

BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of)	
Buckeye Wind, LLC, to Amend its)	
Certificate Issued in)	Case No. 13-360-EL-BGA
Case No. 08-666-EL-BGN)	

**MEMORANDUM OF ROBERT McCONNELL, DIANE McCONNELL, AND
JULIA F. JOHNSON IN OPPOSITION TO APPLICANT’S MOTION FOR WAIVER**

Applicant Buckeye Wind LLC (“Buckeye Wind” or “Applicant”) has filed a Renewed Motion for Waiver asking the Ohio Power Siting Board (“OPSB”) to grant waivers from certain requirements of Ohio Administrative Code (O.A.C.) Chapter 4906-17 for the Buckeye Wind I wind project. Proposed Intervenors Diane McConnell, Robert McConnell, and Julia Johnson (“Petitioners”) oppose the following components of the requested waivers.

O.A.C. § 4906-17-05(B)(5) (Future Plans for the Project)

Buckeye Wind has requested waivers of most requirements in O.A.C. § 4906-17-05, including O.A.C. § 4906-17-05(B)(5). O.A.C. § 4906-17-05(B)(5) requires an applicant to submit the following information in its application for a certificate:

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.

The transparent purpose of this requirement is to determine whether future additions of turbine sites to the project will affect the advisability of the design proposed for the current application. In this case, Buckeye Wind wants to amend the certificate for Buckeye Wind I, because the additional turbines that it hopes to build in Buckeye Wind II have necessitated the relocation of

the construction staging areas, distribution lines, and a substation. If the applicant plans to add turbines in addition to those currently included in the Buckeye Wind I and II projects, then the Board should be informed about the locations and numbers of these turbines so that it can determine whether the new locations for the staging areas, distribution lines, and substation are appropriate. Otherwise, the Board and the parties may be forced to endure a fourth proceeding should the additional turbines change the project's design again.

The Applicant's piecemeal planning and applications have already resulted in three power siting proceedings, including this one. The Board should require the Applicant to reveal any plans that it or any of its affiliates have to add more turbines to this project to minimize the potential for yet another proceeding.

O.A.C. § 4906-17-07 (Environmental Impacts)

Buckeye Wind has requested a waiver of every requirement in O.A.C. § 4906-17-07. This rule requires an applicant to reveal the environmental impact of its project, including its effects on water and its production of solid wastes.

While Petitioners do not believe that the amendment application needs to describe the environmental impacts of the portions of the project that will remain unchanged, the Board needs to examine the environmental impacts of the relocated and changed elements of the facility. For example, a construction staging area, substation, or access road may cause more environmental harm in one location than another. In fact, the amendment application admits that the substation will be shifted to a location closer to a nonparticipating neighbor's home. See Application, p. 10. Similarly, changes in design may pose different or harsher environmental impacts. Consequently, the environmental information submitted in the original application may no longer describe the degree of environmental harm of the facility components that Applicant seeks to

change or relocate. The Board should deny the Applicant's request for a waiver from O.A.C. § 4906-17-07 to the extent it would apply to changed or relocated elements of the facility.

O.A.C. § 4906-17-08(A) (Social and Ecological Data)

There is a similar problem with the Applicant's request to waive all of the requirements in O.A.C. § 4906-17-08(A). In particular, the waiver of two requirements in this rule would be detrimental to the public.

O.A.C. § 4906-17-08(A)(2)(a), (c), and (d) address the construction noise that may affect the neighbors absent certificate conditions to control the noise. These provisions require the Applicant to describe the noise impacts of the project's construction activities on neighboring properties, including the noise from truck traffic and installation of equipment. They also require the Applicant to identify nearby noise-sensitive areas and to describe noise mitigation measures that will be followed to reduce noise impacts.

The construction of the changed or relocated elements of the facility described in Buckeye Wind's application for amendment will produce noise. The construction staging areas will produce noise during the construction of the entire wind project. The impact of this noise could be more serious than the noise impacts predicted by the original application, especially if the modified facility components are located closer to neighboring homes and other noise-sensitive receptors. Accordingly, the Board should be informed about the actual noise impacts of the changed and relocated facility components so that its amended certificate, if issued, contains conditions necessary to mitigate those noise impacts.

O.A.C. § 4906-17-08(A)(3) requires the Applicant to identify any impact to public and private water supplies from its activities and facility components. If the changed or relocated

facility components will affect nearby water supplies, then the Board needs to know about those impacts.

The Board should deny the Applicant's request for a waiver from O.A.C. § 4906-17-08(A)(2)(a), (c), and (d) and O.A.C. § 4906-17-08(A)(3) to the extent these provisions apply to the elements of the facility that will be changed or relocated.

Conclusion

For the foregoing reasons, the Applicant has not shown good cause for the requested waivers from the requirements described above. Accordingly, Petitioners request the Board to deny the Applicant's Renewed Motion for Waiver to the extent that it would enable the Applicant to evade these necessary requirements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on March 29, 2013, a copy of the foregoing Petition for Leave to Intervene and Memorandum in Support was served by electronic mail on M. Howard Petricoff (mhpetricoff@vorys.com), Michael J. Settineri (mjsettineri@vorys.com), and Miranda Leppla (mrleppla@vorys.com), Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, Columbus, Ohio 43215; Jane Napier, Assistant Prosecuting Attorney (jnapier@champaignprosecutor.com), Champaign County, 200 N. Main Street, Urbana, Ohio 43078; and Gil S. Weithmann (diroflaw@ctcn.net) and Breanne Parcels (Breanne.parcels@ci.urbana.oh.us), City of Urbana Law Department, 205 S. Main Street, Urbana, OH 43078.

/s/ Jack A. Van Kley
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Summary: Memorandum in Opposition to Applicant's Renewed Motion for Waiver electronically filed by Mr. Jack A Van Kley on behalf of Johnson, Julia Ms. and McConnell, Robert Mr. and McConnell, Diane Ms.