

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of)
Buckeye Wind LLC for an Amendment to)
its Certificate to Install and Operate a) Case No. 13-360-EL-BGA
Wind-Powered Electric Generation Facility)
in Hardin County, Ohio.)

ENTRY

The administrative law judge finds:

- (1) On March 10, 2010, the Board issued an Opinion, Order, and Certificate granting the application of Buckeye Wind LLC (Buckeye) for a certificate to construct a wind-powered electric generating facility in Champaign County, Ohio. *In re Buckeye Wind LLC*, Case No. 08-666-EL-BGN (*Buckeye I*). The Board granted Buckeye's application pursuant to a joint stipulation filed by Buckeye, the Ohio Farm Bureau Federation (OFBF), and the Staff which included 70 specific conditions.
- (2) On March 19, 2013, Buckeye filed an application to amend the certificate issued in *Buckeye I*. In its amendment application, Buckeye proposes the following six changes in the amendment application: adjust the construction staging areas; move one staging area 1.3 miles west; shift the project substation by 1,000 feet; add a new access road; modify four previously approved access roads; and move the electric collection line system underground.
- (3) R.C. 4906.07(B) provides that the Board shall hold a hearing on an application for an amendment of a certificate, if the proposed change would result in a material increase in any environmental impact of the facility, or a substantial change in the location of all or a portion of the facility. In conformance with this statutory provision, Ohio Adm.Code 4906-5-10(B)(1)(a) provides that the administrative law judge (ALJ) shall schedule a hearing in an amendment case, if the proposed change would result in any significant adverse environmental impact of the certified facility or a substantial change in the location of all or a portion of such certified facility.

- (4) Staff filed its investigative report (Staff Report) on November 1, 2013. In its report, Staff states it has reviewed the application and notes that Buckeye has proposed changes to the construction staging areas, project substation, access roads, and electric collection line system. Staff found that Buckeye is not proposing to relocate or add wind turbines under this proposed amendment. Staff recommends the Board find the proposed amendment to the Certificate poses minimal social and environmental impacts, provided that the amendment includes the following conditions:
- (a) Buckeye shall adhere to all conditions of the original certificate in *Buckeye I*;
 - (b) Buckeye shall construct the facilities as approved in *Buckeye I* and as further modified by the proposed amendment and replies to Staff data requests in this proceeding;
 - (c) Buckeye shall exercise reasonable efforts to coordinate activities at the western construction staging area with the city of Urbana in the event that the installation of the city's planned sewer line extension coincides with the installation of the western construction staging area; and
 - (d) Within six months of completing construction, Buckeye shall either communicate the location of the buried electric collection lines to the Ohio Utilities Protection Service or become a member of the Ohio Utilities Protection Service.
- (5) As stated previously, R.C. 4906.07(B) sets forth two separate and distinct reasons that would require the Board to hold a hearing on an amendment application. The first being that the proposed amendment would result in a material increase in any environmental impact of the facility. The ALJ finds that none of the six proposed changes in the amendment application would result in a material increase in any environmental impact of the facility. Therefore, R.C.

4906.07(B) does not require a hearing with regard to environmental impact of the facility, as amended.

The second reason necessitating a hearing is if there is a substantial change in the location of all or a portion of the facility. The ALJ finds that the following three proposed changes in the amendment application do not require a hearing under R.C. 4906.07(B), because they do not result in a substantial change in the location of all or a portion of the facility: adjustments to the construction staging areas; modifications to four previously approved access roads; and the movement of the electric collection line system underground. Therefore, R.C. 4906.07(B) does not require a hearing with regard to these three changes.

However, the ALJ finds that the following three proposed changes in the amendment application require a hearing under R.C. 4906.07(B), because they may result in a substantial change in the location of all or a portion of the facility: the movement of one staging area 1.3 miles west; shifting the project substation by 1,000 feet; and the addition of a new access road. Accordingly, a hearing should be held solely to consider the portion of the amendment application related to these three changes under the provision in R.C. 4906.07(B), which requires a hearing if there is a substantial change in the location of all or a portion of the certified facility.

- (6) In order to facilitate the Board's timely consideration of Buckeye's application, parties should adhere to the following procedural schedule:
 - (a) December 23, 2013 – Deadline for the filing of all direct testimony.
 - (b) The hearing shall commence on January 6, 2014, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio, Hearing Room 11-C, 180 E. Broad Street, Columbus, Ohio.
 - (c) Due to the limited scope of the hearing, the ALJ finds that no briefing schedule is necessary; however, at the close of the hearing,

parties will be permitted the opportunity to make oral closing statements.

- (7) In addition, given the limited scope of the hearing, the ALJ finds that the response time for discovery should be shortened to 10 calendar days. Discovery requests and replies shall be served by hand delivery, facsimile transmission, or electronic message, unless otherwise agreed to by the parties. An attorney serving a discovery request shall attempt to contact the attorney upon whom the discovery request will be served in advance to advise him/her that a request will be forthcoming, unless otherwise agreed by the parties. To the extent that a party has difficulty responding to a particular discovery request within the 10-day period, counsel for the parties should discuss the problem and work out a mutually satisfactory solution. In addition, the ALJ finds that any memorandum contra should be filed and served within eight calendar days of the filing of a motion and any reply to a memorandum contra should be filed and served within five calendar days of the filing of a memorandum contra.
- (8) On various dates, the Board of Commissioners of Champaign County (Champaign), Boards of Trustees of Union and Urbana townships, and the OFBF filed motions to intervene. No memoranda contra were filed in response to these motions to intervene. The ALJ finds that the motions to intervene filed by Champaign, Boards of Trustees of Union and Urbana townships, and the OFBF are reasonable and should be granted.
- (9) On March 27, 2013, the city of Urbana (Urbana) filed a petition for leave to intervene. In support of its motion to intervene, Urbana notes that Buckeye's application to amend would shift a construction staging area to a location that is more than a mile closer to the city's eastern corporation limit. Urbana asserts that the shift in the construction staging area would potentially interfere with the extension of a city sewer main to a nearby business. Urbana also claims that no other existing party adequately represents Urbana's interests in this matter, that its participation in this matter will allow the Board to reach a just and expeditious

resolution of this proceeding, and that granting its intervention will not create undue delay or prejudice.

- (10) On April 11, 2013, Buckeye filed a response to Urbana's petition to intervene. Buckeye asserts that the only issue raised by Urbana relates to the relocation of the western staging area and the potential sewer line extension or damage the sewer line once installed. Buckeye states that it is agreeable to Urbana's limited intervention in this proceeding so the parties can address Urbana's concerns; however, Buckeye does not believe Urbana's unlimited participation in this proceeding is warranted given the delays and duplicative issues the city's unlimited intervention could raise.
- (11) The ALJ agrees with Urbana that no other existing party adequately represents Urbana's interests in this matter, that its participation in this matter will allow the Board to reach a just and expeditious resolution of this proceeding and not create undue delay or prejudice. Accordingly, the ALJ finds that Urbana's motion to intervene is reasonable and should be granted.
- (12) On March 29, 2013, Diane McConnell, Robert McConnell and Julia Johnson (Petitioners) filed a petition for leave to intervene. Petitioners claim they have a direct and substantial interest in the proceeding due to the potential impacts of the wind project on their residences, land, roads, and community. In addition, Petitioners assert that the Board previously found they had a sufficient stake warranting intervention in both *Buckeye I* and in *In Re Champaign Wind, LLC*, Case No. 12-160-EL-BGN (*Buckeye II*). According to Petitioners, because Buckeye's amendment application involves requests to change locations and/or construct facilities in the projects areas for *Buckeye I* and *Buckeye II*, they have an equal interest in an amendment to the certificate that would authorize these projects.
- (13) On April 12, 2013, Buckeye filed a memorandum contra Petitioners' petition to intervene. Buckeye asserts that Petitioners' interests do not warrant intervention. Buckeye asserts that many of the changes involved with the amendment application, if approved, would be more

favorable to Petitioners, such as the location of the staging areas or traffic and road damage. Buckeye also claims that Champaign will adequately represent any concerns that Petitioners have about traffic delays and road damage. Buckeye also asserts that granting the intervention of Petitioners will add unnecessary delay and prejudice to this proceeding. On April 19, 2013, Petitioners filed a reply to Buckeye's memorandum contra.

- (14) Upon review, the ALJ finds good cause to grant the motion to intervene filed by Petitioners.
- (15) On February 6, 2013, as amended on March 15, 2013, Buckeye filed a motion for waivers of certain filing requirements contained in the Ohio Adm.Code.
- (16) On July 2, 2013, Staff filed a notice that, with the exception to the request for waiver of Ohio Adm.Code 4906-17-05(B)(5), it did not object to any of the requested waivers. However, Staff notes that it reserved the right to require information from Buckeye in areas covered by the requested waivers if Staff determines it to be necessary during the course of the investigation.
- (17) On July 18, 2013, Buckeye filed a notice of withdrawal of the request for waiver from Ohio Adm.Code 4906-17-05(B)(5).
- (18) On March 29, 2013, Champaign filed a memorandum contra to Buckeye's request for certain of the requested waivers. Champaign agrees with Buckeye that it should be granted waivers from the application requirements that are not applicable to the amendment proposed in this case, but disagrees with the extent of the waivers requested. Champaign contends that some of the amendments proposed in this case involve modifying the location of the current staging areas and shifting a large portion of the collection line system in order to utilize the facilities involved in *Buckeye II*. On March 29, 2013, Petitioners filed a memorandum in opposition to certain of the waivers sought by Buckeye. Buckeye filed a reply to the memoranda contra the motion for waivers filed by Champaign and Petitioners.
- (19) The Board has previously found that an intervenor in a Board proceeding lacks standing to oppose the grant or

denial of a waiver request, as that decision is in the sole discretion of the Board. *Buckeye I*, Entry (July 31, 2009) at 8. However, in *Buckeye I*, the Board acknowledged that it has been the Board's practice to consider an intervenor's arguments in opposition to a motion for waivers. *Id.* at 8-9. Accordingly, the ALJ will consider Petitioners' and Champaign's arguments in consideration of Buckeye's motion for waivers.

- (20) Buckeye first requests a waiver of Ohio Adm.Code 4906-17-02 that requires a summary and overview of the proposed project including a statement of the general purpose and description of the facility. Buckeye contends that information relating to the turbines and other facilities unrelated to the collection lines was previously reviewed by the Board in *Buckeye I*. As a result, 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 other proposed changes. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-02.
- (21) Buckeye requests a waiver of Ohio Adm.Code 4906-17-03 that requires the applicant to submit detailed information on the type of wind turbines of the project, the number of turbines, capacity figures, land area requirements and a detailed project schedule. Buckeye similarly requests a waiver from the requirements of this rule that do not relate to the collection lines and other proposed changes in the project's design. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-03.
- (22) Buckeye requests a waiver from Ohio Adm.Code 4906-17-04 which relates to the selection of the project area for the wind generation facility. Buckeye claims that the information under this rule is not applicable, as siting of the project was completed and approved in *Buckeye I*. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-04.

- (23) Buckeye seeks a waiver of Ohio Adm.Code 4906-17-05 that 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. According to Buckeye, it provided information required by the rule in *Buckeye I* and the proposed changes in the collection line system and access roads and relocation of the construction staging area and substation have little relevance to the information required by this subsection. However, Buckeye states that it will provide updated maps of the project area site and layout map, grade elevations, and information on how the proposed change in collection line design relates to the collection line system of the project.
- (24) The ALJ finds good cause to grant the motion for a waiver of Ohio Adm.Code 4906-17-05. As the memoranda contra and the motion waivers filed by Champaign and Petitioners only applied to Ohio Adm.Code 4906-17-05(B)(5) and that portion of Buckeye's waiver request has been withdrawn, the ALJ finds that the issues raised in the memoranda contra the motion for waiver of Ohio Adm.Code 4906-17-05 are moot.
- (25) Buckeye seeks a waiver of Ohio Adm.Code 4906-17-06 which requires the applicant submit financial information, capital costs and intangible costs, and operation and maintenance expenses. Buckeye states that it will provide a description of the current ownership of the project area, but good cause exists to support this waiver because the proposed collection line design modification and other proposed design changes have little to no impact on the overall capital cost of the project. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-06.
- (26) Buckeye seeks a waiver from Ohio Adm.Code 4906-17-07 which requires information to assess the environmental effects of the facility. Buckeye claims that the Board reviewed the environmental impact of the project in *Buckeye I* and the proposed design changes are discrete changes in the project design that have little relevance to the information required under this subsection. Petitioners object to Buckeye's motion for waiver from Ohio Adm.Code

4906-17-07. Petitioners state that, while they do not believe the amendment application needs to describe the environmental impacts of the portions for the project that will remain unchanged, the Board needs to examine the environmental impacts of the relocated changed elements of the facility, including a construction staging area, substation, and access roads. As to Petitioners opposition to Ohio Adm.Code 4906-17-07, Buckeye asserts that they only make the general statement that the environment impacts of the relocated elements of the project should be identified. Buckeye also claims the proposed changes in the amendment application will have minimal if any bearing on air emissions, water discharges, and solid waste generation, and that it addressed the design changes impact to surface waters and existing agricultural land in its application. The ALJ finds that the issues raised by the Petitioners regarding the environmental impacts of the amendment project are adequately addressed in the amendment application. Therefore, Buckeye's motion for a waiver of Ohio Adm.Code 4906-17-07 is warranted and should be granted.

- (27) Buckeye requests a waiver of Ohio Adm.Code 4906-17-08(A) which relates to health and safety issues. Buckeye contends that the waiver is warranted as it previously provided this information to the Board in *Buckeye I*. Buckeye also contends that none of the information required by this rule is relevant to the proposed changes to the project's design.
- (28) Champaign objects to a waiver from Ohio Adm.Code 4906-17-08(A)(2)(a). Champaign claims that noise levels in the proposed staging areas as well as along the new collection line routes and access roads during the construction phase should be important information needed for the determination of the Board. Petitioners also object to Buckeye's motion for waivers of Ohio Adm.Code 4906-17-08(A)(2)(a), (c), and (d). Petitioners state that these provisions require the applicant to describe the noise impacts of the project's construction activities on neighboring properties and describe noise-sensitive areas and mitigation measures that will be followed to reduce noise impacts. Petitioners assert that the proposed changes in the amendment application will produce noise and the Board should be informed about the actual noise impacts of

the changed and relocated facility components. Petitioners also object to the waiver from Ohio Adm.Code 4906-17-08(A)(3), as it requires the applicant to identify any impact to public and private water supplies from its activities and facility components and the Board needs to know if any of the proposed changes will affect nearby water supplies.

- (29) As to the Petitioners and Champaign's opposition to its motion for waiver from Ohio Adm.Code 4906-17-08(A)(2)(a), (c), and (d), Buckeye states that it supplied all of this information in its initial application in *Buckeye I* and the Board approved a certificate with conditions directed at these concerns. According to Buckeye, nothing in the amendment application changes the type of construction equipment described in the initial application or the general sound levels provided in the initial application. With regard to Petitioners' objection related to impact on nearby water supplies as a result of the design changes, Buckeye asserts that they have failed 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. Buckeye asserts that it provided extensive information regarding its investigation of any impact the project would have on water supply in the area to the Board in *Buckeye I*, and nothing about the changes proposed in the amendment application warrant resubmittal of this information.
- (30) The ALJ agrees that the information necessary under Ohio Adm.Code 4906-17-08(A) was provided by Buckeye in its initial application in *Buckeye I* and the Board approved a certificate with conditions directed at these concerns. There is nothing in the amendment application that changes the type of construction equipment described in the initial application or the general sound levels provided in the initial application or the impact on water supplies. Therefore, good cause exists to warrant granting the motion for waiver of Ohio Adm.Code 4906-17-08(A)(2)(a), (c), and (d).
- (31) Buckeye requests a waiver of Ohio Adm.Code 4906-17-08(B) that requires information related to vegetation and animal life surveys with the facility's project area boundary in

Buckeye I and, given the close proximity of the relocated collection lines and staging areas to the prior locations, Buckeye requires that it not be required to provide survey information for both vegetation and animal life for the entire project area. Buckeye requests a waiver to provide survey information on the areas of the forest that will be temporarily disturbed, as well as a survey of the areas of scrub-shrub area that will experience a temporary disturbance with no permanent disturbance. Buckeye states that it proposes to submit the following information, including a map showing the information required under Ohio Adm.Code 4906-17-08(B)(1)(a): vegetation and animal life surveys in areas where the relocated collection lines are routing through forestland or scrub-shrub a summary of stream crossing and wetland delineation studies; and a list of major species from the surveys and an estimate on the impact of construction of the relocated collection lines, staging areas, access roads, and substation. Buckeye also requests a waiver from the requirement of Ohio Adm.Code 4906-17-08(B)(3) because this rule addresses the impact of operation which is more relevant to the operation of the turbines, and not the buried collection lines access roads, staging areas, and substation. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-08(B)(3).

- (32) Buckeye requests a waiver from Ohio Adm.Code 4906-17-08(C) which 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, turbines, setbacks, land use impacts, structures to be removed and relocation and plans for the future use of the site, and economic impact. Buckeye states that it provided this information to the Board in *Buckeye I* and the information will be unchanged by the proposed collection line redesign, the relocation of the staging areas, and other proposed changes.
- (33) Champaign objects to the request for a waiver of Ohio Adm.Code 4906-17-08(C)(3). Champaign states that the probable impact of the construction of the project on public services and facilities is an essential factor in the Board's

determination in this case. Champaign disagrees with Buckeye's assertions that the information has previously been provided in *Buckeye I*. Champaign claims the cumulative impact may be different than previously provided in *Buckeye I* and *Buckeye II*.

- (34) Because the cumulative impact of *Buckeye I* and *Buckeye II* projects is not at issue in the amendment application, the ALJ finds no merit to Champaign's objections and finds good cause to grant the waiver of Ohio Adm.Code 4906-17-08(C).
- (35) Buckeye seeks a waiver from Ohio Adm.Code 4906-17-08(D) which requires the applicant to submit general information regarding the cultural impact of the facility. Buckeye states that it provided this information to the Board in *Buckeye I*. Buckeye proposes that, given the limited nature of the design changes, the requirements of subsection Ohio Adm.Code 4906-17-08(D) be waived, with the exception that Buckeye be required to provide a map in accordance with Ohio Adm.Code 4906-17-08(D)(1) and estimate the impact of the collection line redesign and relocation of the construction staging areas, access roads, and substation on the landmarks set forth in the map. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-08(D).
- (36) Buckeye requests a waiver from Ohio Adm.Code 4906-17-08(E) that requires information regarding public interaction programs, insurance, radio and television interference, military radar interference, the impact on roads and bridges, and the decommissioning plan for the facility. Buckeye states that it is not proposing to modify its certificate in regard to any condition of these topics, and the proposed change in collection line design and the other design changes have minimal bearing on the information required by this rule.
- (37) Champaign objects to the waiver of Ohio Adm.Code 4906-17-08(E)(1), (2), (5), and (6). Champaign claims that this information is critical in order for Buckeye to set forth the necessary modifications to its public information programs

and insurance protection, as well as the anticipated impact to roads, bridges, and decommissioning plans due to the proposed amendments.

- (38) The ALJ finds that, because the application is not proposing to modify the existing certificate of *Buckeye I* related to public interaction programs, insurance, radio and television interference, military radar interference, the impact on roads and bridges, and the decommissioning plan for the facility, good cause exists to grant the requested waiver of Ohio Adm.Code 4906-17-08(E)(1), (2), (5), and (6).
- (39) Buckeye seeks a waiver from Ohio Adm.Code 4906-17-08(F), that requires the applicant to provide the Board with information regarding the facility's impact on agricultural land. Buckeye states that it provided this information to the Board in *Buckeye I* and it seeks a waiver so that it would only provide information relating to the collection line redesign and the relocation of the construction staging area, access roads, and substation. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-08(F).
- (40) The ALJ wishes to clarify that, although he is willing to grant the requested waivers, this does not preclude Staff or the Board from requesting the waived information, and Buckeye must provide to Staff and the Board any and all waived information requested in this proceeding.

It is, therefore,

ORDERED, That the procedural schedule for this proceeding be adopted as set forth in finding (6). It is, further,

ORDERED, That the procedures set forth in finding (7) be adhered to. It is, further,

ORDERED, That the motions to intervene filed by the Board of Commissioners of Champaign County, Boards of Trustees of Union and Urbana townships, the city of Urbana, the Ohio Farm Bureau Federation, Diane McConnell, Robert McConnell and Julia Johnson are granted. It is, further,

ORDERED, That Buckeye's motion for waivers filed on February 6, 2013, as amended on March 15, 2013, be granted. It is, further,

ORDERED, That a copy of this entry be served upon all interested persons of record.

THE OHIO POWER SITING BOARD

s/Scott Farkas

By: Scott E. Farkas
Attorney Examiner

CMTP/sc

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

Summary: Administrative Law Judge Entry orders a procedural schedule, grants motions to intervene filed by the Board of Commissioners of Champaign County, Boards of Trustees of Union and Urbana townships, the city of Urbana, the Ohio Farm Bureau Federation, Diane McConnell, Robert McConnell & Julia Johnson, and grants Buckeye's motion for waivers filed on 02/06/2013, as amended on 03/15/2013. - electronically filed by Sandra Coffey on behalf of Scott Farkas, Attorney Examiner, Public Utilities Commission of Ohio