

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. 13-0360-EL-BGA


CITY OF URBANA'S PETITION FOR LEAVE TO INTERVENE

Pursuant to Ohio Administrative Code § 4906-7-04(A)(2), the City of Urbana, Ohio ("the City"), by its legal representative, petitions the Ohio Power Siting Board for leave to intervene in this matter. The City states the following facts as demonstrative of good cause for status as an intervener (more fully discussed in the attached Memorandum In Support of this Petition):

1. The duly-elected representatives of the City have taken action to authorize the City's legal representative to intervene in this action.
2. The City has no opinion on the Applicant's plan to bury electrical interconnect lines on privately leased land, but opposes the change of a construction staging area from U.S. Route 36 and State Route 814 to U.S. Route 36 and Three Mile Road, to the extent that use of the proposed staging area may interfere with a sewer line extension or damage it.
3. The City must intervene in these proceedings as the direct, substantial interests of the City and its citizenry are not represented by any other party.

Therefore, the Petitioner, the City of Urbana, requests the Board grant this Petition.

Respectfully submitted,



G.S. WEITHMAN (0018377)
City of Urbana Director of Law
205 S. Main Street
Urbana, Ohio
(937) 652-4397

BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of)	
Buckeye Wind, LLC, to Amend its)	Case No. 13-0360-EL-BGA
Certificate issued in)	
Case No. 08-666-EL-BGN)	

**MEMORANDUM IN SUPPORT OF
CITY OF URBANA'S PETITION FOR LEAVE TO INTERVENE**

Ohio Administrative Code ("O.A.C") § 4906-7-04(B) states the Ohio Power Siting Board or administrative law judge ("ALJ") should consider these factors for all intervention petitions:

- (a) The nature and extent of the interest;
- (b) The extent to which the interest is represented by existing parties;
- (c) The potential contribution to a just and expeditious resolution of the issues; and
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

Additionally, O.A.C. § 4906-7-04(A)(1) provides that a municipal corporation may file a petition to intervene within 30 days of the date the application (or in this case, Amended Application) was served. The City received service of Buckeye Wind's Amended Application on March 21. Therefore, this Petition to Intervene is timely. Although under O.A.C. § 4906-7-04(A)(1), no "portion" of the Buckeye Wind facility is inside the current city limits, one staging area is within an identified area of future planned development at the intersection of U.S. Route 36 and Three Mile Road, within 1.1 miles of the city limits.

O.A.C. § 4906-7-04(A)(2) allows a party to petition for leave to intervene based on good cause. For the following reasons, the City of Urbana submits that there is good cause for the

Board to grant its petition for leave to intervene in these proceedings and that the intervention is warranted under the administrative code's criteria.

A. Because Champaign Wind may impact the City's economic interests, the City has a significant, vested interest in this matter.

The City of Urbana is an Ohio municipal corporation located adjacent to the project area, with proposed Buckeye Wind turbine sites located in Urbana Township (to the east and southeast of the City), Union Township (to the east), and Wayne Township (to the northeast). The City was granted intervener status in the prior Board proceeding involving Buckeye Wind, Case No. 08-0666-EL-BGN, the "first phase" or "sister project" of Champaign Wind, Case No. 12-0160-EL-BGN. The Board, to date, has not issued a Certificate for the Champaign Wind project. Sites for both projects include locations in the City's planned development area of future incorporation through annexation along the U.S. Route 36 corridor, as Urbana continues to grow to the east.

Buckeye Wind's Application to Amend would shift a construction staging area from the intersection of U.S. Route 36 and State Route 814 to the north side of the intersection of Three Mile Road and U.S. Route 36. That location is more than a mile closer to the City's eastern corporation limit at U.S. Route 36 and Dugan Road. The City identifies the new location of the staging area as unfavorable due to potential interference with the extension of a city sewer main to a nearby business, and potential damage the sewer infrastructure once it is in place.

Although the Applicant characterizes Buckeye's proposed design changes as "not substantial," the relocation of a staging area to a parcel of land within the city's sewer service area is a significant change that must be carefully reviewed by the Ohio Power Siting Board due to the potential for conflicts with construction and damage to the sewer line.

The Urbana City Council acted to approve the sewer line extension on March 12, 2013 (Appendix A). On February 26, 2013, the Champaign County Commissioners voted to apply for a \$160,000 Community Development Block Grant for Economic Development through the Ohio Department of Development for the project (Appendix B). Urbana will provide matching funds for the grant in the amount of \$160,000. The manufacturer, Rothschild's Berry Farm, a gourmet food producer, also will pay approximately \$467,000 to finish the sewer main and build a lift station on the southeast side of the intersection at Three Mile Road and U.S. Route 36.

The sewer main line will be constructed in the public right of way along the north side of U.S. Route 36 (Appendix C). After review of Buckeye's Amended Application and consultation with the City's engineering department, the sewer line installation would most likely be finished before Buckeye's projected use of the staging area begins in October of 2013. However, to the extent that construction of the staging area could interfere with installation of the sewer line if the sewer project is delayed, or that use of heavy equipment in the staging area by Buckeye Wind could damage the finished sewer line, the City would ask the Board to consider these potential problems in its decision to approve or deny Buckeye Wind's Amended Application.

No representatives from Buckeye Wind have contacted the City with regard to resolution of the City's concerns about the sewer line. Instead, Buckeye Wind asserts the relocation of the staging area to a different parcel more than a mile closer to the city limits will have "no substantial impact," with no discernible justification for that conclusion. Therefore, the City must intervene to protect its interests from potential adverse impacts from this project.

Furthermore, the City has recently learned that Buckeye Wind never had permission to use the property located at State Route 814 and U.S. Route 36 for a staging area, even though Buckeye Wind represented it had such a lease to the Board in its initial application in 2009

(Appendix D). Furthermore, any approval of relocation of the easternmost staging area for Buckeye Wind to match the staging area proposed by Champaign Wind would be premature, when the Board has not issued a Certificate for Champaign Wind.

B. No other existing party adequately represents the City's interests in this matter.

At this time, according to information from the Board's online docketing system, no other parties have filed petitions to intervene in the Amended Application for Buckeye Wind.

C. The City's participation in this matter will allow the Board to reach a just and expeditious resolution of this proceeding.

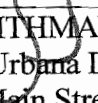
The City's intervention, supplemented by expert testimony as appropriate, will provide critical information to allow the Board to fairly assess Buckeye Wind's impact to Urbana and the local community, and therefore will contribute to a just and expeditious resolution.

D. The City's participation in this matter will not create undue delay or prejudice.

Granting the City's petition to intervene will not unduly delay the proceedings or cause unjust prejudice to the Applicant. The deadline for the City to intervene as of right is April 20, 2013, within 30 days after service of Buckeye Wind's Amended Application. The City has complied with that deadline. The City may suffer significant harm and prejudice if Buckeye Wind is allowed to proceed without consideration of the City's interests.

For the foregoing reasons, the City of Urbana requests the Ohio Power Siting Board grant this Petition for Leave to Intervene in the matter of the application of Buckeye Wind LLC.

Respectfully submitted,



G.S. WEITHMAN (0018377)
City of Urbana Director of Law
205 S. Main Street
Urbana, Ohio
(937) 652-4397

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following parties of record via email on this 27th day of March, 2013.

M. Howard Petricoff
Michael J. Settineri
Miranda Leppla
Stephen Howard
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
mjsettineri@vorys.com
smhoward@vorys.com
mrleppla@vorys.com

Jack A. VanKley
Christopher A. Walker
VanKley & Walker, LLC
137 North Main Street, Suite 316
Dayton, Ohio 45402
jvankley@vankleywalker.com
cwalker@vankleywalker.com

Jane Napier
Champaign County Assistant Prosecutor
200 N. Main Street
Urbana, Ohio 43078
jnapier@champaignprosecutor.com

Gene Park
Piqua Shawnee Tribe
1803 Longview Drive
Springfield, OH 45504
Ewestl4@woh.rr.com

Daniel A. Brown
Brown Law Office LLC
204 S. Ludlow St., Suite 300
Dayton, Ohio 45402
dbrown@brownlawdayton.com

Werner Margard
John Jones
Stephen Reilly
Devin Parram
Assistant Attorneys General
180 East Broad Street, Ninth Floor
Columbus, Ohio 43215
Werner.Margard@puc.state.oh.us
John.Jones@puc.state.oh.us
Stephen.Reilly@puc.state.oh.us
Devin.Parram@puc.state.oh.us

Sarah Anderson
Summer Plantz
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, OH 43215
sarah.anderson@ohioattorneygeneral.gov
summer.plantz@ohioattorneygeneral.gov

Chad Endsley
Ohio Farm Bureau Federation
280 N. High Street.
Columbus, Ohio 43218-2383
cendsley@ofbf.org
Chad A. Endsley
Chief Legal Counsel
Ohio Farm Bureau Federation
cendsley@ofbf.org

Sarah Chambers
Philip B. Sineneng
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, OH 43215-6101
Sarah.Chambers@ThompsonHine.com
Philip.Sineneng@ThompsonHine.com

G. S. Weithman, Urbana Director of Law

RESOLUTION 2386

RESOLUTION TO AUTHORIZE THE CITY OF URBANA, FOR THE PURPOSES OF ECONOMIC DEVELOPMENT, A SANITARY SEWER EXTENSION ALONG EAST STATE ROUTE 36 TO ROBERT ROTHSCHILD FARM

WHEREAS the City of Urbana, Ohio wishes to enter into an agreement for the construction of sanitary sewer extension;

WHEREAS the City of Urbana, Ohio is the provider of said public sanitary services and maintains the sanitary sewer mains and appurtenances;

WHEREAS, the City of Urbana, Ohio wishes to expend one hundred and sixty thousand dollars (\$160,000) from the sanitary sewer funds for the fiscal year 2013 toward this project;

WHEREAS, the City of Urbana, Ohio expenditure for this project is subject to acceptance of certain conditions precedent;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE City of Urbana, Ohio:

SECTION ONE:

That the Urbana City Council authorizes the Mayor or his authorized designee as the official representative of the City of Urbana to enter into necessary agreements to facilitate this sanitary sewer extension for economic development

SECTION TWO:

This resolution shall be in force and effect immediately after its passage to ensure the coordination and cooperation needed for this project.



Council President

Passed: MARCH 12, 2013

Attest: 

This resolution approved by me this 12TH day of MARCH, 2013



Mayor

Champaign County Commissioners

COMMISSIONERS

BOB E. CORBETT
DAVID E. FAULKNER
STEVEN R. HESS



CLERK/ADMINISTRATOR

ANDREA MILLICE

CLERK

MARY COLLIER

1512 SOUTH U.S. HIGHWAY 68

SUITE A100

URBANA, OHIO 43078

(937) 484-1611

RECEPTIONIST/BOOKKEEPER

ROBIN FERRYMAN

February 26, 2013

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – ROBERT ROTHSCHILD FARMS – SEWER EXTENSION PROJECT

THE BOARD OF COMMISSIONERS of Champaign County, Ohio met in regular session on February 26, 2013 with the following present:

Steve Hess
Bob Corbett
Dave Faulkner

Mr. Faulkner moved the Board approve the following Resolution.

WHEREAS, Robert Rothschild Farms (Rothschild) has requested that the City of Urbana extend a sewer to its property outside of the city limits into Urbana Township, an unincorporated area of Champaign County and wishes for Champaign County to apply for certain funding for such sewer extension project on its behalf,

Be it resolved by the Board of County Commissioners of Champaign County, Ohio (Board) that:

SECTION 1: As Rothschild has orally guaranteed and will be making such guarantee in writing hereafter as follows:

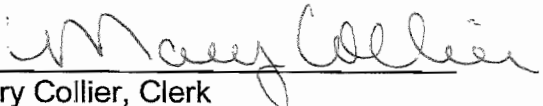
1. To complete the sewer project according to the Grant Agreement, being 16 FTE jobs, including 9 LMI jobs within 24 months of project completion, plus \$467,000 in private on-site infrastructure investment;
2. Rothschild will keep the land and project free of liens and claims from construction except as noted in the application and Grant Agreement;
3. The project will not result in the relocation of the plant or loss of jobs within three years of the date of assistance, if such loss will likely result in a significant loss of jobs.
4. Should Rothschild fail to comply with 1, 2, or 3, it shall reimburse the County for the Grant,

the Board shall apply for funding equal to Fifty percent (50%) of off-site costs from the Community Development Block Grant (CDBG) through the Ohio Department of Development (ODOD). No additional money investment from Champaign County is contemplated by all parties involved in the subject project.

SECTION 2: As further incentive to the Board applying for CDBG funding, it is the Board's understanding that the City of Urbana has committed to funding the remaining Fifty percent (50%) of the cost as well as maintaining and operating the public infrastructure.

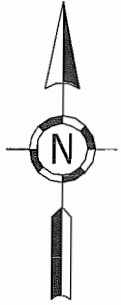
Mr. Corbett seconded the motion and the result of the vote was:
Mr. Hess, yes; Mr. Corbett, yes; Mr. Faulkner, yes.

I, Mary Collier, Clerk of the Board of Commissioners of Champaign County, certify this to be a true and correct statement as taken from the minutes of the Commissioners' Journal Volume 61, under date of February 26, 2013.



Mary Collier, Clerk
Board of Commissioners
Champaign County, Ohio

Cc: Marcia Bailey



SCALE IN FEET



Rothschild sewer extension vs. turbine staging area @ Three Mile Rd.

Bob and Barbara Behling [thepark@ctcn.net]

Sent: Saturday, March 23, 2013 9:22 AM

To: Gil Weithman

APPENDIX D

Mr. Weithman -

Re: Turbine vs. sewer: article in Springfield News Sun Saturday Mar. 23

It states the city may intervene concerning the amendment Everpower is filing with the state where they want to move a staging area from Rt 36 and Ludlow to Rt. 36 and Three Mile Rd.

The article also states Everpower wants to make this change "to minimize the effect on local roads during construction."

We own the property at Rt 36 and Ludlow Road. Several years ago, we were presented with a lease for a staging area. We looked it over for a few days, did some research on wind turbines and decided we did not want either a turbine or a staging area. We never signed a lease agreement with Everpower.

So although Everpower says they are moving the staging area out of concern for local roads, they are really establishing a new staging area - since they never officially had one on Rt 36 to begin with.

The purpose of our email is just to set the record straight.

Thank you,

Bob and Barbara Behling
484-3625

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/27/2013 1:56:07 PM

in

Case No(s). 13-0360-EL-BGA

Summary: Petition Petition for Leave to Intervene with attached Memorandum in Support electronically filed by Mr. Gil S Weithman on behalf of City of Urbana, Ohio