

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of Buckeye Wind, LLC, for a Certificate to Install Numerous Electric Generating Wind Turbines in Champaign County to be Collected at an Electrical Substation in Union Township, Champaign County, Ohio)	Case No. 08-0666-EL-BGN
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In the Matter of the Application of Buckeye Wind, LLC, to Amend its Certificate Issued in Case No. 08-666-EL-BGN)	Case No. 13-0360-EL-BGA
)	

**INTERVENORS CHAMPAIGN COUNTY AND GOSHEN, UNION AND
URBANA TOWNSHIPS' MEMORANDUM CONTRA BUCKEYE WIND, LLC'S
MOTION FOR WAIVERS**

Buckeye Wind, LLC (“Buckeye”) is now requesting, by motion filed August 4, 2014, waivers to the requirements for amendment to its Certificate of Environmental Compatibility and Public Need (“Certificate”), being specifically a modification to Condition 52 to extend the time in which it may construct its project under the Certificate approved March 22, 2010, and for expedited ruling on such. Essentially, the effect of the waivers requested would allow Buckeye to circumvent the requirements of the amendment process although it appears Buckeye is now acquiescing that the amendment process is the proper process to extend the Certificate. Due to the short time allowed for timely response after request for an expedited ruling, Intervenors Champaign County and Goshen, Union and Urbana Townships (“County and Townships”) summarize their objections to Buckeye’s motion for waivers herebelow.

As addressed in their Motion in Opposition to Buckeye's Motion for Extension of the Certificate, the County and Townships contend that the amendment process would better protect the public interest by (1) giving adequate public notice for comment or intervention, (2) giving the Staff the ability to conduct an investigation and submit a report on the impacts of the amendment of this project in concert with the Champaign Wind, LLC project, Case No. 12-0160-EL-BGN, as it appears that the projects will be constructed jointly thereby necessitating the extension requested, and (3) holding a public hearing if required after Staff review. Therefore, the County and Townships object to circumvention of the requirements of the amendment process in requesting a modification of Certificate 52 of the Certificate.

Condition 52 of the certificate approved by the Ohio Power Siting Board ("OPSB") sets forth that:

"The certificate shall become invalid if Buckeye has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate."

OPSB's Opinion Order and Certificate of March 22, 2010.

The County and Townships disagree with Buckeye's contention that adequate public notice has been given. Notice of the filing of the motion for extension of the Certificate was given less than 30 days prior to the date of filing of the motion for waivers by Buckeye and prior to the expedited response time hereof. By the filing of a motion in lieu of an amendment, especially with a request for waivers and a request for expedited ruling, the response time is severely truncated and does not allow for further intervention or investigation by the Staff of the Ohio Power Siting Board ("OPSB"). The amendment process allows for more adequate time for the intervenors, the public and the Staff to review the amendment and analyze the impacts, especially as it is presumed that Buckeye intends to construct its project at the same time as the Champaign Wind, LLC project. Although Buckeye has not explicitly indicated that it is constructing its project at the same time as the Champaign Wind, LLC project, Buckeye is arguing that the Certificate should be extended to the same date of expiration of Champaign Wind, LLC's

certificate and that it cannot presently construct its project due to current appeal of the Champaign Wind, LLC certificate. Further, if allowed, a public hearing give the intervenors the opportunity to present evidence as to impacts of the amendment, after investigation and report from the Staff of the joint projects' impacts, and request necessary conditions to the Certificate.

Although Buckeye suggests that good cause exists to support its waiver requests, it does not raise any issue which specifically applies to this amendment, but could be raised by any applicant wishing to avoid the requirements of the amendment process. Buckeye specifically states that it gave statutory notice, but does not address the inadequate time for review and response by the parties and the public for an amendment, even though brief responses were made by some in the 15 day response period to its motion. Further, it states that the waivers do not prejudice the parties or public as no hearing is required. A hearing is not mandatory in the amendment process (although the County and Townships argue it would be required herein) and, therefore, Buckeye arguing that a hearing is not necessary is not a good reason to circumvent the process. Also, Buckeye contends that waiver of the requirements of the amendment process would "secure a just, efficient and inexpensive determination". Buckeye, like any developer, would rather not have the Staff of the OPSB conduct an investigation and submit and report as required, along with recommended conditions. However, it is certainly warranted in this matter as Buckeye appears to be requesting that this project be constructed jointly with Champaign Wind, LLC's project. The impact of both projects on the public has not been fully addressed in either project as they have been reviewed as separate and independent projects.

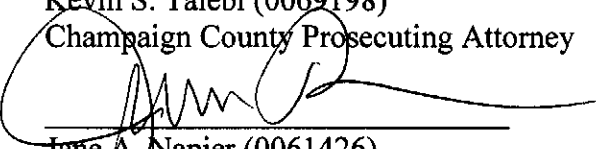
Additionally, Buckeye argues that it should have an extension of time from March 22, 2015 to May 28, 2018, being an increase from five (5) years to approximately eight (8) years, two (2) months and six (6) days. Such a large extension of time without review of the need for such extension and without much explanation from Buckeye clearly undermines the finality of the OPSB's Order, which set an expiration date of the Certificate.

CONCLUSION

For the reasons set forth herein, the intervening Boards of Champaign County Commissioners and the Boards of Trustees of Goshen, Union and Urbana Township request that the Ohio Power Siting Board deny waivers requested by Buckeye Wind, LLC herein and mandate that Buckeye Wind, LLC follow the requirements of the amendment process for modification of Condition 52 of the Certificate.

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

Attorney for Champaign County
and Goshen, Union and Urbana Township

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, 9th 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 11th day of August, 2014.



Jane A. Napier (0061426)

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in

Case No(s). 13-0360-EL-BGA, 08-0666-EL-BGN

Summary: Memorandum Contra Buckeye Wind, LLC's Motion for Waivers electronically filed by Jane A. Napier on behalf of Goshen Township Board of Trustees and Union Township Board of Trustees and Urbana Township Board of Trustees and Champaign County Board of Commissioners