

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)	

**BUCKEYE WIND LLC’S OPPOSITION TO THE PETITION TO INTERVENE BY
ROBERT McCONNELL, DIANE McCONNELL AND JULIA JOHNSON**

I. INTRODUCTION

Buckeye Wind LLC opposes the Petition to Intervene by Robert McConnell, Diane McConnell and Julia Johnson for good reason. The McConnells and Johnson state that their interest in this proceeding is their concern about increased traffic on U.S. Route 36, damage to roads as a result of deliveries, and disruptions to traffic caused by installing collection lines underneath local roads. (Petition at 4-5.) In addition, the McConnells and Johnson state that the relocated western staging area could result in siltation of an adjacent creek “that may affect Julia Johnson’s property.” (Petition at 5.) No matter how the McConnells and Johnson frame their petition, the nature of their interest does not warrant intervention. The western staging area is actually being relocated further away from the McConnells and Johnson’s residences. Overhead lines originally planned to run in the right-of-way off Route 36 in front of the McConnells’ and Johnson’s driveways are being eliminated. These changes are actually favorable to the McConnells and Johnson as compared to the original design which involved significant work in right-of-ways. If the McConnells and Johnson are truly concerned about traffic and road damage as a direct result of the proposed changes in the amendment, then Champaign County can adequately represent those interests. As to the stream that the McConnells and Johnson claim

could lead to siltation issues, the western staging area is over 2,200 feet or almost a half mile away from the nearest stream. (Amendment Application, Case No. 13-360-EL-BGA, Appendix C, Figure 2: Stream Crossings; Hull Surface Water Delineation Report, Grid C2, page 47.)

Moreover, Johnson's residence is approximately two miles from the staging area. (Amendment Application, Case No. 13-360-EL-BGA, Figure 5-2A). The McConnells and Johnson's stated interests do not rise to a level that warrants intervention in this proceeding, especially given the participation of Champaign County in this proceeding. The Petition to Intervene should be denied for a lack of good cause.

II. ARGUMENT

A. Legal Standard

Under both Section 4906.08(A)(3), Revised Code, and OAC Rule 4906-7-04(B), a request for leave to intervene must show good cause in order to be granted. As stated in Rule 4906-7-04(B)(1), the Board may consider the following factors in determining whether "good cause" to permit intervention exists:

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

Simply filing a petition to intervene in an administrative proceeding does not guarantee intervention. *See e.g. Senior Citizens Coalition v. PUCO*, 69 Ohio St. 2d 625, 627 (1982) (upholding PUCO decision to limit intervention).

B. Relevant Facts

It is important to understand the nature of the proposed changes to the project design prior to considering the McConnells and Johnson's Petition to Intervene. The McConnells and Johnson do not mention the fact that the amendment will improve the design of the project. Rather, the McConnells and Johnson imply that the change to underground collection lines will result in "numerous cuts across roadways and rights-of way that would temporarily close roads and pose the risk of unresolved damage to the roads[.]" (Petition at 4.) They also imply that the relocated staging area will result in two construction staging areas along U.S. Route 36 leading to heavy traffic and road damage. (*Id.*) The McConnells and Johnson, however, are wrong in their description of the magnitude and impact of the changes proposed in the application.

Buckeye Wind's application proposes discrete changes to the project design. First, Buckeye Wind is proposing to relocate a portion of the project's collection line system from overhead right-of-way locations to underground locations on private parcels. For example, near the McConnells' and Johnson's driveways, Buckeye will be eliminating approximately 3 miles of overhead collection lines that would have to be constructed in the U.S. Route 36 right-of-way.¹ (*In re Buckeye Wind*, Case No. 08-666-EL-BGN, Application, Figure 1, Buckeye Wind Power Project Area Land Cover Map – Index, April 24, 2009.) Likewise, Buckeye is eliminating approximately 3.5 miles of overhead collection lines that would have been constructed in the right-of-way of Ludlow Road. (*Id.*) In fact, all of the right-of-way work is being eliminated with the exception of various road crossings for collection lines. The shift in

¹Diane and Robert McConnell live at 4880 E. U.S. Route 36, Urbana, OH. (Direct Testimony of Julia F. Johnson, Case No. 08-666-EL-BGN, November 2, 2009, page 2). Julia F. Johnson lives at 4891 E. U.S. Route 36, Urbana, OH. (Direct Testimony of Julia F. Johnson, Case No. 08-666-EL-BGN, November 2, 2009, page 1).

the collection line locations is a significant improvement in the project's design which initially called for over 39 miles of overheard collection lines in public right-of-ways.

Second, Buckeye Wind is proposing to shift and expand two of the approved staging areas on the same parcels as approved by the Board. The staging area to the south will expand from 3.75 acres to 9.5 acres, and will have driveway access to State Route 56 versus a township road as originally planned in the initial design. (Amendment Application, Case No. 13-360-EL-BGN, March 19, 2013 at 5; Figure 4.) The staging area to the east will continue to have an access road from U.S. Route 36 and will expand in size from 3.75 to 10 acres. (*Id.* at 6.) The western staging area will decrease in size from 3.75 acres to 3.4 acres and is being relocated to a separate parcel, but with access still off U.S. Route 36. To be clear, Buckeye Wind is not adding a second staging areas to U.S. Route 36 as the McConnells and Johnson imply. In fact, the western staging area is actually decreasing in size and being moved further from the McConnells' and Johnson's properties.

Buckeye Wind is also proposing to relocate four access roads on the same parcels as approved and add a new access road between turbines 16 and 18. Buckeye Wind is also planning to relocate the substation on the same parcel as approved by the Board at the request of the landowner. Neither the McConnells nor Johnson have expressed any concern over these changes.

Using the above information, the McConnells and Johnson's Petition to Intervene may be evaluated.

C. The McConnells and Johnson Lack Good Cause to Intervene in this Proceeding.

1. The nature and extent of the McConnells' and Johnson's interest

The McConnells and Johnson start their argument by claiming that they have a “direct and substantial interest in these proceedings due to the potential impacts of the wind project on their residences, land, roads, and community.” (Petition at 2.) The McConnells and Johnson then list their involvement in the wind industry over the last few years and point to the Board’s approval of their petitions to intervene in the Buckeye I and Buckeye II applications for certificates of environmental compatibility and public need. (Petition at 3.)

This proceeding, however, is much different than the Buckeye I proceeding in Case No. 08-666-EL-BGN and the Buckeye II proceeding in Case No. 12-160-EL-BGN. Those proceedings involved the installation of an entire wind powered generation facility. In the matter at bar, Buckeye Wind only seeks to amend its certificate to relocate certain collection lines, move a staging area further west on U.S. Route 36, relocate and resize two staging areas on the same parcels, add a new access road between two turbines, relocate four access roads on the same parcels and relocate a substation on the same parcel as initially approved. No relocation of any wind turbine is proposed in this application. The McConnells and Johnson’s proclaimed interests for intervening should only be considered as to the application that is proposed, not as to what their interests were in the Buckeye I and Buckeye II proceedings.

Considering only the McConnells and Johnson’s stated interests in this proceeding, the nature and extent of their interests do not warrant intervention. The McConnells and Johnson state that their interests in this proceeding are their concern about increased traffic on U.S. Route 36, damage to roads as a result of deliveries and disruptions to traffic caused by installing collection lines underneath local roads. (Petition at 4-5.) In addition, the McConnells and

Johnson state that the relocated western staging area could result in siltation of an adjacent creek “that may affect Julia Johnson’s property.” (Petition at 5.) These are the only interests asserted by the McConnells and Johnson to support their Petition to Intervene, and these interests weigh against intervention.

First, contrary to what the McConnells and Johnson imply, a second staging area is not being added to U.S. Route 36. The Buckeye Wind I project has always called for two staging areas off U.S. Route 36. The Board reviewed Buckeye Wind’s application in Case No. 08-666-EL-BGN and approved the location of the two temporary staging areas when it issued the certificate for the Buckeye Wind I project. Any claims by the McConnells and Johnson that a second staging area will lead to additional traffic and additional impacts is not an interest that supports intervention, as two staging areas are already approved for the project off U.S. Route 36. The only changes are (1) resizing and moving the eastern staging area on the same parcel as approved and (2) resizing and moving the western staging area further away from the McConnells’ and the Johnson’s residence. These are discrete changes to temporary staging areas that do not create an interest sufficient for intervention by the McConnells and Johnson.

The McConnells and Johnson’s claims about the collection line road crossings also do not support intervention. Buckeye Wind is proposing to place a large amount of the collection line system on private properties instead of in road right-of-ways. This will help eliminate construction near roads with the exception of short term construction for road crossings. The McConnells and Johnson ignore this benefit, claiming they are concerned about road closures, damage to the roads and traffic disruption. (Petition at 4-5.) Road crossing work, however, is temporary in nature. The temporary nature of road crossing construction coupled with the fact that the applicable governmental authority will be involved with permitting road crossing work

undercuts the McConnells and Johnson's claims that their concerns about road crossings warrants their intervention in this proceeding.²

The McConnells and Johnson's claim that activity at the western staging area will cause stream siltation that "may" affect Julia Johnson's property also does not support their intervention. (Petition at 5.) First, the McConnells cannot rely on an alleged interest by Julia Johnson to support their intervention. As to Julia Johnson's alleged interest, the application shows that the nearest stream is approximately 2,200 feet from the boundary of the western staging area. Amendment Application, Case No. 13-360-EL-BGA, Appendix C, Figure 2: Stream Crossings; Hull Surface Water Delineation Report, Grid C2, page 47.) The distance of the stream from the staging area does not support Johnson's claim that siltation may affect her property which is approximately two miles from the staging area. Moreover, as stated at page 28 of the application, sediment control measures implemented through the National Pollutant Discharge Elimination System (NPDES) permit will preserve the existing water quality level in streams. Johnson's interests like the McConnells' interests do not rise to the level to warrant intervention in this proceeding.

2. The extent to which the person's interest is represented by existing parties

Champaign County will adequately represent any concerns that the McConnells and Johnson have about traffic delays and road damage in this proceeding. The County has stated in its Notice of Intervention that it intends to intervene to represent the citizens of Champaign County. (County Notice to Intervene Petition at 1, March 29, 2013.) The McConnells and Johnson are citizens of Champaign County, and their stated interests in traffic delays and road

² State, county and township permits are required for road crossing work. See ORC 5515.01 and see http://engineer.co.champaign.oh.us/Permits/Rwpermi2_app.pdf (application for right-of-way work for Champaign County and Township roads).

damage will be adequately represented by the County. In fact, the County has expressly indicated an interest in impacts to roads and bridges in its opposition to Buckeye Wind's motion for waivers. (County Memorandum Contra at 3, March 29, 2013.) Given that the County can adequately represent the McConnells and Johnson's interests, there is no need for duplicative intervention in this proceeding. Also, the Board's Staff can adequately address and investigate Johnson's concern about stream siltation, especially as this interest is extremely remote given that the stream is almost a ½ mile from the western staging area and given that the project will have a NPDES permit in place. The second intervention factor weighs against the McConnells' and Johnson's intervention in this proceeding.

3. The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.

With their interests being minimal, the McConnells' and Johnson's potential contribution to this proceeding does not justify intervention. The McConnells and Johnson claim that "[a]s a result of their activities in Champaign County and at the state level as described above, Petitioners have substantial knowledge of the environmental and community impacts of commercial-scale wind projects." (Petition at 5.) They also claim that their "intervention will provide important information that will contribute to a balanced assessment of the applicant's project and to a just and expeditious resolution of this proceeding." (Petition at 5.) This application, however, is not for a new wind farm project but rather to make discrete changes to a project that has already been approved. The McConnells and Johnson do not bring any expertise to this proceeding that will assist the Board in its review of Buckeye Wind's application, especially given the nature of the McConnells' and Johnson's alleged interests. With nothing to contribute, the McConnells' and Johnson's participation in this proceeding is not necessary and will avoid unnecessary litigation.

4. Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

There can be little doubt that the McConnells' and Johnson's intervention in this proceeding will unduly delay this proceeding and prejudice Buckeye Wind. The McConnells and Johnson claim that granting their Petition to Intervene will not unduly delay the proceedings or cause unjust prejudice to Buckeye Wind. (Petition at 6.) The McConnells and Johnson then state that their Petition was filed well in advance of the deadline for filing motions to intervene and that they would "consolidate their discovery, examination of witnesses, and presentation of testimony[.]" (Petition at 6.) The McConnells' and Johnson's desire to conduct discovery and hold an evidentiary hearing in an amendment proceeding that actually improves the design of the project will delay both this proceeding and a ruling on Buckeye Wind's amendment application. Buckeye Wind will not only be prejudiced by the time lost to defend its application from the McConnells and Johnson, but will also incur unnecessary legal and personnel costs to address the McConnells' and Johnson's participation in this case. This factor weighs against the McConnells' and Johnson's intervention in this proceeding.

III. CONCLUSION

The changes proposed by Buckeye Wind in its amendment application do not warrant intervention in this proceeding by Julia Johnson and the McConnells. The McConnells and Johnson's stated interests about traffic and road damage are not significant and Champaign County can adequately represent those interests on behalf of its citizens. Avoiding duplicative intervention will also avoid the unnecessary legal costs that Buckeye Wind will certainly incur as a result of the McConnells' and Johnson's participation. As to the allegation of stream siltation from activity at the western staging area, the closest stream to that staging area is almost a half mile away. The McConnells and Johnson have nothing to contribute to this proceeding except to

unnecessarily delay and prejudice Buckeye Wind in this amendment proceeding. The Board should deny the Petition to Intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following individuals via electronic mail this 12th day of April 2013. Service on G. S. Wiethman was also made via U.S. Mail this 12th day of April 2013.

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Summary: Memorandum Contra to Robert McConnell, Diane McConnell and Julia Johnson's
Petition to Intervene electronically filed by Mr. Michael J. Settineri on behalf of Buckeye Wind
LLC