

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of the **6011**)
GREENWICH WINDPARK, LLC for a)
Certificate to Site Wind-Powered Electric) Case No. 13-990-EL-BGN
Generation Facilities in Huron County, Ohio)

**6011 GREENWICH WINDPARK, LLC MEMORANDUM CONTRA
LATE-FILED MOTION TO INTERVENE OF OMEGA CROP CO., LLC**

Applicant, 6011 Greenwich Windpark, LLC (“Applicant”) received the Late-Filed Motion to Intervene and Memorandum in Support of Omega Crop Co., LLC, an Adjacent Property Owner (“Motion”) on the afternoon of August 21, 2014, less than one and one-half business days before the Ohio Power Siting Board (“Board”) has scheduled its meeting on August 25, 2014 to consider the fully stipulated case in the above captioned proceeding. In order to reply prior to the Board’s meeting, Applicant files this short Memo Contra to the Motion of Omega Crop Co., LLC (“Omega”) to address the inappropriateness of the request to intervene. Applicant reserves the right to supplement this Memo Contra, if necessary, within the time permitted by the Board’s rules.

Because of obvious time constraints caused by the last minute filing of the Motion, the Motion’s factual misstatements and the arguments on the legal aspects that might have been raised during the proceeding will not be addressed herein. Instead, this Memo Contra will focus on the legal shortcomings of Omega’s attempt to intervene that compels the Board to reject the Motion.

The Motion states that it is filed pursuant to Ohio Administrative Code (“OAC”) Rule 4906-7-4(C). Motion at p. 1. OAC Rule 4906-7-4(C) permits the Board or its administrative law judge “in extraordinary circumstances, and for good cause shown” to grant the petition to intervene. The Motion does not meet either of these criteria. There are no extraordinary

circumstances even alleged. Notice of the filing of the application was *specifically mailed to Omega* as an adjacent property owner. Omega's name was included in the list of adjacent property owners on the Proof of Service of Application filed by the Applicant on February 21, 2014. On March 13, 2014, the Applicant filed a letter attesting to the fact the letter required by OAC Rule 4906-5-8(C)(3) was sent to the listed adjacent property owners. The Motion does not allege that the letter was not thus received by Omega. Furthermore, public notice of the filing of the application and of the hearing dates was made *twice*, not only in the newspaper of general circulation, but also in the weekly paper serving the project area. See affidavits of publication filed on March 25, 2014 and May 12, 2014. In addition, Applicant sent out a second letter dated March 31, 2014 (see Attachment 1) to all of the adjoining property owners that included detailed information on the project that was not required by the aforementioned rule.

When an affected person receives actual notice but simply fails to intervene on a timely basis, no extraordinary circumstances exist. Omega has not and cannot demonstrate good cause for its failure to intervene before now—three months after the proceedings had concluded. Despite its base assertions of “extraordinary circumstances,” Omega gives no good cause¹ as to why it waited until now to file its Motion. The Board's rule, OAC Rule 4906-7-4(C) is not a formality that should be waived in this case. The extraordinary circumstances and good cause standards is one that was designed to protect all parties to a case, but particularly the Applicant who has completed its case and filed a stipulation signed by all parties who timely intervened. See *In the Matter of the Application of the City of Hamilton and American Municipal Power, Inc., for a Certificate of Environmental Compatibility and Public Need for the Construction of a Substation*

¹ The Motion alleges only that Omega determined to intervene after an effort “to learn and then appreciate the significance of intervenor status.” Motion at p. 7. This “reason” would eviscerate OAC Rule 4906-7-4 requiring interested persons to intervene within a specific time period.

in Franklin and Washington Townships, Case No. 10-2439-EL-BSB; and *In the Matter of the Application of the City of Hamilton and American Municipal Power, Inc., for a Certificate of Environmental Compatibility and Public Need for the Construction of a Transmission Line in Franklin and Washington Townships*, Case No. 10-2440-EL-BTX (Entry on Rehearing dated January 23, 2012). Specifically in the Entry on Rehearing, the Board states:

Applicants filed their proofs of service reflecting that the appropriate legal notices of the local public and adjudicatory hearings were published in newspapers of general circulation, and the notices discussed the deadline for intervention and provided the Board's address. Given the date of publication of the notices, under Rule 4906-7-4, O.A.C, petitions to intervene were due by September 6, 2011. Here, petitions to intervene . . . are untimely as they were filed 106 days and 108 days, respectively, after the filing deadline for petitions to intervene, and after the Board issued the Order in these cases. Further, the petitions contain no statements of good cause for failing to timely file such petitions and there has been no showing that extraordinary circumstances justify granting the petitions or that the [Petitioners] agree to be bound by agreements previously made in the proceedings. Consequently, the Board finds that the petitions for leave to intervene . . . fail to comply with Rule 4906-7-4, O.A.C, and should be denied.

Id. at paragraph 17. Further, the Public Utilities Commission of Ohio has also denied late filed motions to intervene when the movant failed to show extraordinary circumstances and good cause for granting the late filed motion.² But for the fact that the Board did not schedule a meeting in June or July, Applicant would have received a Board decision prior to the filing of this Motion.

Omega's Motion states that it will not be bound by the Stipulation in this case, which was signed by all the parties including the Staff, but in the same breath, alleges that its intervention "will not unduly prolong or delay the proceeding." Motion at pp. 2-3 and 10. The statements that

² *Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 11-5201-EL-RDR (Opinion and Order dated August 17, 2013); *Columbus Southern Power Company and Ohio Power Company*, Case No. 08-917-EL-SSO, et al. (June 29, 2011); *Ohio Power Company and Columbus Southern Power Company, et al.*, Case Nos. Case No. 10-2376-EL-UNC; 11-346-EL-SSO; 11-348-EL-SSO; 11-349-EL-AAM; 11-350-EL-AAM; 10-343-EL-ATA; 10-344-EL-ATA; 10-2929-EL-UNC; (December 14, 2011); and *Investigation of Ameritech Ohio Relative to its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code*, Case No. 99-938-TP-COI (October 5, 2000); and *Lake Erie Utilities Company*, Case No. 86-656-WS-AIR (Opinion & Order February 10, 1987).

Omega's intervention will apply only to "remaining phases" of the case and that Omega will contribute to the resolution of issues in this case (Motion at p. 9) are patently untrue. The record in this matter has been *closed* since May 19, 2014, three months prior to the filing of the Omega Motion. There are no remaining phases of the case nor are there unresolved issues left in this case. In short, Omega's participation in this case *will not* contribute to this proceeding at all.

OAC Rule 4906-7-4(C)(2) specifically requires that a party claiming extraordinary circumstances must agree, "to be bound by agreements, arrangements, and other matters previously made in the proceeding." The Stipulation that Omega seeks to excuse itself from constitutes an agreement contemplated by the rule. It is a critical "agreement" in this case. By its own statements (Motion at pp. 2 and 10), Omega has not fulfilled this requirement of OAC Rule 4906-7-4(C). The Board should not, indeed one can argue it cannot, grant Omega intervention because Omega does not merit late intervention under any circumstances. The requirement to accept the record as it exists at the time of a late intervention is hardly a mere formality.

If late intervening parties did not accept the record, as it existed when they intervened, chaos would reign in the Board's proceedings, and most particularly, the intervention would severely prejudice applicants. In this case, Applicant has adhered to the applicable laws and all the Board's requirements and has expended considerable time and money on the application process. Delay of a decision by the Board on August 25, 2014 will cause the Applicant extraordinary prejudice. Because the requirements of the law in effect at the date this case has been set for Board decision will be changed next month,³ Applicant would have to begin this more than yearlong process of preparing, filing, and prosecuting a new application. Applicant completed its application more than a year before the legislation was introduced and this case was

³ The Board is no doubt aware of the passage of SB 310. The timing of Omega's motion suggests an attempt to delay this proceeding in light of the effective date of SB 310, which will be effective approximately September 2014.

submitted even before the new law was passed. Applicant should not be compelled to start over under new standards because Omega decided to attempt intervention well after the record in this matter had closed. Any delay caused by this Motion would be extremely prejudicial to the Applicant.

For all the reasons stated in this Memo Contra, Applicant urges the Board to deny Omega's Late-Filed Motion to Intervene.

Respectfully submitted on behalf of
6011 GREENWICH WINDPARK, LLC



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Memo Contra has been served upon the following parties listed below by electronic mail, this 22nd day of August 2014.



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March 31, 2014

Omega Crop Co LLC
3496 Rome Greenwich Road
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To Whom It May Concern,

You may have recently received a letter from the attorney firm Bricker & Eckler regarding the Greenwich Wind project. I realize that letter did not provide much detail regarding the proposed Greenwich wind farm; therefore, I would like to take this opportunity to share information about the actual project.

We have held three community meetings to date, with the most recent held in May 2013 prior to commencing the Ohio Power Siting Board process. As it is not always convenient to attend a community meeting; I am sending along the most up-to-date information to help provide a clear understanding of the project.

If you have any questions or comments concerning the Greenwich Wind project or enclosed documents, please call me directly.

Many thanks,

Monica Jensen
Vice President/Development

Enclosure(s)



Project Details

Project Size:

- 60 MW's
- 25 Proposed Turbines
- Over 4,600 acres leased for project

Project Design:

- Environmental risk assessment and individual species studies, wetland, geology studies completed.
- Site cleared for FAA, microwave paths, doppler radar and all communications
- Economic, sound surveys, noise acoustic and visual assessments completed
- Decommissioning plans, road evaluations and cooperation's with County Engineers structured.
- Project costs is approx \$119 million
- Commercial operations: Summer/Fall 2015

Ohio Power Siting Board

- **Application & copies of all completed studies and assessments can be reviewed at the Greenwich Public Library; or on line at: <http://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=13-0990>**

Benefits to the Community

Revitalizes Rural Economies: Wind energy can revitalize and diversify the economies of rural communities via the taxes paid by the operating wind farm. School districts can receive a much needed source of long term funding.

Creates Jobs: Wind energy projects create new short-and long-term jobs. Related employment ranges from contractors and surveyors to structural engineers, assembly workers, lawyers, bankers, and technicians. During construction local workers and service providers are used when possible and available. Once the project is operational, the long term jobs are good paying and stay in the community.

Investment in Local Businesses: Building a wind energy project increases direct spending in local businesses and infrastructure (primarily roads). One dollar spent locally can turn over between four and six times which effects the local community both directly and indirectly. Local service providers are direct beneficiaries.

Tax Revenue

There are various options for taxing wind farm infrastructure. Under the current Ohio Revenue Code 5725.75, the county may approve a tax rate assessed on the nameplate (the rated machine) capacity. Under this scenario, the Greenwich Windpark's estimated annual service payment would be \$540,000 per year (= \$9,000 (tax rate) X 60 MW (size of project)). These funds would be paid directly to Huron County to distribute appropriately. All amounts are calculated on the full tax rate.

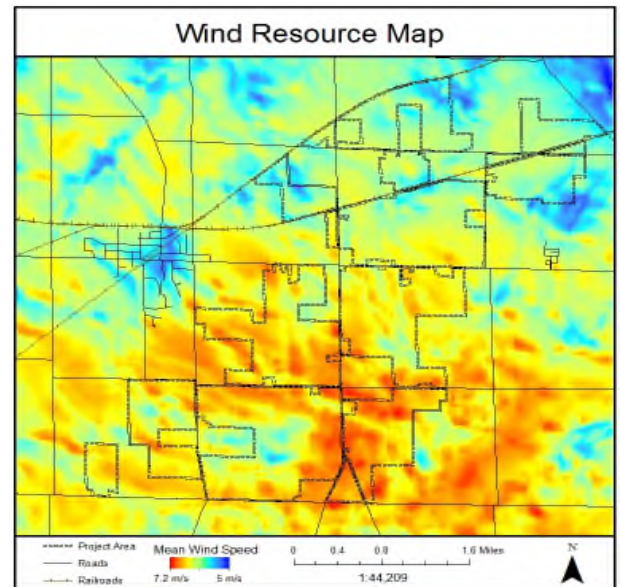
	<u>Scenario 1</u>	<u>Scenario 2</u>	
County Wind Fund	\$0	\$120,000	⇒ County Commissioners, by agreement, can designate up to \$2,000/MW
County General Fund	\$18,568	\$14,441	
Alcohol, Drug Addiction, Mental Health Svcs.	\$4,420	\$3,440	
Christie Lane (Developmental Disabilities)	\$35,367	\$27,506	
Senior Citizens Center	\$4,420	\$3,440	
South Central School District	\$326,254	\$253,753	
Ehove (Adult Career Svcs.)	\$34,925	\$27,163	
Greenwich Township	\$56,587	\$44,011	
General Health District	\$6,630	\$5,158	
Tri-Community Ambulance	\$17,685	\$13,753	
Tri-Community Fire Department	\$26,524	\$20,630	
Library	\$8,620	\$6,705	
	<u>\$540,000</u>	<u>\$540,000</u>	

NOTE: The tax distributions are a representation of the current ORC 5725.75, rates have not yet been finalized and are subject to change.

Why Greenwich?

- Wind Resource – Greenwich Township is located at the highest elevation point in Huron County. Wind speeds occurring at higher altitudes become steadier, more persistent, and of higher velocity.
- Wind Assessment – The project area has estimated long-term wind speeds of 7.0 m/s, which can produce enough energy to support a utility grade wind project. (Dark red areas on map are higher wind speed areas.)
- Grid Connection – Proposed interconnection is to a 69 kV utility line within the project site. American Electric Power (AEP) operates & owns the line.
- Project Area – Over 4,600 acres leased: ***The project area is defined by and limited by its wind resource and utility grid connection.*** The wind resource significantly declines directly outside the project area. The existing 69 kV transmission line can only accommodate a maximum of 60 MW of power.

These two factors will not allow for future site expansion.

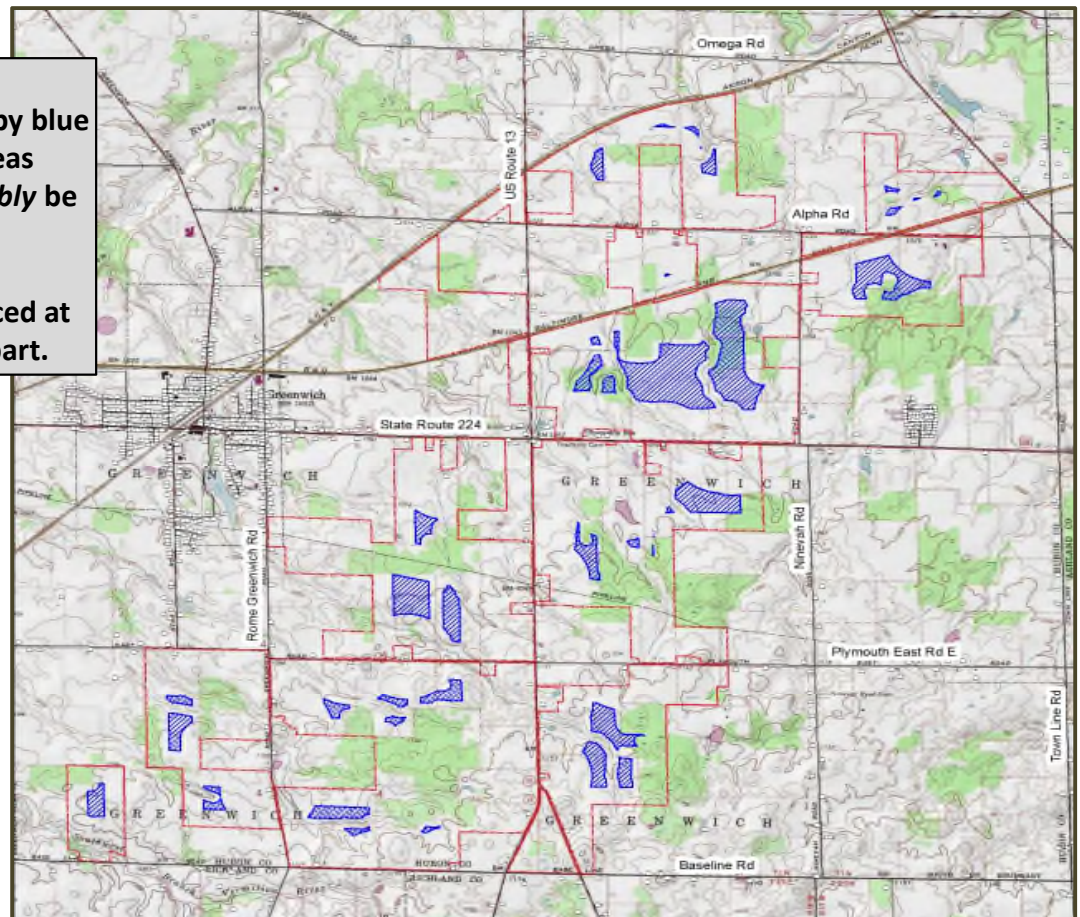


Project Area

Areas free from setback restrictions are indicated by blue hashed area; these are areas where turbines *may possibly* be placed.

Turbines are typically spaced at minimum +/- 1500 feet apart.

NOTE: Setback's are areas that turbines cannot be located due to proximity to roads, houses, railroads, tree lines, wetland or environmentally sensitive areas , etc. Setback's are dictated by the state & OPSB and are subject to change.



The Truth About Wind Power

	The Rhetoric	The Reality
Consumer Prices	Wind energy is expensive and costs more than other sources of electricity.	Wind power is the lowest cost of new generation; twenty year power contracts provide long-term level power costs. No fuel cost; no fuel transportation costs. Aging coal fleet is being decommissioned; will impact consumer prices upward.
Reliability	Wind is intermittent; therefore, it threatens the reliability of the electric grid.	Grid operators already rely on wind power and successfully integrate it in large amounts across the US power grid. Over 60,000 MW of wind energy is currently on the US grid (roughly powers 45,000,000 homes).
Sound	The sound of operating wind turbines causes a variety of health effects, including dizziness, headaches, and loss of sleep.	Independent studies conducted <i>worldwide</i> have consistently found that wind farms have no direct impact on physical health. Sound levels are modeled during development to avoid post-operational issues.
Shadow Flicker	The shadows of rotating wind turbines are bothersome and cause negative health effects.	<i>Shadow flicker is predictable</i> and is based on the sun's angle, turbine location, and the distance to an observer. Flicker is modeled during development to minimize and mitigation measures are available.
Fire	Turbines often catch fire and when they do they send flaming shards into fields and forests.	A wind turbine fire is a very rare event. Turbines are closely monitored 24/7 for any operating inconsistencies. Extensive precautions are taken, including emergency & first responder training.
Potential & Land Use	Wind takes too much land to make much of the nation's energy.	Wind energy accounted for 42% of all new energy installation in 2012. The project area may appear to spread across a large area, however, the infrastructure requires little land. Wind energy is compatible with agricultural activities; farmers can plant up to the turbine base and livestock enjoy the shade in summer.
Property Values	Wind farms hurt property values.	Studies have found that wind facilities do not affect long-term property values. Wind drives community economic development that benefits all property owners through the tax revenues paid annually.
Emissions	Wind power does not reduce carbon and may even contribute to climate change.	Wind power has no carbon emissions and emits no pollutants or greenhouse gases. Wind power does not use any water and does not contribute to water contamination. No energy expended to extract fuel.
Old Turbines	Old turbines are left abandoned.	History shows that old turbines are repowered with newer technology. Current wind practices require a bond be posted to protect landowners and community; in addition, turbines have a high salvage value.
Energy Incentives	Renewable energy is subsidized at higher rates than fossil fuels	Fossil fuels received about five times more in subsidies than renewable energy. Wind's primary incentive is the Product Tax Credit, <i>a performance based incentive</i> .
Wildlife	Wind turbines are killing birds, bats and eagles at an alarming rate.	Wind generates electricity without many of the environmental impacts associated with other energy sources and is supported by wildlife agencies. Newer siting requirements and techniques continue to reduce wildlife impacts.

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Summary: Memorandum Contra of 6011 Greenwich Windpark,LLC electronically filed by
Teresa Orahod on behalf of Sally Bloomfield