

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application	)	
of Buckeye Wind, LLC, to Amend	)	Case No. 13-0360-EL-BGA
its Certificate Issued in	)	
Case No. 08-666-EL-BGN	)	

---

INTERVENORS CHAMPAIGN COUNTY AND GOSHEN, UNION AND URBANA  
TOWNSHIPS' APPLICATION FOR REHEARING AND RECONSIDERATION

---

Kevin S. Talebi (0069198)  
Champaign County Prosecuting Attorney

Jane A. Napier (0061426)  
Assistant Prosecuting Attorney

200 N. Main Street  
Urbana, Ohio 43078  
(937) 484-1900  
(937) 484-1901 Fax  
[jnapier@champaignprosecutor.com](mailto:jnapier@champaignprosecutor.com)

Attorney for Champaign County  
and Goshen, Union, and Urbana  
Townships

Four Champaign County political subdivisions, consisting of the Champaign County Board of County Commissioners and Boards of Trustees of Goshen, Union, and Urbana Townships (“Boards”) apply to the Ohio Power Siting Board (“OPSB”) for an order to rehear and reconsider the amendments identified herein prior to the issuance of the Amended Certificate of Environmental Compatibility and Public Need for the construction, operation and maintenance of a wind-powered electric generation facility in Champaign County (“Amendment”) to Buckeye Wind, LLC (“Applicant”).

Pursuant to Revised Code § 4903.10 and Ohio Administrative Code § 4906-7-17(D), the Boards respectfully apply to the Ohio Power Siting Board to grant reconsideration and rehearing to introduce pertinent evidence regarding the specific amendments set forth herein for the following reasons:

The OPSB erroneously found in its February 18, 2014 Order (“Order”) that portions of the amendment application regarding adjustments to the construction staging areas, modification of four previously approved access roads and the movement of the electric collection line system underground did not require a hearing because they did not result in a substantial change in the location of all or a portion of the facility. The Boards believe that such amendments do 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 as more fully discussed herein and have pertinent information to provide to the OPSB through testimony regarding such amendments. Therefore, the Order is unreasonable and unlawful.

The basis for this application is set forth in more detail in the attached Memorandum in Support.

Respectfully submitted,

Kevin S. Talebi (0069198)  
Champaign County Prosecuting Attorney

Jane A. Napier (0061426)  
Assistant Prosecuting Attorney  
200 N. Main Street  
Urbana, Ohio 43078  
(937) 484-1900  
(937) 484-1901 Fax  
[jnapier@champaignprosecutor.com](mailto:jnapier@champaignprosecutor.com)

Attorney for Champaign County  
and Goshen, Union, and Urbana  
Townships

## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION**

The intervening Boards are significantly concerned with the evident failure of the OPSB to set forth adequate protection for Champaign County's infrastructure and other interests as it relates to wind energy development.

The Boards are troubled that the OPSB approved the amendments to Buckeye Wind, LLC's Certificate of Environmental Compatibility and Public Need for the construction, operation and maintenance of a wind-powered electric generation facility in Champaign County ("Project") without hearing as to:

- (1) adjustments to construction staging areas;
- (2) modifications to four previously approved access roads; and
- (3) movement of the electrical collection line system underground.

As a result, the Boards are seeking reconsideration and rehearing (actually initial hearing) of the amendments not heard herebefore for the reasons set forth in the following memorandum.

## **II. LAW**

R.C. §4906.07 (B) states in relevant part:

“On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in *any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility* . . . .” (Emphasis provided.)

The Boards are aware that the OPSB may deny, grant, or grant upon such terms, conditions, or modifications as the board considers appropriate for a certification application for a major utility facility, pursuant to the requirements set forth in R.C. §4906.10 of the Revised Code. *OAC §4906-17-01(C)*.

Further, the OPSB has the authority to modify Applicant's proposal in order protect the public interest. *R.C. §4906.10(A)*. In order to protect the public interest, it is proper for the OPSB to require an evaluation of the impacts of the proposed wind facility as set forth, and to deny certification or modify the proposal if the identified need could be satisfied with fewer adverse impacts. *City of Columbus v. Ohio Power Siting Commission*, 58 Ohio St. 2d 435 (1979); *City of Columbus v. Teater*, 53 Ohio St. 2d 253, 260-61 (1978).

## **III. ARGUMENT**

**A. The OPSB approved Applicant's amendments in its Order of February 18, 2014, without holding a required hearing as such amendments 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 such facility.**

There is very little guidance as to what would be considered a “material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility” for a wind project. R.C. §4906.07(B) However, the Supreme Court has given an example of what is not a material increase or a substantial change. In its decision in the appeal of the underlying Certificate, it stated that, for an amendment, “surely not every issue (e.g., whether white or gray screws are used in the control room)” would be subject to hearing. *In re Application of Buckeye Wind, LLC, (2012) 131 Ohio St.3d 449, 457.* The amendments not heard by the OPSB herein are not even remotely similar to the example provided by the Supreme Court. In fact, the subject amendments are very substantial changes to the facility and will have significant impacts on Champaign County which were not foreseeable at the hearings on the original certificate application held in November 2009.

Specifically, the adjustments to the construction staging areas for utilization of both Buckeye I and Buckeye II Wind Projects are significant changes in and may have a significant impact upon the facility due to traffic concerns. In utilizing the same staging areas for not one but two projects, essentially doubling the estimated turbines and construction traffic, there certainly are significant impacts which were not foreseeable in the approval of the original certificate or in the Buckeye II Wind Project and, therefore, could not be addressed at that time. Also, the relocated staging area may affect the infrastructure in the abutting rights-of-way due to the same concerns.

The burying of electric collection lines in the rights-of-way and relocation of two of four identified access roads which end at a right-of-way are significant changes in and have significant impact on the facility as they will entail concerns with road use which should be agreed upon by the Applicant and the applicable Boards and which was not addressed originally in the Buckeye I Wind Project. Unlike in the Buckeye II Wind Project and other projects subsequent to the Buckeye I Wind Project, there is no condition for the negotiation of a Road Use Maintenance Agreement (“RUMA”) to the original Certificate. Certainly the manner in which access roads will abut the existing public rights-of-way is not addressed in the Certificate conditions. Further, there are no requirements for burying the electrical collection lines in the rights-of-way set forth by the OPSB including, but not limited to: the depth of such lines, the media in which the lines will be encased, emergency procedures, *etc.* Certainly, a RUMA would be the proper document to address these concerns. Although the Buckeye I Wind Project did not originally include a condition for a RUMA (as it was the first wind project in the State of Ohio and also the first wind project before the OPSB), a RUMA is a standard condition of subsequent projects and this oversight should be addressed at this time due to the nature of the amendments.

**B. The OPSB’s approval of the amendments without hearing denied the Boards the only opportunity to be heard.**

The Boards contend that they have pertinent information regarding the amendments not heard herein. Certainly, due to these amendments, the Champaign County Sheriff and the Champaign County Engineer would have testimony regarding

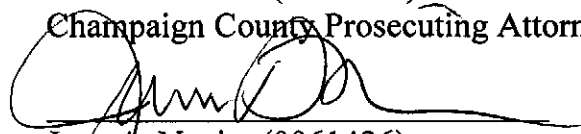
traffic safety and right-of-way concerns not present in the Project originally. Further, there are other township, county and city officials who would have relevant testimony regarding the significant positive and negative effects of the amendments not heard herein. Unfortunately, with the OPSB approving the amendments without hearing by its Order of February 18, 2014, the Boards have been denied any opportunity to present evidence on such amendments and, therefore, have been denied due process.

#### **IV. CONCLUSION**

For the reasons set forth herein, the intervening Boards of Champaign County Commissioners and the Townships Trustees of Goshen, Union and Urbana request that the Ohio Power Siting Board order that the issues presented by the aforementioned Boards be addressed by reconsideration and rehearing on the amendments addressed herein as its Order of February 18, 2014 is unreasonable or unlawful.

Respectfully submitted,

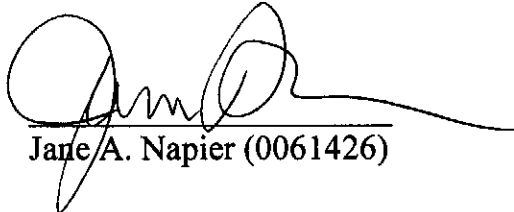
Kevin S. Talebi (0069198)  
Champaign County Prosecuting Attorney



Jane A. Napier (0061426)  
Assistant Prosecuting Attorney  
200 N. Main Street  
Urbana, Ohio 43078  
(937) 484-1900  
(937) 484-1901 Fax  
[jnapier@champaignprosecutor.com](mailto:jnapier@champaignprosecutor.com)  
Attorney for Champaign County  
and Goshen, Union and Urbana  
Townships

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was sent to Miranda R. Leppla, Esq. Vorys, Sater, Seymour & Pease, 52 East Gay Street, P.O. Box 008, Columbus, Ohio 43216-1008, to Chad A. Endsley, Esq., Ohio Farm Bureau Federation, 280 N. High Street, P.O. Box 182383, Columbus, Ohio 43218-2383, to Christopher A Walker, Esq., Van Kley & Walker LLC, 137 North Main Street, Suite 316, Dayton, Ohio 45402, to Werner Margard and John Jones, Asst. Attorney Generals, 180 E. Broad Street, 9<sup>th</sup> Floor, Columbus, Ohio 43215, and to Breanne Parcels, Director of Law, City of Urbana, 205 S. Main St., Urbana, Ohio 43078, by electronic transmission, this 20<sup>st</sup> day of March, 2014.

  
Jane A. Napier (0061426)



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**3/20/2014 3:36:05 PM**

**in**

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

Summary: App for Rehearing electronically filed by Jane A. Napier on behalf of Champaign County Board of Commissioners and Union Township Board of Trustees and Urbana Township Board of Trustees and Goshen Township Board of Trustees