

BEFORE THE OHIO POWER SITING BOARD

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

REPLY BRIEF OF BUCKEYE WIND LLC
TO THE MEMORANDA IN OPPOSITION BY ROBERT McCONNELL, DIANE
McCONNELL, JULIA JOHNSON, AND CHAMPAIGN COUNTY TO
BUCKEYE WIND'S MOTION FOR WAIVER

On March 15, 2013, Buckeye Wind LLC filed a renewed motion for waiver from certain application requirements that are either not applicable to the proposed changes to the project's approved design, or not necessary for the Board's review of Buckeye Wind's Amendment Application. On March 29, 2013, local residents Robert McConnell, Diane McConnell and Julia Johnson, and Champaign County filed memoranda in opposition to Buckeye Wind's renewed motion for waiver opposing some of Buckeye Wind's waiver requests. Specifically, the McConnells, Johnson and the County oppose waivers from (1) OAC 4906-17-05(B)(5); (2) OAC 4906-17-07; (3) OAC 4906-17-08(A)(2)(a), (c), and (d); and (4) OAC 4906-17-08(A)(3), (C)(3), (E)(1), (E)(2), (E)(5) and (E)(6). The McConnells, Johnson and the County do not object to Buckeye Wind's remaining requests for waivers.

As an initial point, the McConnells, Johnson, and the County lack standing to oppose Buckeye Wind's motion for waiver. In the *Buckeye Wind* proceeding, the Administrative Law Judge ("ALJ") held that an intervenor "...in a Board proceeding lacks standing to oppose the grant or denial of an applicant's request for waiver." *In re Buckeye Wind LLC*, Case 08-0666-EL-BGN, Entry dated July 31, 2009 at ¶ 14. As noted in that entry, "[t]he decision to grant or deny a waiver request is in the sole discretion of the Board." (*Id.*) The ALJ and the Board need

not consider the McConnells', Johnson's and the County's memoranda contra briefs given their lack of standing.

Even if the McConnells, Johnson and the County had standing, which they do not, their opposition to Buckeye Wind's request for waivers is not well founded. Buckeye Wind is requesting waivers from the identified sections of the Ohio Administrative Code because the requirements are either not applicable to the proposed changes in the Amendment Application or not necessary for the Board's determination on the proposed changes. A discussion of each waiver opposed by the McConnells, Johnson and the County follows.

OAC 4906-17-05(B)(5)

The McConnells, Johnson and the County all object to Buckeye Wind's request for a waiver from OAC 4906-17-05(B)(5), which would require Buckeye Wind to submit information regarding future plans for additional turbines and the maximum electric capacity anticipated for the facility. The rule states that "[t]he 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 Amendment Application submitted by Buckeye Wind involves relocating collection lines to underground locations on private property, resizing and relocating two staging areas on the same properties, moving one staging area further west on U.S. Route 36, relocating four access roads and a substation on the same properties as previously approved and adding one new access road. The Amendment Application does not involve the addition of new turbines or new turbine locations. It also does not involve Buckeye Wind's or any affiliate's plans for other stand-alone wind projects. Because the information required by this section is not applicable to the proposed design changes and not necessary for the Board's review of the Amendment Application, Buckeye Wind's request for waiver may be granted.

OAC 4906-17-07

The McConnells and Ms. Johnson argue that Buckeye Wind should not be permitted to waive the requirements of OAC 4906-17-07. This rule relates to air emissions, water discharges, the effects of facility operation on water quality, and solid waste generation. *See* OAC 4906-17-07. The McConnells and Johnson do not identify any specific information from the rule that they believe should be included in the Amendment Application. Instead, they make the general statement that the environmental impacts of the relocated elements of the project should be identified. (Opposition at 2.)

Buckeye Wind provided general information on the facility's environmental impact in its initial Application. *See In re Buckeye Wind*, Case No. 08-666-EL-BGN, *Application for Certificate*, April 24, 2009, Part I at 72 - 85. Air emissions (or the lack thereof) were addressed and permits for storm water discharges were discussed along with the lack of any impact on existing watersheds for both construction and operation. *Id.* General mitigation procedures were also discussed in the initial Application. *Id.*

Nothing in the proposed amendment changes that information. Relocating collection lines, relocating two staging areas on the same parcels, relocating a staging areas to another parcel, relocating four access roads on the same parcels, relocating a substation on the same parcel and adding a new access road are changes that have minimal, if any, bearing on air emissions, water discharges and solid waste generation. Moreover, Buckeye Wind addressed the design changes' impacts to surface waters and existing agricultural land in the Amendment Application in its responses to Rule 4906-17-08. That information rather than the information required under 4906-17-07 will assist the Board in evaluating the impact of the relocated

collection lines, access roads, staging areas and substation. Accordingly, the Board may grant Buckeye Wind's motion for waiver of OAC 4906-17-07 for good cause.

OAC 4906-17-08(A)(2)(a), (c), and (d)

The McConnells, Johnson and the County disagree with Buckeye Wind's request for waiver from OAC 4906-17-08(A)(2)(a), (c), and (d). Rule 4906-17-08(A)(2)(a) requests a description of construction noise levels expected at the nearest property boundary. Part (A)(2)(c) requires an applicant for a wind powered generation facility to "[i]ndicate the location of any noise-sensitive areas within one mile of the proposed facility." Part (A)(2)(d) requires a description of the "equipment and procedures to mitigate the effects of noise emissions from the proposed facility during construction and operation."

Buckeye Wind supplied all of this information in its initial Application, including a list of the estimated sound levels of particular types of construction equipment. *See In re Buckeye Wind*, Case No. 08-666-EL-BGN, *Application for Certificate*, April 24, 2009, Part I at 87-90. Sound levels for various activities were given at various distances with information about the impact of construction on nearby residences. (*Id.*) Mitigation measures were also presented to the Board. Nothing in the amendment changes the type of construction equipment described in the initial Application or the general sound levels provided in the initial Application. Moreover, the Board considered construction noise in the 08-666 proceeding and approved the certificate with a condition, Condition 25, which limited construction to daytime hours Monday through Saturday and 8:00 to 5:00 on Sundays. *See In re Buckeye Wind*, Opinion, Order and Certificate at page 88, March 22, 2010. Given that the Board has already addressed construction noise when it issued the certificate and given the limited periods for which construction will occur,

Buckeye Wind's request for waiver from OAC 4906-17-08(A)(2)(a), (c), and (d) is appropriate and may be granted.

OAC 4906-17-08(A)(3)

The McConnells and Johnson also argue that Buckeye Wind should not be granted a waiver from OAC 4906-17-08(A)(3), requiring identification of impacts on public and private water supplies from its project. The rule states that “[t]he applicant shall estimate the impact to the public and private water supplies due to construction and operation of the proposed facility.” OAC 4906-17-08(A)(3). The McConnells and Johnson argue that the Board needs to know about any impact on nearby water supplies as a result of the design changes. The McConnells and Johnson are again vague about their objection, failing to provide any specific comments on how relocating construction lines, staging areas, a substation and access roads will impact the private and public water supplies in the area.

The simple fact is that the proposed changes to the project design will have no impact on water supplies, which is why Buckeye Wind's waiver request should be granted. In its initial Application, Buckeye Wind provided extensive information regarding its investigation of any impacts the project would have on water supply in the area. *See In re Buckeye Wind*, Case No. 08-666-EL-BGN, *Application for Certificate*, April 24, 2009, Part I at 102-04. As approved, Buckeye Wind's collection lines will be buried 36 inches below ground level and its staging areas, access road and substation will either not involve foundations or not require the type of foundation that is necessary for the turbines. Nothing about the changes proposed in the Amendment Application warrant a regurgitation of the information provided to the Board in the initial Application on impacts to public and private water supplies. Buckeye Wind's requested waiver may be granted for good cause shown.

OAC 4906-17-08(C)(3)

The County argues that Buckeye Wind should not be granted a waiver from OAC 4906-17-08(C)(3), which requires an applicant to provide information on the probable impact of construction of the project on public services and facilities. The rule requires the applicant to “describe the probable impact of the construction and operation on public services and facilities.” OAC 4906-17-08(C)(3).

Buckeye Wind provided information in its initial Application on the project’s impact on public services. *See In re Buckeye Wind*, Case No. 08-666-EL-BGN, *Application for Certificate*, April 24, 2009, Part I at 176-77. The County argues that this information is no longer sufficient, and that “cumulative impacts may be different than previously provided in Buckeye I and Buckeye II.” (County at 2.) The County contends there may be “significant impacts” to emergency service providers by combining staging areas Buckeye I and Buckeye II, and that closing roads to bury collection lines within or near the public rights-of-way. (County at 2-3.)

The County’s argument is without merit. This project is separate from Buckeye II and there is no requirement that cumulative impacts on public services be considered. Moreover, nothing in the proposed amendment differs from the currently proposed design in such a way to merit a review of impacts on public services. Collection lines are being relocated away from right-of-ways, four access roads are being relocated on the same properties and a new access road is being installed on private property. Two of the three approved staging areas are being relocated on the same properties as initially approved while the third is being relocated further west, but still using an entrance from U.S. Route 36. The substation is also located on private property and is being relocated on the same property as approved in the certificate. Nothing

about these project design changes warrants revisiting the facility's impact on public services. Buckeye Wind's waiver request may be granted for good cause.

OAC 4906-17-08(E)(1), (2), (5) and (6)

Finally, the County argues that Buckeye Wind should not be granted a waiver from OAC 4906-17-08(E)(1), (2), (5) and (6). (County at 3.) This rules relate to public responsibility and require the applicant to (1) describe its public information programs, (2) describe its insurance programs, (5) evaluate and describe impacts to road and bridges associated with construction vehicles and equipment delivery and (6) describe the decommissioning plan for the project. The County believes that the proposed design changes warrant updates to the information Buckeye Wind provided in its initial Application. (County at 3.) The County gives examples of marking buried collection lines on public and private property and anticipates impacts to roads and bridges due to the changes. (County at 3.)

The proposed changes to the project design are not applicable to the rule requirements cited by the County. Nothing in the proposed design revisions will change Buckeye Wind's public information programs about the project or its plan for insurance coverage. Likewise, decommissioning remains as stated in the approved certificate. *See In re Buckeye Wind*, Opinion, Order and Certificate at page 93-96, March 22, 2010. As to impacts on roads and bridges, the collection lines will be located on private property that will require trenching equipment for installation and not cranes. Buckeye Wind will still use U.S. Route 36 to access the western and eastern staging areas while the southern staging area access driveway will be shifted from a township road (Pisgah Road) to a state route (State Route 56) as a result of moving the staging area slightly east on the same property as initially approved by the Board. There is no reason to revisit road and bridge impacts when this proceeding does not involve a

change in turbine locations or a significant change in the project's staging areas. Accordingly, Buckeye Wind's request for waiver of the requirements of OAC 4906-17-08(E)(1), (2), (5) and (6) may be granted.

To conclude, Buckeye Wind has shown good cause for the requested waivers. The McConnells, Johnson and the County present limited opposition to Buckeye Wind's waiver request and do not oppose many of Buckeye Wind's requests for waivers. As to the waivers the McConnells, Johnson and the County do oppose, Buckeye Wind has presented good cause for the waivers. Accordingly, Buckeye Wind's renewed motion for waiver may be granted in full.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following parties of record in Case No. 08-666-EL-BGN via U.S. mail and electronic mail this 5th day of April, 2013.

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

Summary: Reply Brief of Buckeye Wind LLC to the Memoranda in Opposition by Robert McConnell, Diane McConnell, Julia Johnson and Champaign County to Buckeye Wind's Motion for Waiver electronically filed by Ms. Miranda R Leppla on behalf of Champaign Wind LLC