applicant shall:

- (1) Submit estimates of applicable capital and intangible costs for the various alternatives. The data submitted shall be classified according to federal energy regulatory commission uniform system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company, or a natural gas company, as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the capital and intangible costs classified in the accounting format ordinarily used by the applicant in its normal course of business).
- (2) Compare the total costs per kilowatt with the applicant's similar facilities, and explain any substantial differences.
- (3) Tabulate the present worth and annualized cost for capital costs and any additional cost details as required to compare capital cost of alternates (using the start of construction date as reference date), and describe techniques and all factors used in calculating present worth and annualized costs.

(C) Operation and maintenance expenses. The applicant shall:

- (1) Supply applicable estimated annual operation and maintenance expenses for the first two years of commercial operation. The data submitted shall be classified according to federal energy regulatory commission uniform

system of accounts prescribed by the public utilities commission of Ohio for utility companies, unless the applicant is not an electric light company, a gas company, or a natural gas company, as defined in Chapter 4905. of the Revised Code (in which case, the applicant shall file the operation and maintenance expenses classified in the accounting format ordinarily used by the applicant in its normal course of business).

- (2) Compare the total operation and maintenance cost per kilowatt with applicant's similar facilities and explain any substantial differences.
- (3) Tabulate the present worth and annualized expenditures for operation and maintenance costs as well as any additional cost breakdowns as required to compare alternatives, and describe techniques and factors used in calculating present worth and annualized costs.

(D) Delays. The applicant shall submit an estimate of the cost for a delay prorated on a monthly basis beyond the projected in-service date.

Buckeye seeks a waiver from Rule 4906-17-06(B), (C) and (D). Buckeye will comply with subsection (A) and provide a description of the current ownership of the Project area, including the areas impacted by the new collection line design and the relocation of the construction staging areas. Good cause exists to support this waiver because the proposed collection line design modification and relocation of the construction staging areas have little to no impact on the overall capital cost of the Project as well as the Project's operation and maintenance costs, costs previously reviewed by the Board in Case No. 08-666-EL-BGN. The proposed design changes also have no bearing on the cost of project delays. Accordingly, Buckeye respectfully requests a waiver from Rule 4906-17-06(B), (C) and (D).

## **VII    Rule 4906-17-07    Environmental Data**

Rule 4906-17-07 requires information to assess the environmental effects of the facility.

The Rule states as follows:

- (A) General. The information requested in this rule shall be used to assess the environmental effects of the proposed facility. Where appropriate, the applicant may substitute all or portions of documents filed to meet federal, state, or local regulations. Existing data may be substituted for physical measurements.

(B) Air.

(1) Preconstruction. The applicant shall:

- (a) Submit available information concerning the ambient air quality of the proposed project area site and any proposed alternative site(s).
- (b) Describe applicable federal and/or Ohio new source performance standards, applicable air quality limitations, applicable national ambient air quality standards, and applicable prevention of significant deterioration increments.
- (c) Provide a list of all required permits to install and operate air pollution sources. If any such permit(s) has been issued more than thirty days prior to the submittal of the certificate application, the applicant shall provide a list of all special conditions or concerns attached to the permit(s).
- (d) Describe how the proposed facility will achieve compliance with the requirements identified in paragraphs (B)(1)(b) and (B)(1)(c) of this rule, if applicable.

(2) Construction. The applicant shall describe plans to control emissions during the project area site clearing and construction phase.

(C) Water.

(1) Preconstruction. The applicant shall provide a list of all permits required to install and operate the proposed facility.

(2) Construction. The applicant shall:

- (a) Describe the schedule for receipt of the national pollution discharge elimination system permit.
- (b) Estimate the quality and quantity of aquatic discharges from the project area site clearing and construction operations, including run-off and siltation from dredging, filling, and construction of shore side facilities.
- (c) Describe any plans to mitigate the above effects in accordance with current federal and Ohio regulations.
- (d) Describe any changes in flow patterns and erosion due to project area site clearing and grading operations.

- (3) Operation. In order to assess the effects of facility operation on water quality, the applicant shall:
  - (a) Provide a quantitative flow diagram or description for water and waterborne wastes resulting from run-off from soil or other surfaces at the proposed project area(s).
  - (b) Describe how the proposed facility incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives.
- (D) Solid waste.
  - (1) Preconstruction. The applicant shall:
    - (a) Describe the nature and amount of debris and solid waste on the project area site.
    - (b) Describe any plans to deal with such wastes.
  - (2) Construction. The applicant shall:
    - (a) Estimate the nature and amounts of debris and other solid waste generated during construction operations.
    - (b) Describe the proposed method of storage and disposal of these wastes.
  - (3) Operation. The applicant shall:
    - (a) Estimate the amount, nature, and composition of solid wastes generated during the operation of the proposed facility.
    - (b) Describe proposed methods for storage, treatment, transport, and disposal of these wastes.
  - (4) Licenses and permits. The applicant shall describe its plans and activities leading toward acquisition of waste generation, storage, treatment, transportation, and/or disposal permits. If any such permit(s) has been issued more than thirty days prior to the submittal of the certificate application, the applicant shall provide a list of all special conditions or concerns attached to the permit(s).

Buckeye seeks a waiver in full from the requirements of Rule 4906-17-07. This rule calls for general information about the facility, information that the Board reviewed in Case No. 08-



666-EL-BGN. The Board reviewed the environmental impact of the Project in Case No. 08-666-EL-BGN and the proposed collection line redesign and the relocation of the construction staging areas are discrete changes in the Project design that have little relevance to the information required under this subsection. Accordingly, Buckeye respectfully requests a waiver in full from the requirements of Rule 4906-17-07.

#### **VIII. Rule 4906-17-08 Social and Ecological Data**

Rule 4906-17-08 requires an applicant to submit a wide range of information regarding the social and ecological impact of the proposed facility. Much of the information required under 4906-17-08 has no relevancy to the proposed change in collection line design and the relocation of the construction staging areas. As well, conditions currently in place throughout the certificate address any issues that may be raised, such as mitigation measures in sensitive areas. Each subsection of the Rule 4906-17-08 and the sought waiver are discussed below.

##### **A. Subsection 4906-17-08(A) – Health and Safety**

Subsection 4906-17-08(A) relates to health and safety issues. Under this subsection, the applicant must provide demographic information, noise information, water impacts, ice throw, blade shear and shadow flicker information. The rule provides:

##### **(A) Health and safety.**

(1) Demographic. The applicant shall provide existing and ten-year projected population estimates for communities within five miles of the proposed project area site(s).

(2) Noise. The applicant shall:

(a) Describe the construction noise levels expected at the nearest property boundary. The description shall address:

- (i) Dynamiting activities.
- (ii) Operation of earth moving equipment.
- (iii) Driving of piles.

- (iv) Erection of structures.
  - (v) Truck traffic.
  - (vi) Installation of equipment.
- (b) For each turbine, evaluate and describe the operational noise levels expected at the property boundary closest to that turbine, under both day and nighttime conditions. Evaluate and describe the cumulative operational noise levels for the wind facility at each property boundary for each property adjacent to the project area, under both day and nighttime operations. The applicant shall use generally accepted computer modeling software (developed for wind turbine noise measurement) or similar wind turbine noise methodology, including consideration of broadband, tonal, and low-frequency noise levels.
- (c) Indicate the location of any noise-sensitive areas within one mile of the proposed facility.
- (d) Describe equipment and procedures to mitigate the effects of noise emissions from the proposed facility during construction and operation.
- (3) Water. The applicant shall estimate the impact to public and private water supplies due to construction and operation of the proposed facility.
- (4) Ice throw. The applicant shall evaluate and describe the potential impact from ice throw at the nearest property boundary, including its plans to minimize potential impacts if warranted.
- (5) Blade shear. The applicant shall evaluate and describe the potential impact from blade shear at the nearest property boundary, including its plans to minimize potential impacts if warranted.
- (6) Shadow flicker. The applicant shall evaluate and describe the potential impact from shadow flicker at adjacent residential structures and primary roads, including its plans to minimize potential impacts if warranted.

Buckeye provided all of this information to the Board in Case No. 08-666-EL-BGN and none of the information required by the rule is relevant to the proposed changes to the collection line system or the proposed relocation of the construction staging areas. Accordingly, Buckeye respectfully requests a waiver in full from the requirements of subsection 4906-17-08(A).

**B. Subsection 4906-17-08(B) – Ecological Impact**

Subsection 4906-17-08)(B) relates to the ecological impact of the Facility, and requires information related to vegetation and animal life surveys within the facility's Project area boundary. The subsection states:

**(B) Ecological impact.**

**(1) Project area site information. The applicant shall:**

- (a) Provide a map of 1:24,000 scale containing a half-mile radius from the proposed facility, showing the following:**
  - (i) The proposed project area boundary.**
  - (ii) Undeveloped or abandoned land such as wood lots, wetlands, or vacant fields.**
  - (iii) Recreational areas, parks, wildlife areas, nature preserves, and other conservation areas.**
- (b) Provide the results of a survey of the vegetation within the facility boundary and within a quarter-mile distance from the facility boundary.**
- (c) Provide the results of a survey of the animal life within the facility boundary and within a quarter-mile distance from the facility boundary.**
- (d) Provide a summary of any studies which have been made by or for the applicant addressing the ecological impact of the proposed facility.**
- (e) Provide a list of major species from the surveys of biota. "Major species" are those which are of commercial or recreational value, or species designated as endangered or threatened in accordance with the United States and Ohio threatened and endangered species lists.**

**(2) Construction. The applicant shall:**

- (a) Estimate the impact of construction on the areas shown in response to paragraph (B)(1)(a) of this rule.**
- (b) Estimate the impact of construction on the major species listed under paragraph (B)(1)(e) of this rule.**

- (c) Describe the procedures to be utilized to avoid, minimize, and mitigate both the short- and long-term impacts due to construction.

(3) Operation. The applicant shall:

- (a) Estimate the impact of operation on the areas shown in response to paragraph (B)(1)(a) of this rule.
- (b) Estimate the impact of operation on the major species listed under paragraph (B)(1)(e) of this rule.
- (c) Describe the procedures to be utilized to avoid, minimize, and mitigate both the short- and long-term impacts of operation.
- (d) Describe any plans for post-construction monitoring of wildlife impacts.

Buckeye provided this information to the Board in Case No. 08-666-EL-BGN and given the close proximity of the relocated collection lines and staging areas to the prior locations, Buckeye requests that it not be required to provide survey information for both vegetation and animal life for the entire Project area. Over 95 percent of the relocated collection lines will be in active agricultural fields, and only 5.5 acres of forestland will be disturbed by the relocation. Rather than provide full survey information, Buckeye instead will provide survey information on the 5.25 acres of forest that will be temporarily disturbed and that will have a 0.28 acre permanent disturbance, as well as a survey of the 0.94 acres of scrub-shrub area that will be a temporary disturbance with no permanent disturbance. The type of surveys conducted will be limited to only those surveys necessary for the amendment. For example, avian and bat surveys will not be included in the amendment application as those surveys are primarily intended to document and characterize activity for use in determining potential impact by turbine operation.

This waiver is further justified because the Board has approved conditions to the current certificate that will protect areas of the relocated collection lines and staging areas. For example, Condition 8 requires Buckeye to provide a stream crossing plan and final collection line plan

including an explanation of how impacts to all sensitive resources will be avoided and minimized. Condition 8(f) requires Buckeye a tree clearing plan including a description about how electric line corridors and laydown areas will be protected from damaged during construction and how clearing work will be done to minimize removal of woody vegetation.

Other conditions include Condition 9 which requires Buckeye to install and maintain erosion and sedimentation control measures. Condition 11 requires Buckeye to employ BMPs when working in the vicinity of environmentally-sensitive areas. Condition 13 requires Buckeye to have an environmental specialist on site at all times that construction, including vegetation clearing is being performed in or near a sensitive area. Buckeye also has to notify Staff, ODNR and/or USFWS if any threatened or endangered species are discovered on-site during construction or operation under Condition 14.

With the waiver, Buckeye is proposing to submit the following information: (1) a map of 1:24,000 scale showing the information required under Rule 4906-17-08(B)(1)(a); (2) the results of vegetation and animal life surveys in the 5.25 acres of forestland and the 0.94 acres of scrub-shrub pursuant to Rule 4906-17-08(B)(1)(b),(c); (3) a summary of stream crossing and wetland delineation studies applicable to the relocated collection lines and relocated staging areas pursuant to Rule 4906-17-08(B)(1)(d); (4) a list of major species from the surveys pursuant to 4906-17-08(1)(e); and (5) an estimate on the impact of construction of the relocated collection lines and staging areas as required under 4906-17-08(B)(2), including any potential impact to the rayed bean mussel and eastern massasauga rattlesnake. Buckeye also requests a waiver from the requirements of Subsection 4906-17-08(B)(3) as that subsection addresses the impacts of operation which is more relevant to the operation of the turbines, and not the buried collection lines.

**C. Subsection 4906-17-08(C) – Economics, Land Use and Community Development**

Subsection 4906-17-08(C) requires the applicant to provide information on land uses within five miles of the facility, the number of residential facilities within 1,000 feet of the facility boundary, turbine setbacks, land use impacts, structures to be removed and relocated and plans for the future use of the site. Subsection 4906-17-08(C) also requires economic information such as payroll and employment estimates, the probable impact on public services and facilities and the impact on regional development. Buckeye provided this information to the Board in Case No. 08-666-EL-BGN and the information will be unchanged by the proposed collection line redesign and the relocation of the construction staging areas. Accordingly, for good cause, Buckeye requests a waiver in full from the requirements of Subsection 4906-17-08(C).

**D. Subsection 4906-17-08(D) – Cultural Impact**

Subsection 4906-17-08(D) requires the applicant to submit general information regarding the cultural impact of the facility. Buckeye provided this information in Case No. 08-666-EL-BGN to the Board. Taking into consideration the limited nature of the design changes, Buckeye proposes that the requirements of subsection 4906-17-08(D) be waived with the exception that Buckeye be required to provide a map in accordance with subsection 4906-17-08(D)(1) and estimate the impact of the collection line redesign and relocation of the construction staging areas on the landmarks set forth in the map (subsection 4906-17-08(D)(2)).

**E. Subsection 4906-17-08(E) – Public Responsibility**

Subsection 4906-17-08(E) calls for information regarding public interaction programs, insurance, radio and TV interference, military radar interference, the impact on roads and bridges and the decommissioning plan for the facility. Buckeye is not proposing to modify its certificate

in regard to any conditions on these topics. As well, the proposed change in collection line design and the relocation of the construction staging areas has minimal bearing on the information required by this rule. Accordingly, Buckeye respectfully requests that it be granted a waiver in full from the requirements of subsection 4906-17-08(E).

**F. Subsection 4906-17-08(F) – Agricultural District Impact**

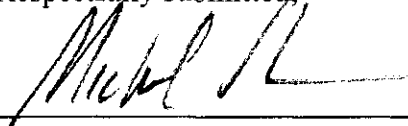
Subsection 4906-17-08(F) requires the applicant to provide the Board with information regarding the facility's impact on agricultural land. This information was provided to the Board in Case No. 08-666-EL-BGN. To avoid unnecessary and repetitive information, Buckeye requests that it be permitted to only provide information relating to the collection line redesign and the relocation of the construction staging areas in response to this subsection. Accordingly, Buckeye respectfully requests a waiver from subsection 4906-17-08(F) as to any part of the facility other than the redesigned portion of the collection lines and the relocated construction staging areas.

**IX. Conclusion**

Through this motion, Buckeye is asking the Board to waive the requirements in Chapter 4906-17 which are not necessary for the Board to consider Buckeye's proposed changes to its Project's collection line system and the relocation of the construction staging areas. Buckeye's application to redesign part of the Project's collection line system and relocate a construction staging area will include, but is not be limited to, the following information: layout drawings, technical summaries and overviews, cultural impact information and agricultural land use information. This information will allow the Board and its Staff, as well as the public, to

evaluate the impact of the proposed change to the Project. Accordingly, for good cause shown, Buckeye respectfully requests that the Board grant the sought waivers in full.

Respectfully submitted,



---

M. Howard Petricoff (0008287)  
Michael J. Settineri (0073369)  
Miranda R. Leppla (0086351)  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216-1008  
(614) 464-5414  
(614) 719-4904 (fax)  
[mlhpetricoff@vorys.com](mailto:mlhpetricoff@vorys.com)  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[mrleppla@vorys.com](mailto:mrleppla@vorys.com)

Attorneys for Buckeye Wind LLC



## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served upon the following parties of record via email and U.S. mail on this 6th day of February, 2013.

Jack A. VanKley  
VanKley & Walker, LLC  
132 Northwoods Blvd., Suite C-1  
Columbus, Ohio 43235  
[jvankley@vankleywalker.com](mailto:jvankley@vankleywalker.com)

Christopher A. Walker  
VanKley & Walker, LLC  
137 North Main Street, Suite 316  
Dayton, Ohio 45402  
[cwalker@vankleywalker.com](mailto:cwalker@vankleywalker.com)

Chad A. Endsley  
Chief Legal Counsel  
Ohio Farm Bureau Federation  
280 North High Street, P.O. Box 182383  
Columbus, OH 43218-2383  
[cendsley@ofbf.org](mailto:cendsley@ofbf.org)

G.S. Weithman, Director of Law  
City of Urbana  
205 S. Main Street  
Urbana, OH 43078  
[diroflaw@ctcn.net](mailto:diroflaw@ctcn.net)

Gene Park  
Piqua Shawnee Tribe  
1803 Longview Drive  
Springfield, OH 45504  
[Ewest14@woh.rr.com](mailto:Ewest14@woh.rr.com)

Daniel A. Brown  
Brown Law Office LLC  
204 S. Ludlow St., Suite 300  
Dayton, Ohio 45402  
[dbrown@brownlawdayton.com](mailto:dbrown@brownlawdayton.com)

Werner Margard  
John Jones  
Assistant Attorneys General  
180 East Broad Street, 9th Floor  
Columbus, Ohio 43215  
[werner.margard@puc.state.oh.us](mailto:werner.margard@puc.state.oh.us)  
[john.jones@puc.state.oh.us](mailto:john.jones@puc.state.oh.us)

Margaret A. Malone  
Christina E. Grasseschi  
Assistant Attorneys General  
30 East Broad St., 25<sup>th</sup> Floor  
[margaret.malone@ohioattorneygeneral.gov](mailto:margaret.malone@ohioattorneygeneral.gov)  
[christina.grasseschi@ohioattorneygeneral.gov](mailto:christina.grasseschi@ohioattorneygeneral.gov)

Jane A. Napier  
Assistant Prosecuting Attorney  
Champaign County  
200 N. Main Street  
Urbana, OH 43078  
[jancepo@ctcn.net](mailto:jancepo@ctcn.net)

Sarah Chambers  
Thompson Hine LLP  
41 South High Street, Suite 1700  
Columbus, OH 43215-6101  
[Sarah.Chambers@ThompsonHine.com](mailto:Sarah.Chambers@ThompsonHine.com)

  
\_\_\_\_\_  
Michael J. Settineri