

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of	)	
6011 Greenwich Windpark, LLC for a	)	
Certificate to Construct a Wind-Powered	)	Case No. 13-990-EL-BGN
Electric Generation Facility in	)	
Huron County, Ohio.	)	

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**LATE-FILED MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT  
OF OMEGA CROP CO., LLC, AN ADJACENT PROPERTY OWNER**

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**August 21, 2014**

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**LATE-FILED MOTION TO INTERVENE OF  
OMEGA CROP CO., LLC,  
AN ADJACENT PROPERTY OWNER**

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Omega Crop Co., LLC (“Omega”)<sup>1</sup> hereby respectfully moves the Ohio Power Siting Board (“Board”), pursuant to Section 4906.08(B), Revised Code, and Rule 4906-7-04(C), Ohio Administrative Code (“O.A.C.”), for leave to intervene in the above-captioned matter.

On December 23, 2013, December 24, 2013 and December 27, 2013, 6011 Greenwich Windpark, LLC (“Greenwich”) filed an application for a Certificate of Environmental Compatibility and Public Need (“Certificate”) to construct the Greenwich Wind Farm, a proposed wind-powered electric generation facility located in Huron County.

As demonstrated further in the Memorandum in Support attached hereto and incorporated herein, Omega owns approximately 1,200 acres of farmland adjacent to

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<sup>1</sup> Omega is owned by Gerald and Connie Oney.

the land that has been or will be leased by Greenwich. It has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest.

Omega believes that granting its intervention request as it may apply to the remaining phase or phases of this proceeding will not unduly prolong or delay this proceeding and that it will significantly contribute to the full development and equitable resolution of the factual and other issues.

The interests of Omega have not been represented by any existing parties to the proceeding. Indeed, these interests as well as the views of similarly situated property owners have generally not, during the evidentiary phase of this proceeding, been directly communicated to the Board by such property owners or indirectly relayed to the Board by existing parties.

Omega believes and hereby asserts that extraordinary circumstances, more fully described in the Memorandum in Support, justify granting its late-filed intervention request.

If permitted to intervene, Omega agrees to be bound by arrangements, other matters previously made and by agreements previously made except for the Joint Stipulation and Recommendation which was filed in this proceeding on May 16, 2014 by parties not representing the interests of Omega or similarly situated property owners.

As is clear from the testimony filed shortly after the May 6, 2014 local public hearing<sup>2</sup> and the only testimony filed in support of this Joint Stipulation and Recommendation, the Joint Stipulation and Recommendation is being advanced based on the incorrect claim that there is little or no opposition to the relief requested in this proceeding. The assertion that the relief requested in this proceeding is not opposed by members of the public such as Omega or an assertion that the Joint Stipulation and Recommendation properly responds to the concerns that have been raised by members of the public including Omega is incompatible with reality. If Omega was required to agree to be bound by the Joint Stipulation and Recommendation as a condition for securing intervenor status, it may effectively deprive Omega of any meaningful opportunity to protect its interests in the remaining phases of this proceeding.

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<sup>2</sup> Testimony of Monica Jensen on behalf of 6011 Greenwich Windpark, LLC (May 9, 2014). Since this testimony is dated May 9, 2014 and the local public hearing was held on May 6, 2016, it is reasonable to conclude that the existing parties to this proceeding had concluded settlement discussions prior to the May 6, 2016 local public hearing. The existence of such a settlement or the settlement negotiations that were obviously taking place at the time of the local public hearing were never disclosed at the public hearing. Additionally, the May 9, 2014 testimony of Greenwich, which was filed in support of the settlement, acknowledges that the local public hearing was scheduled at a time when it was unlikely that members of the mostly-farming community would be able to attend. More specifically, page 4 of such testimony states: "... because of the timing of the hearing and the fact that the people in the community are mostly farmers who are now considerably behind in spring planting due to uncooperative weather, only a few were able to attend the hearing." Testimony of Monica Jensen on behalf of 6011 Greenwich Windpark, LLC at 4 (May 9, 2014). The only testimony filed in support of the Joint Stipulation and Recommendation also fails to assert that the Joint Stipulation and Recommendation satisfies the criteria which are used to evaluate settlements. There is no affirmative and direct assertion that the Joint Stipulation and Recommendation is a product of serious bargaining among capable, knowledgeable parties, whether the settlement, as a package, benefits ratepayers and the public interest and whether the settlement package violates any important regulatory principles or practices. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370. *See, also, AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St.3d 81, 82-83, 765 N.E.2d 862.

Accordingly and for the additional reasons set forth in the attached memorandum in support, Omega requests that the Board grant its late-filed intervention request for good cause shown.

Respectfully submitted,

/s/ Samuel C. Randazzo  
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**MEMORANDUM IN SUPPORT OF LATE-FILED MOTION TO INTERVENE  
BY OMEGA CROP CO., LLC, AN ADJACENT PROPERTY OWNER**

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In support of this Motion to Intervene, Omega states that it is the owner of real property consisting of approximately 1,200 acres. Such property is farmland and adjacent to the property which has been or will be leased by Greenwich to construct the Greenwich Wind Farm, a proposed wind-powered electric generation facility located in Huron County.

Throughout this proceeding, Greenwich has attempted to divert attention from the growing opposition to its wind farm project. The May 9, 2014 testimony which Greenwich filed in support of the Joint Stipulation and Recommendation suggests that there is no opposition.

While there was a local public hearing held in this proceeding, Greenwich's May 9, 2014 testimony acknowledges that the hearing was held at a time when it was unlikely that members of the local community would be able to attend. More specifically and at page 4 of the testimony of Monica Jensen dated May 9, 2014, the testimony states (emphasis added):

10. Are there any other matters you would like to bring to the attention of the Board concerning this case?

Yes, I wanted to mention that there were no witnesses at the public hearing who opposed this project. Though we had talked with many people in the area about supporting the project by attending and testifying at the public hearing on May 6, 2014, **because of the timing of the hearing and the fact that the people in the community are mostly farmers who are now considerably behind in spring planting due to uncooperative weather, only a few were able to attend the hearing.**

More recently and on August 19, 2014, Greenwich's attorney filed a letter and other materials suggesting that the opposition to Greenwich's proposed wind farm which is increasingly evident to everyone but Greenwich is imagined, contrived or the result of citizens who have not been given the correct information. This August 19, 2014 filing by Greenwich was not served on the members of the public who have filed comments opposing Greenwich's certification request. It was served on the administrative law judge and "parties of record." Accordingly, the parties most directly affected by Greenwich's rebuttal to the opposition that is evident from the public comments in the case file had no real notice or opportunity to contest the claims and assertions contained in the August 19, 2014 letter.

It is not an easy thing for property owners who must attend to their "day job" to also figure out how they must present facts and information to the Ohio Power Siting Board in cases where the value and use of their property may be affected by the for-profit ambitions of a wind farm developer.<sup>3</sup> Yes, Omega's intervention request is late as measured by the literal application of the procedural schedule in this case. But

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<sup>3</sup> On August 20, 2014 and as soon as Omega appreciated the significance of intervenor status, it sought legal representation and authorized the filing of the late-filed intervention request. Counsel for Omega worked diligently thereafter to review the case file, prepare an intervention-related motion and memorandum and to otherwise assist Omega in its efforts to protect its interests.

Omega's intervention comes after a rather extraordinary effort on the part of Omega to learn and then appreciate the significance of having intervenor status as a condition for full utilization of all available rights and privileges which are available to Omega once it has intervenor status.

Omega and other similarly situated property owners, local officials and members of the General Assembly have repeatedly asked the Board to hold another local public hearing which would provide a meaningful opportunity for the Board to hear the truth about the scope and degree of opposition to Greenwich's proposed wind farm. It is an extraordinary circumstance for the Board to ignore these requests for a meaningful local public hearing in a context where Greenwich itself has acknowledged that public participation in the May 6, 2014 hearing was unlikely due to the real world demands of getting a crop in the ground. Nonetheless, these many requests have thus far been ignored by the Board in a context that clearly shows that Greenwich has used, to its considerable advantage, its "party" status in this proceeding to obscure the views and positions of property owners and other citizens who are: (1) just beginning to appreciate the risks associated with Greenwich's ambitions; and, (2) then express opposition to the Greenwich Wind Farm.

Among other things, Greenwich and the Staff Report of Investigation suggest<sup>4</sup> that Greenwich has secured all the necessary waivers from the minimum setback requirements. However, the information presently available in the record indicates that Greenwich has not secured waivers from all the owners of property adjacent to the wind

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<sup>4</sup> See Letter dated July 15, 2014 attaching copies of executed waivers (July 15, 2014); Staff Report of Investigation at 30, 42 (April 18, 2014). As the Board knows, the minimum setback requirements in current law were changed by Substitute Senate Bill 310 ("SB 310").



farm property. For example, the information in the record clearly shows that Omega is an adjacent property owner and that Omega has not signed a waiver of the minimum setback requirement. The information in the record also clearly shows that Greenwich is proposing to place wind turbines in locations where the minimum setback requirement will be violated. Nothing in the Staff Report of Investigation or the testimony which has been filed in this proceeding even mentions Greenwich's failure to secure waivers from all owners of property adjacent to the wind farm property. It is an extraordinary circumstance for Omega, a citizen untrained in the Board's process or the law as it relates to certification of major utility facilities, to have to bring this issue to the attention of the Board. Nonetheless, none of the existing parties have suggested that this may be an issue that warrants the Board's attention.

As noted above, SB 310 modifies Ohio's portfolio mandates as they relate to renewable resources. One of the modifications removes the in-state purchase requirement. Nonetheless, the views expressed in the Staff Report of Investigation (at page 50) are predicated on the continuation of the in-state compliance requirement. None of the existing parties to this proceeding have notified the Board that circumstances have changed (as a result of SB 310) and that the Board may wish to take the changed circumstances into account. It is an extraordinary circumstance for Omega to have to formally bring this reality to the attention of the Board.

The existing parties to this proceeding have submitted a Joint Stipulation and Recommendation and have urged the Board to adopt the Joint Stipulation and Recommendation for purposes of granting Greenwich the requested certificate. However, there is nothing in the record of this proceeding that indicates that the Board

can find that the Joint Stipulation and Recommendation satisfies the criteria typically used to evaluate settlements. The only testimony filed in support of the Joint Stipulation and Recommendation fails to assert that the Joint Stipulation satisfies the three criteria which are used to evaluate settlements. There is no affirmative and direct assertion that the Joint Stipulation and Recommendation is a product of serious bargaining among capable, knowledgeable parties, the settlement, as a package, benefits ratepayers and the public interest and that the settlement does not violate any important regulatory principles or practices.<sup>5</sup> It is an extraordinary circumstance for Omega to have to have to bring this defect to the attention of the Board.

Omega owns approximately 1,200 acres of farmland adjacent to the land that has been or will be leased by Greenwich. It has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest.

Omega believes that granting its intervention request as it may apply to the remaining phase or phases of this proceeding will not unduly prolong or delay this proceeding and that it will significantly contribute to the full development and equitable resolution of the factual and other issues.

The interests of Omega have not been represented by any existing parties to the proceeding. Indeed, these interests and the views of similarly situated property owners have generally not, during the evidentiary phase of this proceeding, been directly

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<sup>5</sup> *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370. See, also, *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St.3d 81, 82-83, 765 N.E.2d 862.

communicated to the Board by such property owners or indirectly relayed to the Board by existing parties.

Omega believes and hereby asserts that extraordinary circumstances justify granting its late-filed intervention request.

If permitted to intervene, Omega agrees to be bound by arrangements, other matters previously made and by agreements previously made except for the Joint Stipulation and Recommendation which was filed in this proceeding on May 16, 2014. As explained previously, if Omega was required to agree to be bound by the Joint Stipulation and Recommendation as a condition for securing intervenor status, it may effectively deprive Omega of any meaningful opportunity to protect its interests in the remaining phases of this proceeding. Such a condition would, in present circumstances, violate due process requirements.

Accordingly, Omega requests that the Board grant its late-filed intervention request for good cause shown.

Respectfully submitted,

/s/ Samuel C. Randazzo  
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## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Late-Filed Motion to Intervene and Memorandum in Support of Omega Crop Co., LLC, An Adjacent Property Owner* has been served via electronic mail upon the following parties of record this 21<sup>st</sup> day of August 2014.

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**ATTORNEY EXAMINER**

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Summary: Motion Late-Filed Motion to Intervene and Memorandum in Support of Omega Crop Co., LLC, an Adjacent Property Owner electronically filed by Mr. Samuel C. Randazzo on behalf of Omega Crop Co., LLC