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IN THE SUPREME COURT OF OHIO

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

Case No. 14-1210

**On Appeal from the Ohio Power  
Siting Board,  
Case No. 13-360-EL-BGA**

**NOTICE OF APPEAL OF APPELLANTS CHAMPAIGN COUNTY  
AND GOSHEN, UNION AND URBANA TOWNSHIPS**

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Appellants Champaign County and Goshen, Union and Urbana Townships (collectively "Appellants County and Townships") hereby give notice of their appeal, pursuant to R.C. §4906.12, R.C. §4903.11, and R.C. §4903.13, to the Ohio Supreme Court from the following attached orders of the Ohio Power Siting Board ("Board") in Case No. 13-360-EL-BGA ("Project"): (1) Opinion, Order and Certificate entered on February 18, 2013; and (2) Entry on Rehearing entered on May 19, 2014 (hereinafter also referred to collectively as "Orders").

Appellants County and Townships are and were parties of record in Case No. 13-360-EL-BGA and timely filed their Application for Rehearing of the Board's Opinion, Order and Certificate of February 18, 2014, pursuant to R.C. §4903.10. Appellant's Application for Rehearing was denied with respect to the issues on appeal herein, by entry entered May 19, 2014. The Orders are unlawful and unreasonable in the following respects:

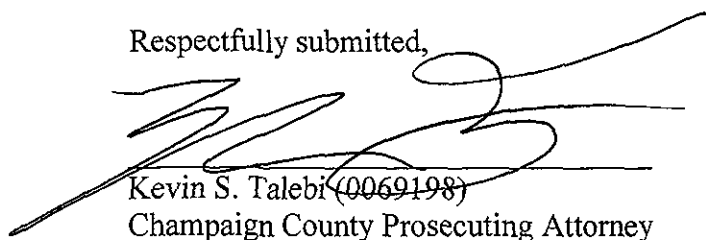
The Board erred as follows:

**A. The Board's approval of Applicant's amendments in its Order of February 18, 2014 and its Order of May 19, 2014, without holding a required hearing was unreasonable and unlawful, as such amendments would result in a material increase in the environmental impact of the facility or a substantial change in the location of all or a portion of such facility.**

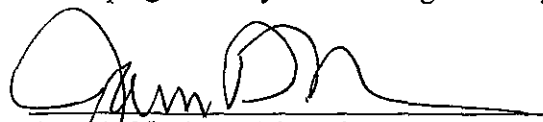
**B. The Board's approval of the amendments in its Order of February 18, 2014 and its Order of May 19, 2014, without hearing was unreasonable and unlawful, as it denied Appellants County and Townships the only opportunity to be heard.**

Accordingly, Appellants County and Townships submit that the Orders of February 18, 2014 and May 19, 2014 are unlawful and unreasonable and should be reversed. This Honorable Court should remand the Orders to the Ohio Power Siting Board with instructions to correct the errors identified herein.

Respectfully submitted,



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Attorneys for Appellants Champaign County  
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### CERTIFICATE OF SERVICE

I hereby certify that, on July 16, 2014, a copy of the foregoing Notice of Appeal was served upon the Chairman of the Public Utilities Commission and the Ohio Power Siting Board, by leaving a copy at his office at 180 East Broad Street, Columbus, OH 43215, and upon the following counsel and parties of record by electronic mail:

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**CERTIFICATE OF FILING**

I hereby certify that, on July 16, 2014, a copy of the foregoing Notice of Appeal was filed with the Docketing Division of the Public Utilities Commission and the Ohio Power Siting Board, by leaving a copy at his office at 180 East Broad Street, Columbus, OH 43215.

  
Jane A. Napier (0061426)  
Assistant Prosecuting Attorney

BEFORE

THE OHIO POWER SITING BOARD

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

ORDER ON CERTIFICATE AMENDMENT

The Ohio Power Siting Board, coming now to consider the above-entitled matter, having appointed an administrative law judge (ALJ) to conduct the hearing, having reviewed the exhibits introduced into evidence, and being otherwise fully advised, hereby issues its Order on Certificate Amendment in accordance with R.C. Chapter 4906.

APPEARANCES:

Vorys, Sater, Seymour and Pease LLP, by M. Howard Petricoff, Michael J. Settineri, and Miranda R. Leppla, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008, on behalf of Buckeye Wind, LLC.

Mike DeWine, Ohio Attorney General, Werner Margard and John H. Jones, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215, and Sarah Anderson and Summer Plantz, Assistant Attorneys General, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215, on behalf of Staff.

Van Kley & Walker, LLC, by Jack A. Van Kley, 132 Northwoods Blvd., Suite C-1, Columbus, Ohio 43235 and by Christopher A. Walker, 137 North Main Street, Suite 316, Dayton, Ohio 45402, on behalf of Diane McConnell, Robert McConnell, and Julia F. Johnson.

Kevin S. Talebi and Jane A. Napier, Assistant Prosecuting Attorneys, 200 North Main Street, Urbana, Ohio 43078, on behalf of Champaign County Board of Commissioners, and Union and Urbana Township Boards of Trustees.

Breanne Parcels, 205 South Main Street, Urbana, Ohio 43078, on behalf of the city of Urbana.

Chad A. Endsley, Chief Legal Counsel, 280 North High Street, P.O. Box 182383, Columbus, Ohio 43215-2383, on behalf of the Ohio Farm Bureau Federation.

OPINION:I. Summary of the Proceeding

On March 22, 2006, the Board issued an Opinion, Order, and Certificate granting the application of Buckeye Wind, LLC (Buckeye or Applicant) 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*). On May 28, 2013, the Board issued an Opinion, Order, and Certificate granting the application of Champaign Wind, LLC for a certificate to construct a wind-powered electric generating facility in Champaign County, Ohio. *In re Champaign Wind LLC*, Case No. 12-160-EL-BGN (*Buckeye II*).

On March 19, 2013, Buckeye filed an application to amend the certificate issued in *Buckeye I*. In its amendment application, Buckeye proposes six changes to the certificate issued by the Board in *Buckeye I* including: adjusting the construction staging areas; moving one staging area 1.3 miles west; shifting the project substation by 1,000 feet; adding a new access road; modifying four previously approved access roads; and moving the electric collection line system underground. On February 6, 2013, as amended on March 15 and 19, 2013, Buckeye filed a motion for waivers of Ohio Adm.Code 4906-17-02, 03, 04, 05, 06, 07, 08(A), 08(B), 08(C), 08(D), 08(E), 08(F).

On March 22, 2013, Buckeye filed proof of service with the Board indicating that copies of the amendment application had been served upon local government officials and an area library, in accordance with R.C. 4906.06 and Ohio Adm.Code 4906-5-10(B). On May 16, 2013, Buckeye filed proof of public notice of the amendment application that was published in Champaign County on April 1, 2013, in the *Urbana Daily Citizen*. On November 1, 2013, Staff filed a report (Staff Report) evaluating the amendment application (Staff Ex. 1).

By Entry issued November 21, 2013, the ALJ found that none of the six proposed changes in the amendment application would result in a material increase in any environmental impact of the facility. The ALJ also found that the following three proposed changes in the amendment application did not require a hearing under R.C. 4906.07(B), because they did 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. However, the ALJ found that the changes in the amendment application relating to 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, required 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. Therefore, the ALJ scheduled a hearing on January 6, 2014, solely to consider the portion of the amendment application related to 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. The November 21, 2013 Entry also granted the motions to intervene filed by the Board of Commissioners of Champaign County (Champaign), Boards of Trustees of Union and Urbana townships (Townships), the Ohio Farm Bureau Federation (Farm Federation), city of Urbana (Urbana), and Diane McConnell, Robert McConnell, and Julia Johnson (Citizen Interveners), and granted Buckeye's motion for waivers of Ohio Adm.Code 4906-17-02, 03, 04, 05, 06, 07, 08(A), 08(B), 08(C), 08(D), 08(E), 08(F).

On December 16, 2013, Buckeye filed a notice of withdrawal of its request to shift the western construction staging area as proposed in its amendment application. On December 23, 2013, Urbana filed a response to Buckeye's notice of withdrawal of its request to shift the western construction staging area. Urbana noted that, given Buckeye's withdrawal of the portion of its amendment application for the relocation of the western construction staging area, which was its principal reason for intervening in this case, Urbana had no other issues to address at the hearing.

On December 23, 2013, Staff filed the testimony of Stuart M. Siegfried and the Applicant filed the testimony of Michael Speerschneider. No other parties filed testimony. The hearing was held as scheduled on January 6, 2014.

## II. Applicable Law

Buckeye is a corporation and a person under R.C. 4906.01(A) and is certificated to construct, operate, and maintain a major utility facility under R.C. 4906.10, in accordance with the Board's Order in *Buckeye I*.

Pursuant to R.C. 4906.10, the Board's authority applies to major utility facilities and provides that such entities must be certified by the Board prior to commencing construction of a facility. In accordance with R.C. Chapter 4906, the Board promulgated rules, which are set forth in Ohio Adm.Code Chapter 4906-5, prescribing regulations regarding applications for major utility facilities and amendments to certificates.

R.C. 4906.07 requires that, when considering an application for amendment of a certificate, the Board shall hold a hearing "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 other than as provided in the alternates set forth in the application." In conformance with this statutory provision, Ohio



Adm.Code 4906-5-10(B)(1)(a) provides that the 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. An applicant is required to provide notice of its application for amendment in accordance with R.C. 4906.06(B) and (C), and Ohio Adm.Code 4906-5-10(B).

By Entry of November 21, 2013, the ALJ found that none of the six proposed changes in the amendment application would result in a material increase in any environmental impact of the facility. The ALJ also found that the portions of the amendment application related to the construction staging areas, modifications to four previously approved access roads, and the movement of the electric collection line system underground did not require a hearing under R.C. 4906.07(B), because they did not result in a substantial change in the location of all or a portion of the facility.

However, the ALJ found that the three remaining proposed changes in the amendment application required 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 including: 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. In accordance with these findings, the ALJ scheduled a hearing on January 6, 2014, solely to consider the portion of the amendment application related to these three changes under the provision in R.C. 4906.07(B).

### III. Hearing

At the commencement of the January 6, 2014 hearing, the Citizen Intervenors entered an objection to the scope of the hearing and moved to allow questions regarding the portion of the amendment application that includes the relocation and burial of the electrical lines. The Applicant opposed the motion. While noting that the Citizen Intervenors failed to file an interlocutory appeal of the November 21, 2013 Entry that established the scope of the hearing, the ALJ denied the motion. At the hearing, Michael Speerschneider testified on behalf of the Applicant and Stuart Siegfried testified on behalf of Staff. No other witnesses testified on behalf of any parties.

Michael Speerschneider, chief permitting and public policy officer for EverPower Wind Holdings, Inc., and an officer of Buckeye, described the proposed amendments to the certificate issued in *Buckeye I* including, the collection line system, the location and size of three construction staging areas, the location of four access roads, the addition of a new access road, and the location of the project substation. He explained that the proposed amendment will result in significantly less impact on the environment and the local

community, primarily as a result of eliminating overhead collection lines in favor of underground lines. He also noted that another benefit of the proposed design is that the majority of the collection line system, all staging areas, and the substation will now share the same locations as the collection line system, staging areas and substation approved in *Buckeye II*. Mr. Speerschneider indicated that the new access road will be an improvement to the overall design because it will allow for a direct route from another nearby construction staging area for four other turbines. He also claimed that the new access road will not create any environmental concerns. With respect to the substation location, he explained that, if the amendment is approved, the current location for the *Buckeye I* substation will be abandoned and the substation will be placed in the same location as the *Buckeye II* substation and avoid the impacts of two substations. (Buckeye Ex. 1 at 2-5.)

Staff witness Stuart Siegfried explained that his testimony is limited to only the shifting the project substation by 1,000 feet and the addition of a new access road, because the Applicant had withdrawn the portion of the application that proposed the movement of one staging area 1.3 miles west. Mr. Siegfried indicated that no other Staff analysis was needed with respect to the movement of the substation because the substation approved by the Board in *Buckeye I* will be eliminated and the remaining substation will be constructed on the location already analyzed by Staff and approved by the Board in *Buckeye II*. (Staff Ex. 2 at 4.) Mr. Siegfried stated that the new access road will be approximately 2,600 feet in length with a permanent disturbance of 20 feet. Mr. Siegfried also referenced the application noting that the new access road will reduce construction related traffic on a public road. (Staff Ex. 2 at 6.)

#### IV. Staff Investigation of Proposed Amendment

With its amendment, the Applicant is proposing to modify certain components of the wind farm previously certified in *Buckeye I*, including changes to the construction staging areas, project substation, access roads, and the electric collection line system. The Applicant is not proposing to relocate or add wind turbines under this proposed amendment. (Buckeye Ex. 2 at 2; Staff Ex. 1 at 1-2.)

In its report of investigation, Staff found that, with this amendment, the Applicant is proposing to adjust the sizes and locations of three construction staging areas, which are identical to those approved by the Board in *Buckeye II*. The Applicant initially proposed to move the western staging area 1.3 miles west of its initial location to a parcel that the Applicant indicates it controls. The portion of the amendment application related to the shift of the western staging area was later withdrawn by the Applicant. (Buckeye 1 at 5, 11; Staff Ex. 1 at 2-3.) Staff also noted that the eastern and southern staging areas are proposed to be relocated at the request of the landowners within the same parcels as

initially planned and would allow it to use the same staging areas for both the *Buckeye I* and *Buckeye II* projects. Staff did not conduct an additional analysis of the proposed staging areas in this amendment proceeding. (Buckeye Ex. 2 at 7; Staff Ex. 1 at 2.)

Staff reported that the Applicant has proposed to move the project substation within the same parcel as initially approved. The amendment related to the proposed move of the substation would entail the temporary disturbance of approximately five acres, with permanent disturbance estimated at 1.75 acres. The Applicant indicated that the proposed change to the substation location would allow it to use the same substation for both *Buckeye I* and *Buckeye II* projects. The size and location of the amended substation area are identical to those approved by the Board in *Buckeye II*. Because the size and location of this project component has been previously approved by the Board and, therefore, found to have been reasonable, Staff did not conduct an additional analysis of the proposed substation location in this amendment proceeding. (Buckeye Ex. 2 at 6; Staff Ex. 1 at 3.)

The Applicant is also proposing a new access road, as well as relocations of four previously approved access roads. These amendments would entail a permanent disturbance 20 feet in width, while temporary disturbance would typically include vegetation clearing to a width of 55 feet. Staff found that these disturbance parameters are consistent with those from the initial application. (Staff Ex. 1 at 3.)

In addition, the Applicant is proposing to relocate four access roads from their previously approved locations. The Applicant indicated that the proposed relocated access roads are all located in farm fields, with no tree clearing required. First, the Applicant proposes to shift the access road to Turbine 40, which is approximately 1,000 feet in length, approximately 750 feet to the west. Staff found that this new route, which would parallel the original route, would be further from a wetland and follow a relocated collection line route. Second, the Applicant is proposing to relocate the north-to-south access road to Turbine 36 at the landowner's request. Staff found that the shift is approximately 500 feet east of its approved location and would follow a relocated collection line. A third proposed change would extend one of the relocated access roads east-west approximately 2,100 feet between Ault Road and Turbine 44. Staff noted that this modification would avoid a stream crossing consistent with a suggestion made by Staff during a field investigation for *Buckeye I*. The fourth proposed modification would shift approximately 625 feet of the access road that extends from United States (U.S.) Highway 36 to Turbine 21 approximately 470 feet to the east, so that it is within the same parcel as the eastern construction staging area. According to Staff, this proposed shift would move the access road's connection to U.S. Highway 36, so that it is no longer directly in front of a residence. (Buckeye Ex. 2 at 6; Staff Ex. 1 at 3-4.)

Under the amendment application, the Applicant has also proposed the construction of a new access road running north and south between Turbines 16 and 18. Staff found that this new access road reduces the need to use Perry Road and instead follows an approved collection line route. Staff determined that, although located largely in an active agricultural field, the Applicant estimates that the new access road would have temporary impacts to forested areas of 0.14 acres and would require a stream crossing near Turbine 18; however, a crossing structure is already in place at that location. (Buckeye Ex. 2 at 6-8; Staff Ex. 1 at 3-4.)

Staff explained that, as initially proposed, the electric collection system would have been approximately 65.4 miles of which approximately 40 miles would have been overhead lines. As proposed with this amendment, Staff notes that the electric collection system would total 41.1 miles all of which would be installed underground on parcels of participating landowners. Of the 41.1 miles, Staff determined that there are 7.32 miles that were not reviewed and approved in *Buckeye I* or *Buckeye II*. As a result, Staff focused its review in this proceeding on the 7.32 miles of new collection line routing. According to Staff, the Applicant is proposing to use direct burial methods, such as with the use of a cable plow or trencher, to install the electric collection line in most areas and open trenches for installation in areas where the direct burial methods may not be as appropriate. Other installation techniques may be used in certain locations to facilitate the avoidance of specific resources. The 7.32 miles of relocated electric collection system would involve the crossing of three streams, two wetlands, and three roads. Staff also noted that the Applicant intends to install the collection line at these three road crossings using directional drilling and that, as such, any direct impacts to the road at the crossing locations would be avoided. (Buckeye Ex. 2 at 5; Staff Ex. 1 at 4-5.)

Staff recommended the Board find the proposed amendment to the Certificate poses minimal social and environmental impacts, provided that the amendment includes the following recommended conditions:

- (1) The Applicant shall adhere to all conditions of the original certificate for *Buckeye I*.
- (2) The Applicant shall construct the facility as approved in *Buckeye I*, and as further modified by the proposed amendment and replies to Staff data requests in this proceeding.
- (3) Within six months of completing construction, the Applicant shall either communicate the location of the buried electric

collection lines to the Ohio Utilities Protection Service (OUPS) or become a member of the OUPS.

(Staff Ex. 1 at 7.)<sup>1</sup>

## V. Conclusion

As noted previously, R.C. 4906.07(B) requires that, when considering an application for amendment of a certificate, the Board shall hold a hearing if the proposed change in the facility would result in:

1. any material increase in any environmental impact of the facility, or
2. a substantial change in the location of all or a portion of such facility.

In conformance with this statutory provision, Ohio Adm.Code 4906-5-10(B)(1)(a) provides that a hearing shall be scheduled 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. Under the amendment application, the Applicant proposed changes to four project components, including the construction staging areas, project substation, access roads, and the electric collection line system. No changes are proposed to relocate or add wind turbines.

With regard to the first of the two criteria requiring a hearing in an amendment application, upon review of the amendment application and the evidence of record, we find that none of the proposed changes in the application would result in a material increase in any environmental impact of the facility. Therefore, the Board finds that a hearing to consider the first criteria was not required pursuant to R.C. 4906.07(B).

Turning to the second of the two criteria, the Board finds that the portions of the amendment application regarding adjustments to the construction staging areas, modifications to four previously approved access roads, and the movement of the electric collection line system underground did not require a hearing under R.C. 4906.07(B), because they did not result in a substantial change in the location of all or a portion of the facility. However, because the portions of the amendment application related to shifting the project substation by 1,000 feet and the addition of a new access road of approximately

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<sup>1</sup> In the Staff Report, Staff initially recommended a condition addressing the shift of the western staging area proposed in the amendment application. This condition was no longer applicable following Buckeye's withdrawal of that portion of its amendment application.

2,600 feet in length may result in a substantial change in the location of all of a portion of the facility, we find that a hearing was required under R.C. 4906.07(B). As such, a hearing was appropriately held on these portions of the amendment application.

In considering the portion of the amendment application that was the subject of the hearing because it would result in a substantial change, as noted previously, the record reflects that the adjustments to the sizes and locations of the eastern and southern staging areas were proposed at the request of the landowners within the same parcels as initially planned (Buckeye Ex. 2 at 7; Staff Ex. 1 at 2). Also, the proposed changes to the construction staging areas would allow Buckeye to use the same staging areas for both the *Buckeye I* and *Buckeye II* projects which we have previously determined reasonable and approved (Buckeye Ex. 2 at 7; Staff Ex. 1 at 2). In addition, the Applicant will no longer use the project substation initially planned for *Buckeye I* and, instead, will use the substation approved by the Board in *Buckeye II*. As a result, the Applicant will use the same substation for both the *Buckeye I* and *Buckeye II* projects, effectively eliminating a substation (Buckeye Ex. 1 at 2-5). Further, the modifications to four previously approved access roads will all be located in farm fields and will require no tree clearing. The modifications to two access roads will now follow relocated collection lines, one access road will avoid a stream crossing, and another access road will avoid being placed directly in front of a residence. The additional new access road proposed in the application reduces the need to use Perry Road and, instead, follows an approved collection line route. (Buckeye Ex. 2 at 6; Staff Ex. 1 at 3-4.) No issues were raised at the hearing regarding these portions of the amendment application.

As for the remainder of the amendment application that was not within the scope of the January 6, 2014 hearing, a portion of this relates to the electric collection line system. The record reflects that approximately 40 miles of the total 65.4 miles of the electric collection line system originally approved to be overhead is now proposed to be placed underground. In addition, all of the 41.1 miles will be installed on parcels of participating landowners. Of the 41.1 miles, Staff determined that there were 7.32 miles that had not previously been reviewed and approved in *Buckeye I* or *Buckeye II*. In order to avoid specific resources, the Applicant proposes to use direct burial methods to install the electric collection line in most areas or open trenches where the direct burial methods may not be as appropriate, as well as other installation techniques. In addition, the Applicant intends to install the collection lines for the 7.32 miles using directional drilling at three road crossings which will avoid any direct impacts to the road at the crossing locations (Buckeye Ex. 2 at 5; Staff Ex. 1 at 4-5.)

We note that the ALJ denied the motion of the Citizen Intervenors at the commencement of the hearing to expand the scope of the hearing. Specifically, while

expressing agreement with Staff's finding that the applicant use directional drilling on the 7.32 miles of the electrical system, the Citizen Intervenors also sought to expand the hearing because they wanted to make sure that the decision of this Board required directional drilling be done for the entire length of the electrical lines. "Now, we are not as much concerned about the locations of the lines as we are about whether the installation of those lines is going to cut through the roads in the community. We have a commitment from the applicant in response to the Staff's data requests that the 6.3 miles of line in brand-new locations will use horizontal directional drilling to go under the roads instead of cutting through them. "We want to make sure that the decision of this Board requires directional drilling to be done of that extra 24 miles of electrical lines as well the 6.35 miles that the Applicant's already committed to use directional drilling for." (Tr. at 9). The Citizen Intervenors made no argument that the location of the electrical collection system required a hearing in accordance with R.C. 4906.07(B). It is clear that the Citizen Intervenors merely wanted to ensure that directional drilling was used for burying the electrical lines. It is noteworthy that the Citizen Intervenors never filed an interlocutory appeal of the November 21, 2013 ALJ Entry; rather, they made an untimely motion for the same relief at the commencement of the hearing. Notwithstanding the merits of this procedural blemish, we agree with the ruling of the ALJ that R.C. 4906.07(B) does not require that the scope of the hearing include consideration of the Citizen Intervenors' issue regarding the utilization of directional drilling. Moreover, while not raised as an issue by the Citizen Intervenors, we find that the movement of the electrical system at the same location, from above ground to underground, does not result in a substantial change in the location of all or a portion of the facility previously approved by the Board. Therefore, there was no statutory requirement under R.C. 4906.07(B) to hold a hearing on this portion of the amendment application.

Based upon the record in this proceeding, the Board concludes that, pursuant to R.C. Chapter 4906, Buckeye's amendment application should be approved, subject to the conditions set forth in *Buckeye I* and the Staff Report. Accordingly, Buckeye's certificate, issued in *Buckeye I*, should be amended to provide for adjusting the construction staging areas, shifting the project substation by 1,000 feet, adding a new access road, modifying four previously approved access roads, and moving the electric collection line system underground.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Buckeye is a corporation and a person under R.C. 4906.01(A).
- (2) Buckeye's electric generation facility is a major utility facility under R.C. 4906.01(B)(1).

- (3) On March 19, 2013, Buckeye filed an application in this proceeding to amend the certificate issued in *Buckeye I*.
- (4) The proposed amendment would involve adjusting the construction staging areas, shifting the project substation by 1,000 feet, adding a new access road, modifying four previously approved access roads, and moving the electric collection line system underground.
- (5) In accordance with R.C. 4906.06 and Ohio Adm.Code 4906-5-10(B), Buckeye served copies of the amendment application upon local government officials and a public library and filed its proof of service on March 22, 2013. Public notice of the proposed amendment was also published in Champaign County, Ohio and filed with the Board on May 16, 2013.
- (6) On November 1, 2013, Staff filed a report evaluating the amendment application.
- (7) By Entry issued November 21, 2013, the ALJ found that none of the six proposed changes in the amendment application would result in a material increase in any environmental impact of the facility. The ALJ also found that the following three proposed changes in the amendment application did not require a hearing under R.C. 4906.07(B), because they did 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. However, the ALJ found that the changes in the amendment application relating to 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, required 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.
- (8) Champaign, Townships, Farm Federation, Urbana, and the Citizen Intervenors were granted intervention in this proceeding.



- (9) By Entry issued November 21, 2013, the ALJ granted Buckeye's motion for waivers of Ohio Adm.Code 4906-17-02, 03, 04, 05, 06, 07, 08(A), 08(B), 08(C), 08(D), 08(E), 08(F).
- (10) On December 13, 2013, Buckeye filed a notice of withdrawal of its request to shift the western construction staging area.
- (11) On December 23, 2013, Urbana filed a response to Buckeye's withdrawal of its request to shift the western construction staging area and noted that it had no other issues to address at the hearing.
- (12) An evidentiary hearing was held on January 6, 2014, to consider the portion of the amendment application related to shifting the project substation by 1,000 feet, and the addition of a new access road.
- (13) The basis of need criteria in R.C. 4906.10(A)(1) is not applicable to this case. The application satisfies the criteria in R.C. 4906.10(A)(2) through (8).
- (14) Based on the record, in accordance with R.C. Chapter 4906, the certificate of environmental compatibility and public need for Buckeye's electric generation facility, issued in *Buckeye I*, should be amended to permit: adjusting the construction staging areas; adding a new access road; modifying four previously approved access roads; and moving the electric collection line system underground, subject to the conditions set forth in *Buckeye I* and this Order.

ORDER:

It is, therefore,

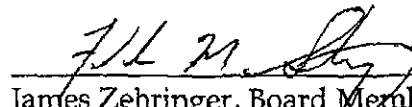
ORDERED, That Buckeye's amendment application be approved, subject to the conditions set forth in *Buckeye I* and this Order. It is, further,


ORDERED, That a copy of this Order on Certificate Amendment be served upon all interested persons of record.

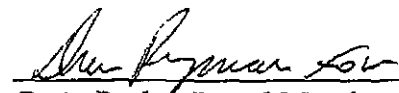
THE OHIO POWER SITING BOARD


  
Todd A. Snitchler, Chairman  
Public Utilities Commission of Ohio

  
David Goodman, Board Member  
and Director of the Ohio  
Development Services Agency

  
James Zehringer, Board Member  
and Director of the Ohio  
Department of Natural Resources

  
Theodore Wymyslo, Board  
Member and Director of the  
Ohio Department of Health

  
Craig Butler, Board Member  
and Interim Director of the Ohio  
Environmental Protection Agency

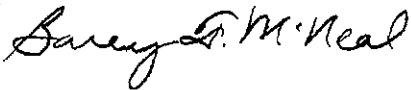
  
David Daniels, Board Member  
and Director of the Ohio  
Department of Agriculture

  
Jeffrey Techak, Board Member  
And Public Member

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Entered in the Journal

**FEB 18 2014**



Barcy F. McNeal  
Secretary

BEFORE

THE OHIO POWER SITING BOARD

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

ENTRY ON REHEARING

The Board finds:

- (1) On March 22, 2006, 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 generation facility in Champaign County, Ohio. See *In re Buckeye Wind, LLC*, Case No. 08-666-EL-BGN (*Buckeye I*).
- (2) On March 19, 2013, as revised on December 16, 2013, Buckeye filed an application to amend the certificate issued in *Buckeye I*. In its amendment application, as revised, Buckeye proposed the following five modifications to the certificate issued by the Board in *Buckeye I*: adjusting the construction staging areas; shifting the project substation by 1,000 feet; adding a new access road; modifying four previously approved access roads; and moving the electric collection line system underground.
- (3) 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 second reason necessitating a hearing is if there is a substantial change in the location of all or a portion of the facility.
- (4) By Entry of November 21, 2013, the administrative law judge (ALJ), in considering the first reason for a hearing, found that none of the five proposed changes in the amendment application would result in a material increase in any environmental impact of the facility that

necessitated a hearing under R.C. 4906.07(B). With regard to the second reason requiring a hearing, the ALJ found that the portions of the amendment application related to the construction staging areas, modifications to four previously approved access roads, and the movement of the electric collection line system underground did not require a hearing under R.C. 4906.07(B), because they did not result in a substantial change in the location of all or a portion of the facility. However, the two remaining proposed modifications in the amendment application related to shifting the project substation by 1,000 feet and the addition of a new access road required 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. In accordance with these findings, the ALJ scheduled a hearing on January 6, 2014, solely to consider the portion of the amendment application related to these two modifications under the provision in R.C. 4906.07(B).

- (5) On February 18, 2014, the Board issued its Order on Certificate Amendment in this case (Order) approving the amendment application subject to the conditions set forth in *Buckeye I* and the Order.
- (6) R.C. 4906.12 states, in pertinent part, that R.C. 4903.02 to 4903.16, and 4903.20 to 4903.23, apply to a proceeding or order of the Board as if the Board were the Public Utilities Commission of Ohio (Commission).
- (7) R.C. 4903.10 provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.
- (8) Ohio Adm.Code 4906-7-17(D) states, in relevant part, that any party or affected person may file an application for rehearing within 30 days after the issuance of a Board order in the manner and form and circumstances set forth in R.C. 4903.10.

- (9) On March 20, 2014, the Board of Commissioners of Champaign County, Ohio, and the Boards of Trustees of the townships of Union, Urbana, and Goshen (collectively, County/Townships), which had been granted intervention, filed an application for rehearing of the Order. Although not styled separately, the County/Townships raise four assignments of error.
- (10) On March 28, 2014, Buckeye filed a response to the County/Townships' application for rehearing. Buckeye states that it opposes the application for rehearing because all of the changes are minor in nature and such changes do not constitute substantial changes in the location of all of or a portion of a facility under R.C. 4906.07(B). Buckeye also states that, in the event the Board grants rehearing, the hearing should take place as soon as possible and should be limited to the relocation of the construction staging areas, the modifications of the four previously approved access roads, and changes to the electrical collection line system.
- (11) By Entry issued April 10, 2014, in accordance with Ohio Adm.Code 4906-7-17(I), the ALJ granted the application for rehearing solely for the purpose of affording the Board additional time to consider the issues raised therein.
- (12) In their first assignment of error, the County/Townships claim that the Board erred when it found that the 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 County/Townships assert that these amendments are very substantial changes to the facility and will have significant impacts on Champaign County. The County/Townships contend that the adjustment to the construction staging areas may have significant impact upon the facility due to traffic concerns because the estimated turbines and construction traffic will be doubled. In addition, the County/Townships claim that the relocated staging area

may affect the infrastructure in the abutting rights-of-way due to the same concerns.

- (13) We find no merit to this first assignment of error. The Entry establishing the scope of the hearing was issued on November 21, 2013; however, the County/Townships failed to file an interlocutory appeal of the Entry. It is worth noting that, at no time prior to or during the hearing, did the County/Townships introduce any evidence or witnesses on matters they now seek rehearing. Rather, they waited until after the hearing and issuance of the Order to argue that the amendments to the certificate required a hearing because they resulted in a substantial change in the location of all or a portion of the facility. Contrary to the assertions of the County/Townships, the traffic and right-of-way concerns identified by the County/Townships in their application for rehearing do not constitute a substantial change in the location of the facility. Further, the adjustments to the staging areas proposed in this amendment are all located within the same parcels as initially planned and approved by the Board in *Buckeye I*. Therefore, the proposed amendments do not result in a substantial change in the location of all or a portion of the facility. Accordingly, a hearing on these issues was not required under R.C. 4906.07, and the County/Townships' first assignment of error should be denied.
- (14) In their second assignment of error, the County/Townships contend that the Board erred because burying electric collection lines in the rights-of-way and relocating two of four identified access roads, which end at a right-of-way, are significant changes in and have significant impact on the facility. They argue that, because these changes will entail concerns with road use, they should be agreed upon by Buckeye and the County/Townships. Further, they contend that, because there is no Road Use Maintenance Agreement (RUMA) to the certificate issued in *Buckeye I*, the manner in which access roads will abut the existing public rights-of-way is not addressed in the certificate conditions.

- (15) We find no merit to this second assignment of error. First, we would note that the lack of a RUMA as a condition to the *Buckeye I* certificate is a matter that should have been addressed in the proceeding involving *Buckeye I*, and it is untimely to raise such issues in this proceeding. Further, as we noted previously, a concern over road use related to a feature of an amendment to a certificate is not a jurisdictional basis under R.C. 4906.07(B) for holding a hearing. Moreover, the record reflects that all of the proposed relocated access roads involved in the amendment application are located in farm fields and all disturbances are consistent with the disturbances from the initial application approved in *Buckeye I*. Such modifications were thoroughly reviewed and considered in our Order and found to be appropriate and in compliance with the statutory requirements for our approval of amendments to certificates for major facilities. In addition, the Order approved the amendment subject to the conditions in the certificate for *Buckeye I*, as well as the conditions set forth in the Order, several of which specifically address the issues raised by the County/Townships in this assignment of error. For example, Condition 56 of the *Buckeye I* certificate requires that, prior to the commencement of construction, Buckeye shall secure a road bond(s), or other similar surety, through the Champaign County Engineer's Office to provide adequate funds to repair any damage to public roads resulting from the construction or decommissioning of the proposed facility. Buckeye shall submit proof of the bond or other similar surety, for Staff's approval in coordination with the Ohio Department of Transportation (ODOT). Further, Condition 23 of the *Buckeye I* certificate requires that any permanent road closures, road restoration, or road improvements necessary for construction and operation of the proposed facility shall be coordinated with the appropriate entities, including, but not limited to, the Champaign County Engineer, ODOT, local law enforcement, and health/safety officials. Also, Condition 24 of the *Buckeye I* certificate requires that, at its expense, Buckeye shall promptly repair all impacted

roads and bridges following construction to at least their condition prior to the initiation of construction activities. Thus, although no specific RUMA is referenced in these conditions or in the certificate issued in *Buckeye I*, the conditions required in *Buckeye I* will ensure the same protections as a RUMA. These include that Buckeye secure a road bond or similar surety that ensures repair from any damage to public roads resulting from the construction or decommissioning of the proposed facility. Accordingly, the Board finds that the second assignment of error set forth by the County/Townships should be denied.

- (16) In their third assignment of error, the County/Townships contend that the Board erred because there are no requirements for burying the electrical collection lines in the rights-of-way set forth by the Board, including the depth of such lines, the media in which the lines will be encased, and emergency procedures.
- (17) We find no merit to the third assignment of error. Initially, we note that, in the *Buckeye I* application approved by the Board, Buckeye proposed placing underground several miles of electric interconnect lines involved in this project. Thus, any concerns with the depth of these lines, the media in which the lines would be encased, and any emergency procedures are issues that should have been raised by the County/Townships in that proceeding in which they were intervening parties. Nevertheless, requirements for the burial of electrical lines in the rights-of-way that would include the depth of such lines, the media in which lines would be encased, and any emergency procedures, would, if applicable, be established by state and federal agencies with jurisdiction over the safety and engineering of electrical systems. Such requirements would be in addition to any requirements set forth in R.C. Chapter 4906. Further, the safe construction and operation of the electrical systems involved with the *Buckeye I* project and amendments necessarily require that Buckeye comply with all state and federal requirements related to the burial of electric lines, as well as any requirements of



entities involved with the delivery of safe electricity in this project. Such requirements are included with the conditions set forth by the Board in its approval of the certificate issued in *Buckeye I*. Specifically, Condition 4 of the *Buckeye I* certificate requires that Buckeye obtain and comply with all applicable permits and authorizations as required by federal and state entities prior to the commencement of construction and/or operation of the facility, as appropriate. Such requirements, if applicable, would include depth of burial, media in which lines will be encased, and emergency procedures. In addition to this condition, the Board notes that the underground electrical collection system to be employed by Buckeye will be interconnected with the electrical system of the Dayton Power and Light Company (DP&L). As such, Buckeye's electrical system will necessarily have to meet all applicable electrical requirements and standards set forth by DP&L, all applicable general tariff terms and conditions of DP&L, and any and all other authorizing agencies. Such standards include the National Electrical Safety Code, which establishes the standards for the safe installation, operation, and maintenance of electric power systems. Therefore, the Board finds that the third assignment should be denied.

- (18) In their fourth assignment of error, the County/Townships claim that the Board erred because 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 and traffic safety and right-of-way concerns not present in the project originally. According to the Board/Townships, because the Board denied any opportunity to present evidence on such amendments, they were denied due process.
- (19) We find no merit to the fourth assignment of error. In this case, the Board found that the ALJ's determination on the portions of the amendment application for which a hearing was required was appropriate. As we noted previously, neither the County/Townships nor any other party filed an interlocutory appeal of the

November 21, 2013 Entry establishing the scope of the hearing. That would have been the proper time within this proceeding to challenge the defined scope of the hearing. Further, the County/Townships never sought to expand the scope of the hearing, either prior to the hearing, at the commencement of the hearing, or at the conclusion of the hearing, and they chose not to proffer, at any time during the hearing, any evidence or testimony on matters they now seek rehearing. In addition, other than claiming generally that there are potential witnesses who would have relevant testimony regarding the positive and negative effects of the amendments, traffic safety, and right-of-way concerns that were not heard, the County/Townships raise nothing specific in their application for rehearing related to the Board's jurisdictional basis under R.C. 4906.07 for holding a hearing on an amendment application. Specifically, the County/Townships never argue in their application for rehearing that there were persons who may have provided testimony regarding the environmental impact of the proposed amendment application or how the proposed amendment to the application may result in a substantial change in the location of the facility; both of which would have constituted the basis necessitated a hearing under R.C. 4906.07. Moreover, the Board emphasizes that our Order in this case clearly sets forth the basis and record evidence supporting for our decision to approve the amendment to the certificate in accordance with the statutory requirements in R.C. Chapter 4906. Accordingly, the Board finds that the fourth assignment of error set forth by the County/Townships should be denied.

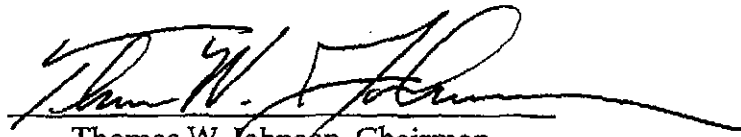
ORDER:

It is, therefore,

ORDERED, That the application for rehearing filed by the County/Townships be denied in its entirety. It is, further,


ORDERED, That a copy of this Entry on Rehearing be served upon all interested persons of record.

THE OHIO POWER SITING BOARD




Thomas W. Johnson, Chairman  
Public Utilities Commission of Ohio

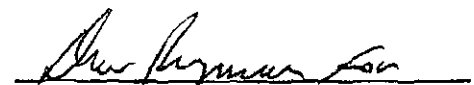
David Goodman, Board Member  
and Director of the Ohio  
Development Services Agency



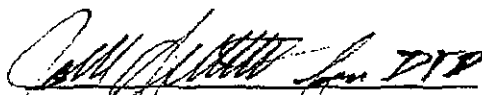
James Zehringer, Board Member  
and Director of the Ohio  
Department of Natural Resources



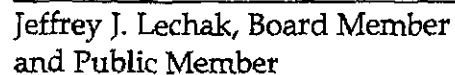
Lance Himes, Board  
Member and Interim Director of the  
Ohio Department of Health



Craig Butler, Board Member  
and Director of the Ohio  
Environmental Protection Agency



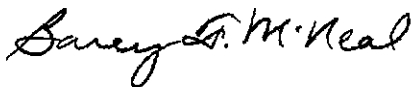
David Daniels, Board Member  
and Director of the Ohio  
Department of Agriculture



Jeffrey J. Lechak, Board Member  
and Public Member

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Entered in the Journal  
**MAY 19 2014**



Barcy F. McNeal  
Secretary