

BEFORE THE OHIO POWER SITING BOARD

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

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PROCEEDINGS

Before Mr. Scott Farkas, Administrative Law
Judge, at the Ohio Power Siting Board, 180 East
Broad Street, Columbus, Ohio, Hearing Room 11C,
on Monday, January 6, 2014, at 10:00 a.m.

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APPEARANCES:

Vorys, Sater, Seymour and Pease, LLP
By Mr. M. Howard Petricoff, Mr. Michael J.
Settineri, and Ms. Miranda Leppla
52 East Gay Street
Columbus, Ohio 43216-1008

On behalf of the Applicant.

Mike DeWine, Ohio Attorney General
By Mr. Werner L. Margard, III and
Mr. John H. Jones
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

and

Ms. Sarah Bloom Anderson and
Ms. Summer J. Plantz
Assistant Attorneys General
Environmental
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

On behalf of the Staff of the Ohio
Power Siting Board.

Mr. Kevin S. Talebi
Champaign County Courthouse
200 North Main Street
Urbana, Ohio 43078

On behalf of Champaign County.

Van Kley & Walker, LLC
By Mr. Jack A. Van Kley
132 Northwoods Blvd., Suite C-1
Columbus, Ohio 43235

On behalf of Intervenor Julia
Johnson and Robert and Diane
McConnell.

Ms. Breanne Parcels
205 South Main Street
Urbana, Ohio 43078

On behalf of the City of Urbana.

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Monday Morning Session,
January 6, 2014.

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ALJ FARKAS: The Commission has called for hearing at this time and place the matter of the Application of Buckeye Wind Farms, LLC, for an amendment to its Certificate to Install and Operate a wind-powered electric generation facility in Hardin County, Ohio, Case No. 13-360-EL-BGA. My name is Scott Farkas. I'm the Administrative Law Judge assigned to hear this case.

First we'll take appearances. Let's start with the Applicant.

MR. SETTINERI: Thank you, Your Honor. On behalf of Buckeye Wind, LLC, M. Howard Petricoff, Michael Settineri, and Miranda Leppla with the lawfirm of Vorys, Sater, Seymour and Pease, LLP, 52 East Gay Street, Columbus, Ohio 43215.

ALJ FARKAS: Thank you. On behalf of the Staff?

MR. MARGARD: Thank you, Your Honor. On behalf of the Staff of the Ohio Power Siting Board, Mike DeWine, Ohio Attorney General, by

1 Assistant Attorneys General Werner Margard and
2 John Jones, Public Utilities Section, 180 East
3 Broad Street, 6th Floor, Columbus, Ohio, and
4 Sarah Anderson and Summer Plantz, Environmental
5 Enforcement Section, 30 East Broad, 25th Floor,
6 Columbus, Ohio.

7 ALJ FARKAS: Thank you. Is the Farm
8 Bureau here? The Farm Bureau is not present.
9 Is someone from the City of Urbana here? No one
10 from the City of Urbana is here. How about
11 Champaign County or Urbana Township or Union
12 Township?

13 MR. TALEBI: Yes, Your Honor, Kevin
14 Talebi, Champaign County Prosecuting Attorney on
15 behalf of the Townships and County
16 Commissioners.

17 ALJ FARKAS: How do you spell your
18 last name?

19 MR. TALEBI: T-a-l-e-b-i.

20 ALJ FARKAS: Thank you. And Mr. Van
21 Kley?

22 MR. VAN KLEY: Thank you, Your Honor.
23 Your Honor, my name is Jack Van Kley. I
24 represent Intervenors, Julia Johnson and Robert
25 and Diane McConnell. I'm with the law firm of

1 Van Kley & Walker and our Columbus office is
2 located at 132 Northwest Boulevard, Suite C-1 in
3 Columbus, Ohio.

4 ALJ FARKAS: Thank you. Now, at this
5 point, is there anything anyone wants to raise
6 prior to us going forward?

7 MR. VAN KLEY: Your Honor, I would
8 like to raise an issue and that concerns the
9 scope of the hearing. We are, of course, aware
10 of Your Honor's entry providing that the hearing
11 will not cover all of -- or will not cover some
12 of the facilities that have been proposed by the
13 application for the amendment, and we wanted to
14 point out one portion of that facility which we
15 believe should be subject to this hearing,
16 which is the relocation and burial of the
17 electrical lines.

18 The application and the answers to a
19 couple of the data requests by the Applicant to
20 requests that were propounded to the Applicant
21 by the Staff shows that about 6.35 miles of
22 lines are going to be placed in new locations
23 which were not approved in either Buckeye Wind
24 or Buckeye II proceedings.

25 And in addition, there will be

1 another approximately 24 lines -- or 24 miles of
2 lines that will be buried in the same corridors
3 as the Buckeye II electrical lines. We believe
4 that that is also a relocation of the Buckeye I
5 lines because they are being moved from the
6 locations that were approved for those lines in
7 Buckeye Wind I and now are being moved over to
8 the corridors that were approved for Buckeye
9 Wind II.

10 The answers to the second set of the
11 Staff's data requests show that these Buckeye
12 Wind lines that are being moved to the Buckeye
13 II corridors may or may not be combined as the
14 same line in Buckeye II, that is, there may be
15 two parallel lines, one for Buckeye I and one
16 for Buckeye II running in the same general
17 corridor, and they may be as much as 5 feet
18 apart or closer or further away, according to
19 the responses to the data requests. So we
20 believe that those are relocations of the
21 Buckeye I electrical lines that need to be heard
22 under the statute.

23 Now, we are not as much concerned
24 about the locations of the lines as we are about
25 whether the installation of those lines is going

1 to cut through the roads in the community. We
 2 have a commitment from the Applicant in response
 3 to the Staff's data requests that the 6.3 miles
 4 of lines in brand-new locations will use
 5 horizontal directional drilling to go under the
 6 roads instead of cutting through them, which
 7 will do less to disrupt traffic and also will
 8 preserve the integrity of the roadways, but we
 9 have no commitment with respect to the other 24
 10 miles of lines that are going to go into the
 11 same general vicinity as the Buckeye II
 12 corridors, and that is our concern here.

13 We want to make sure that the
 14 decision of this Board requires directional
 15 drilling to be done for that extra 24 miles of
 16 electrical lines as well as the 6.35 miles that
 17 the Applicant's already committed to use
 18 directional drilling for.

19 So that is the issue that we have
 20 here, and so we wanted to, first of all, enter a
 21 formal objection to limiting the scope of the
 22 hearing, but would also hope that the Bench
 23 would see fit to have that issue addressed today
 24 as part of this hearing.

25 ALJ FARKAS: I guess at this point,

1 before I allow the parties to respond to your
2 motion, I'll just note for the record that you
3 did not file any interlocutory appeal of the
4 entry that set forth the scope of the hearing,
5 and you had that right at that time to do that.

6 MR. VAN KLEY: Your Honor, we would
7 respectfully disagree that we had that right.
8 Looking at the criteria in the provision that
9 allows for interlocutory appeals, we do not
10 believe that it fits either into the category of
11 the types of decisions that allow for a
12 mandatory interlocutory appeal or for
13 discretionary interlocutory appeal because this
14 is not of a great precedential and novel nature.
15 So we would respectfully disagree with Your
16 Honor in that respect.

17 ALJ FARKAS: But you didn't do it.

18 MR. VAN KLEY: We did not because we
19 don't believe we had the right to.

20 ALJ FARKAS: All right. I'll let the
21 Company respond to the motion.

22 MR. SETTINERI: Thank you, Your
23 Honor. We would note, No. 1, as you pointed
24 out, this is the first time this issue has been
25 raised, but what I heard today is the only issue

1 that has been raised also relates to road
 2 crossings only. The statute related to the
 3 relocation is a substantial change in the
 4 location of the facility. The facility here is
 5 a 56 turbine wind farm collection line
 6 substation access road. We don't view this as a
 7 substantial relocation of the facility for the
 8 collection lines. The fact that the collection
 9 lines are going to be 5 feet potentially from a
 10 Buckeye II line based on the engineering
 11 requirements you were to lay two lines side by
 12 side in certain areas does not constitute
 13 substantial change in location as well. We
 14 firmly support the Board's ruling -- or the
 15 Judge's ruling on this matter and stand by that.

16 ALJ FARKAS: Okay. Staff?

17 MR. WERNER: I don't have anything
 18 futher to add to what the Company's said.

19 ALJ FARKAS: Okay. Mr. Talebi?

20 MR. TALEBI: Nothing, Your Honor.

21 ALJ FARKAS: I'm going to deny your
 22 motion. I'll let the Company go first.

23 MR. SETTINERI: Thank you, Your
 24 Honor. At this time we'd like to call Michael
 25 Speerschneider.

1 ALJ FARKAS: Raise your right hand.

2 (Witness sworn.)

3 ALJ FARKAS: Proceed.

4 MR. SETTINERI: Thank you, Your
5 Honor. At this time we'd like to mark Company
6 Exhibits 1, 2, and 3. Company Exhibit 1, a copy
7 of which we provided to the Bench and to the
8 Court Reporter, is the direct testimony of
9 Michael Speerschneider; Company Exhibit 2 is the
10 application in the matter, and a copy has been
11 provided to the Court Reporter and Bench as
12 well, and parties were previously served; and
13 Company Exhibit 3, which is a proof of
14 publication of notice, a copy of which has been
15 provided to the Bench and Court Reporter. I'll
16 hand those out to the parties now.

17 ALJ FARKAS: Those will be so marked.

18 (EXHIBTS HEREBY MARKED.)

19 - - -

20 MICHAEL SPEERSCHNEIDER

21 called as a witness on behalf of the Applicant,
22 being first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Settineri:

25 Q. Good morning, Mr. Speerschneider.

1 Would you please state your name and business
2 address for the record, please.

3 A. I'm Michael Speerschneider for
4 EverPower Wind at 1251 Waterfront Place, 3rd
5 Floor, Pittsburgh, Pennsylvania 15222.

6 Q. And do you have before you what has
7 been marked as Company Exhibit 1?

8 A. Yes.

9 Q. Can you please identify that for me?

10 A. Yes. This is my direct testimony on
11 the matter of the amendment to the Buckeye Wind,
12 LLC certificate.

13 Q. And do you have any revisions to your
14 testimony today?

15 A. Just one. For question 11, which
16 asks if the application including all appendices
17 and exhibits are true and accurate to the best
18 of my knowledge and belief, I'd just add
19 something after the first sentence. So it
20 should read, "Yes, subject to any clarifying
21 statements made by Buckeye Wind in response to
22 Staff's data requests, and subject to the
23 construction schedule as described on page 12 of
24 the application being extended due to on-going
25 permitting, legislative, and market factors."

1 And then go on as it is currently, "In addition,
2 Buckeye Wind withdrew its request to amend the
3 certificate to shift the western construction
4 staging area on December 13, 2013."

5 Q. Any other changes to your testimony,
6 Mr. Speerschneider?

7 A. No.

8 Q. If I were to ask you the questions in
9 your testimony today, would your answers be the
10 same subject to the revision you just provided?

11 A. Yes.

12 MR. SETTINERI: Thank you, Your
13 Honor. The witness is available for
14 cross-examination.

15 ALJ FARKAS: Okay. Why don't we
16 start with Champaign County.

17 MR. TALEBI: We have no questions,
18 Your Honor. Thank you.

19 ALJ FARKAS: Does Staff have any
20 questions?

21 MR. MARGARD: No, thank you, Your
22 Honor.

23 ALJ FARKAS: Do you have any
24 questions?

25 MR. VAN KLEY: No questions for

1 Intervenor, Your Honor.

2 ALJ FARKAS: Okay. I have no
3 questions.

4 MR. SETTINERI: At this point in
5 time, Your Honor, we would like to admit into
6 the record Company Exhibits 1, 2, and 3.

7 ALJ FARKAS: Any objection to the
8 admission of Company Exhibits 1, 2, and 3?
9 Hearing none, they will be admitted.

10 (EXHIBITS HEREBY ADMITTED.)

11 ALJ FARKAS: Okay. You're excused.
12 Do you have any other witnesses?

13 MR. SETTINERI: No, not from the
14 Company.

15 ALJ FARKAS: Staff?

16 MR. MARGARD: Thank you, Your Honor.
17 Staff would call Mr. Stuart Siegfried to the
18 stand, please.

19 ALJ FARKAS: You want to raise your
20 right hand?

21 (Witness sworn.)

22 ALJ FARKAS: Proceed.

23 MR. MARGARD: Thank you.

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STUART SIEGFRIED

called as a witness on behalf of the Staff,
being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Margard:

Q. Please state your name and business
address, please.

A. My name is Stuart Siegfried and
business address is 180 East Broad Street,
Columbus, Ohio 43215.

Q. And Mr. Siegfried, by whom are you
employed and in what capacity, please?

A. I'm employed by the Public Utilities
Commission of Ohio and I'm in the Efficiency and
Renewables Division here at the Commission.

MR. MARGARD: Your Honor, I have
marked for purposes of identification two
exhibits. The first labeled Staff Exhibit No. 1
is the Staff Investigation Report and
Recommendation filed in the docket in this case.
and I would request that the prefiled testimony
of Stuart M. Siegfried be marked as Staff
Exhibit 2 in this matter.

ALJ FARKAS: So marked.

(EXHIBITS HEREBY MARKED.)

1 MR. MARGARD: Any party require
2 copies?

3 MR. SETTINERI: What was the number
4 for Mr. Siegfried's testimony?

5 MR. MARGARD: No. 2 for his
6 testimony.

7 MR. SETTINERI: Thank you.

8 MR. TALEBI: Can I get a copy of
9 Exhibit 1?

10 ALJ FARKAS: Let's go off the
11 record.

12 (Off the record.)

13 ALJ FARKAS: Would you like to enter
14 an appearance?

15 MS. PARCELS: Yes. Breanne Parcels
16 for the City of Urbana.

17 ALJ FARKAS: Thank you. Go ahead.

18 Q. Mr. Siegfried, do you have before you
19 what has been marked as Staff Exhibits 1 and 2?

20 A. Yes.

21 Q. And are you the Stuart Siegfried
22 identified as the author of Staff Exhibit 2?

23 A. Yes.

24 Q. Was this document authored by you or
25 under your direction?

1 A. Yes, it was.

2 Q. Do you have any changes, amendments,
3 modifications of any kind to this document?

4 A. No, sir.

5 Q. If I would ask you the questions
6 contained in this document, would your answers
7 be the same?

8 A. Yes.

9 Q. In question 5 of your testimony you
10 indicate that you are sponsoring the Staff
11 report issued in this case; is that correct?

12 A. Yes, sir.

13 Q. And is that the document which has
14 been marked as Staff Exhibit No. 1?

15 A. Yes, it is.

16 Q. And that is the same document that
17 was filed in the docket in this case?

18 A. Yes, sir.

19 Q. Do you have any changes, corrections,
20 modifications or amendments to this document, to
21 the best of your knowledge?

22 A. No. I mean, I would mention that the
23 report does address a staging area in the
24 western-most staging area, and there has been a
25 change since the time that this Staff report was

1 docketed. So I think that is just maybe a
2 matter of sequencing and would not change the
3 contents of this based on the information that
4 we had at the time.

5 Q. And by the contents, that would
6 include the recommendations?

7 A. Yes.

8 MR. MARGARD: That's all the
9 questions I have, Your Honor. I will tender
10 this witness for cross-examination and move for
11 the admission of these exhibits subject to his
12 cross-examination.

13 ALJ FARKAS: Does the Company have
14 any questions?

15 MR. SETTINERI: No, we don't, Your
16 Honor. Thank you.

17 ALJ FARKAS: Does the county have any
18 questions?

19 MR. TALEBI: Yes, Your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Talebi:

23 Q. With regards to, I'm referring to
24 question 11 of your testimony. Your response to
25 the question seems to indicate that you went to

1 the site and examined the proposed new access,
2 the location of the proposed new access road; is
3 that right?

4 A. Yes, sir.

5 Q. And you indicate in your answer that
6 there would not be a need for any additional --
7 well, you indicate that it would follow a
8 collection line route that's previously been
9 approved. On what basis are you drawing that
10 conclusion? Just based on the information that
11 was provided to you by the Applicant?

12 A. Yes, and our GIS data that we have
13 from the original Buckeye I proceeding.

14 Q. And there's nothing then about your
15 investigation with regards to the amendment
16 request that suggests that any additional
17 collection line routes would need to be, or
18 deviations from previously-approved collection
19 line routes would need to be made? Want me to
20 rephrase the question?

21 A. Please.

22 Q. In other words, as a result of the
23 access road that's going to be put in, if the
24 amendment were granted for the new access road,
25 would there need to be any deviation to any

1 previously-approved collection line routes?

2 A. For that segment?

3 Q. Yes.

4 A. Not to my recollection.

5 Q. Did you as part of your investigation
6 examine whether that would need to take place or
7 whether that was a possibility?

8 A. I'm sorry. Your question, could you
9 clarify?

10 Q. In other words, what I'm trying to
11 figure out is if the amendment is granted, the
12 new access road is built, is there going to be a
13 requirement to change any of the collection line
14 routes?

15 ALJ FARKAS: That had previously been
16 approved?

17 MR. TALEBI: Yes.

18 A. Not for that particular segment, no,
19 the segment that corresponds to the area of the
20 new access road.

21 MR. TALEBI: Okay. Thank you.
22 That's all I have.

23 ALJ FARKAS: City of Urbana?

24 MS. PARCELS: Yes.

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CROSS-EXAMINATION

By Ms. Parcels:

Q. Mr. Siegfried, in your testimony you have referenced movement of the proposed staging area. Do you recall at what point Buckeye Wind communicated to you prior to filing, or if they communicated to you prior to filing, that they would be withdrawing their request to move the staging area? Do you recall when that happened?

A. I assume you are referring to the western-most staging area.

Q. Yes.

A. Not exactly. It was after the Staff report would have been filed.

Q. Did Buckeye Wind representatives communicate with you before filing that Motion to Withdraw the request to move the staging area?

A. Nothing formally. There may have been an informal discussion, I think maybe the day of the filing or the day before.

MS. PARCELS: I have nothing further. Thank you.

ALJ FARKAS: Mr. Van Kley?

MR. VAN KLEY: We have no questions

1 for this witness.

2 ALJ FARKAS: Thank you. Any redirect?

3 MR. MARGARD: No, thank you, Your
4 Honor. I would respectfully renew my motion for
5 admission of Staff Exhibits 1 and 2.

6 ALJ FARKAS: Any objection? Hearing
7 none and seeing none, they will be admitted.

8 (EXHIBITS HEREBY ADMITTED.)

9 ALJ FARKAS: Anything further?
10 You're excused. Any further witnesses on
11 behalf of the Staff?

12 MR. MARGARD: No, thank you, Your
13 Honor.

14 ALJ FARKAS: And I don't believe any
15 Intervenor filed any testimony so that would
16 mean that we have no further witnesses at all.
17 Anything further? No. Then we will be
18 adjourned. Thank you.

19 (Off the record.)

20 ALJ FARKAS: Back on the record. As
21 identified by counsel for the Company, the entry
22 that scheduled the hearing did allow for closing
23 arguments on behalf of the parties, so I will
24 allow that. Does the company want to make a
25 closing argument?

1 MR. SETTINERI: No, Your Honor. The
2 only thing I would like to make a note is that
3 we reserve the right to raise in any appeals of
4 this matter the issue of the doctrine of
5 collateral estoppel on the matters that were
6 raised today in the hearing, given the fact that
7 it's the same parties, same issues on that issue
8 point. So we simply want to reserve that right
9 for later use if necessary.

10 ALJ FARKAS: Okay. Does Staff have
11 any closing argument?

12 MR. MARGARD: I do not. Thank you.

13 ALJ FARKAS: Does Champaign County
14 have any closing argument?

15 MR. TALEBI: No.

16 ALJ FARKAS: City of Urbana?

17 MS. PARCELS: No.

18 ALJ FARKAS: Mr. Van Kley?

19 MR. VAN KLEY: No, Your Honor. In
20 response to Mr. Settineri's point about
21 collateral estoppel, however, we would point out
22 that there is no collateral estoppel here
23 against anyone who would object to the Board's
24 failure to hear testimony concerning the
25 relocation of the electrical lines, since the

1 prior approval for approximately 41 miles of
 2 lines in Buckeye Wind I previous to this
 3 amendment proceeding were in entirely different
 4 locations than are now being proposed by the
 5 amendment to the certificate. And to illustrate
 6 that point, one needs only to look at figure 4
 7 of the application for the amendment and see how
 8 few of those lines are coded in solid green line
 9 which is the indication as to the lines that are
 10 still in the same locations as the lines that
 11 were approved in Buckeye Wind I, thus showing
 12 that most lines that are now being proposed for
 13 relocation are in completely different
 14 locations. So we do not believe that there's
 15 any collateral estoppel here and would maintain
 16 our objection to the limitation on the scope of
 17 this hearing.

18 ALJ FARKAS: Thank you. Okay, now
 19 we're adjourned.

20 - - -

21 Thereupon, at 10:25 a.m. the hearing
 22 was concluded.

23 - - -

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter before
the Ohio Power Siting Board, on Monday, January
6, 2014.

Iris I. Dillion
Registered Professional
Reporter.

- - -

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in

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

Summary: Transcript in the matter of Buckeye Wind Farms, LLC hearing held on 01/06/14 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Dillion, Iris I. Mrs.