

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Buckeye )  
Wind, LLC, for a Certificate to Construct ) Case No. 08-666-EL-BGN  
Wind-powered Electric Generation )  
Facilities in Champaign County, Ohio. )

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. )

ENTRY

The Board finds:

- (1) On March 22, 2010, the Board issued its 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. *In re Buckeye Wind, LLC*, Case No. 08-666-EL-BGN (*Buckeye I*). The Order in *Buckeye I*, provided 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. *Buckeye I*, Order (Mar. 22, 2010) at 92. Accordingly, the Board required Buckeye to commence a continuous course of construction by March 22, 2015. The Board affirmed its Order by Entry on Rehearing issued July 15, 2010. On March 6, 2012, the Ohio Supreme Court affirmed the Board's Order.
- (2) On March 19, 2013, Buckeye filed an application to amend the *Buckeye I* certificate. *In re Buckeye Wind, LLC*, Case No. 13-360-EL-BGA (*Buckeye I Amendment*). In the amendment application, Buckeye requested authority to revise the design of the facility to adjust the construction staging areas; shift the project substation by 1,000 feet; add a new access road; modify four previously approved access roads; and move the electric collection line system underground. By Order on Certificate Amendment issued February 18, 2014, the Board approved Buckeye's application to amend its certificate, which was affirmed by the Board's Entry on Rehearing issued May 19, 2014.

- (3) On July 14, 2014, as corrected on July 15, 2014, in the *Buckeye I* and *Buckeye I Amendment* cases, Buckeye filed a motion for an extension of the term of the certificate from March 22, 2015, to May 28, 2018. Buckeye states that it has continued to develop this project, however, it has experienced delays as a result of the appeal of the *Buckeye I* decision, which was not decided by the Ohio Supreme Court until March 6, 2012, and ongoing litigation related to securing a required Incidental Take Permit (ITP) from the United States (U.S.) Fish and Wildlife Service's (USFWS). With regard to the ITP, Buckeye explains that Union Neighbors United, an intervenor in these cases, is appealing the issuance of the ITP to the U.S. Court of Appeals, D.C. District Circuit, and Buckeye cannot commence construction until the ITP appeal is resolved. Buckeye also anticipates that the intervenors in the *Buckeye I Amendment* case will file an appeal disputing the amendment with the Ohio Supreme Court; if the amendment is appealed, Buckeye anticipates that it is unlikely the Court will resolve the appeal prior to March 22, 2015, which is the date by which construction must commence on *Buckeye I*.<sup>1</sup> Buckeye submits that the litigation delays are beyond its control, have hampered Buckeye's ability to move forward with construction of the project, and constitute good cause to grant an extension of the certificate. Despite these litigation delays, Buckeye asserts that it continues to develop the project, as evidenced by the fact that it: developed a habitat conservation plan; obtained an ITP from USFWS in 2013; improved the project design by relocating collection lines in the *Buckeye I Amendment* case to locations that will be shared by the project approved in *In re Champaign Wind, LLC*, Case No. 12-160-EL-BGN, Order (May 28, 2013) (*Buckeye II*); and pursued its interconnection to the PJM Interconnection regional transmission grid.
- (4) In addition, Buckeye requests an extension of the term of the certificate to align the term of the *Buckeye I* certificate with the term of the adjacent wind project in *Buckeye II*, which must commence construction before May 28, 2018, in accordance with the Board's Order in *Buckeye II*. The *Buckeye II* Order is currently on appeal at the Ohio Supreme Court. According to

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<sup>1</sup> On July 16, 2014, intervenors in the *Buckeye I Amendment* case filed an appeal of the Board's Order with the Ohio Supreme Court.

Buckeye, the *Buckeye I* and *Buckeye II* projects will use some of the same laydown yards and underground transmission lines, as well as the same electric substation.

- (5) In further support of its motion, Buckeye states that its extension request is consistent with other certificate extension motions which the Board has routinely granted for good cause shown. See *In re FDS Coke Plant, LLC*, Case No. 07-703-EL-BGN, Entry (Sept. 30, 2013); *In re American Municipal Power Ohio, Inc.*, Case No. 06-1358-EL-BGN, Entry (Dec. 17, 2012).
- (6) On July 29, 2014, Union Neighbors United, Julia Johnson, and Robert and Diane McConnell (collectively, UNU) filed a memorandum contra, and Champaign County Board of Commissioners (Champaign County) and Urbana Township Trustees (Urbana Township) (jointly, Champaign/Urbana) jointly filed a memorandum contra Buckeye's motion for an extension.
- (7) On July 29, 2014, Goshen Township Trustees (Goshen Township) and Union Township Trustees (Union Township) (jointly, Goshen/Union) filed a joint motion for an extension of time to respond to Buckeye's motion for an extension of the certificate. Goshen Township states that it received notice of Buckeye's motion after its regularly scheduled meeting on July 15, 2014, and its next meeting was scheduled for August 5, 2014. Union Township states that it received notice of Buckeye's motion after its regularly scheduled meeting on July 7, 2014, and its next scheduled meeting was August 5, 2014. Goshen/Union argue that they were unable to secure a quorum and comply with statutory notice requirements to hold a special meeting before the due date for memoranda contra. Goshen/Union request until August 8, 2014, to file a reply.<sup>2</sup> The Board finds Goshen/Unions' motion for an extension of time to file a reply is reasonable and should be granted.
- (8) On August 8, 2014, Goshen/Union filed a letter indicating that they join in the memorandum contra filed by

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<sup>2</sup> On August 1, 2014, Buckeye filed a memorandum contra Goshen/Unions' request for an extension, but subsequently withdrew the memorandum contra on August 6, 2014.

Champaign/Urbana opposing Buckeye's motion for an extension of the *Buckeye I* certificate.

- (9) In their respective memoranda contra, UNU and Champaign/Urbana contest the request for an extension of the *Buckeye I* certificate. Champaign/Urbana argue that Buckeye has, throughout these proceedings, maintained that *Buckeye I* and *Buckeye II* are separate projects. Champaign/Urbana contend that, to extend the *Buckeye I* certificate based on the term of the *Buckeye II* certificate, undermines the application and hearing process, and the requirement to protect the public interest, particularly as to impacts. Champaign/Urbana argue Buckeye's request for an extension should be reviewed by an amendment to the application and the conditions of the *Buckeye I* certificate should be supplemented to include a Road Use Maintenance Agreement.
- (10) UNU argues that Buckeye's request for an extension of the certificate should be reviewed pursuant to the application amendment process set forth in Ohio Adm.Code 4906-5-10(B). UNU acknowledges that Ohio Adm.Code 4906-1-05 allows time limits to be extended by motion; however, UNU reasons that, based on the principles of statutory construction, Ohio Adm.Code 4906-5-10, which is the amendment application process, is an exception to Ohio Adm.Code 4906-1-05. Therefore, UNU submits that Buckeye's extension request must comply with all the requirements of an application, notice, staff investigation and report, public comments, and, if appropriate, a hearing. UNU also contends that Buckeye could have included its request for a certificate extension in its application for an amendment in *Buckeye I* and the Board could have heard evidence on the issue at that time. UNU offers that, in rulings on past requests for certificate extensions, the Board has cautioned that it routinely includes deadlines for starting construction to make sure that the information on which the Board relied in granting the certificates is still valid. *See In re Lima Energy Co.*, Case No. 00-513-EL-BGN, Entry (July 30, 2012); *In re Norton Energy Storage, LLC*, Case No. 99-1626-EL-BGN, Entry (Sept. 30, 2013). Therefore, since the certificate in *Buckeye I* was issued more than four years ago, UNU submits the Board should require Buckeye to submit an application that deals with this question. In addition, UNU asserts the Board's

rulings in *Lima Energy* and *Norton Energy Storage* also advise that certificate deadlines for starting construction are designed to avoid the indefinite encumbering of land. UNU claims that extending the certificate for another three years will harm the community by creating more uncertainty for development in the area.

- (11) On August 5, 2014, and August 12, 2014, Buckeye filed replies to the memoranda contra filed by UNU, Champaign/Urbana, and Goshen/Union regarding its motion for an extension of the certificate. With respect to the claim that it should have filed an application to amend its certificate and may not use a motion to apply for a certificate extension, Buckeye submits that, in accordance with R.C. 4906.06(A) and Ohio Adm.Code 4906-7-19(B), precedent shows that the Board has a practice of approving certificate extensions through motions. See *Norton Energy Storage*, Entry (June 2, 2008); *In re Lawrence Co. Energy Center, LLC*, Case No. 01-369-EL-BGN, Entry (July 13, 2009); *Lima Energy*. Buckeye retorts that the only issue before the Board is an extension of the term of the certificate. As such, UNU's assertion that Buckeye must submit an amendment application that demonstrates that the information on which the Board relied to grant the certificate is, according to Buckeye, at odds with itself. Buckeye notes that UNU does not state specifically what information needs to be considered as part of an amendment application. Further, Buckeye contends that the intervenors' claims that extending the *Buckeye I* certificate encumbers the land of leaseholders and nonparticipating neighbors is not well made, as this argument overlooks the fact that the *Buckeye II* project is in the same general vicinity and the *Buckeye II* certificate term continues through May 28, 2018. Buckeye also notes that all service and notice requirements in R.C. 4906.06 and Ohio Adm.Code 4906-5-06 and 4906-5-10 were followed, and intervenors have had the opportunity to comment on the motion, no hearing is required, and no party or member of the public has been or will be prejudiced through the Board's consideration of Buckeye's request for extension. Finally, Buckeye contends there is no basis for the claim that the request for an extension of the certificate should have been included in the *Buckeye I Amendment* application filed on March 19, 2013, when, at the

time that case was filed, there were two years remaining on the certificate to commence construction.

- (12) Initially, the Board notes that, as argued by Buckeye and acknowledged by UNU, it is the Board's longstanding practice to consider requests to extend the term of a certificate pursuant to a motion. See *Norton Energy Storage*, Entry (June 2, 2008); *Lawrence Co. Energy*; *American Municipal Power*, Entries (Dec. 17, 2012 and Aug. 25, 2014). In response to UNU's concern that various information, which was considered by the Board in its issuance of the certificate in *Buckeye I*, may need to be updated, the Board points out that, throughout the term of all certificates, the Board tracks the progress of the projects. Based on this tracking process, if there is a need for an amendment, the Board would require an applicant to file an appropriate application. Therefore, the Board finds that UNU's assertions are without merit. In determining whether Buckeye's motion for extension should be granted, the Board finds it instructive that Buckeye has continued to pursue the development of the generation facility and that certain delays have been beyond Buckeye's control. Accordingly, the Board concludes that Buckeye's motion to extend the term of the *Buckeye I* certificate, as amended in *Buckeye I Amendment*, is reasonable and should be granted.
- (13) On August 4, 2014, Buckeye filed a motion for waiver of Ohio Adm.Code 4906-5-10(B), and certain provisions thereunder, and other provisions the Board deems appropriate, to the extent that the rules require an application for an amendment to a certificate to be submitted in the same manner as if it was an application for a certificate. Buckeye requests this waiver to eliminate any procedural dispute as to whether the extension may be requested by motion or only pursuant to an application for certificate amendment. Buckeye avers that the motion for waiver, as well as the motion for extension, should be addressed expeditiously in keeping with the Board's stated policy to secure just, efficient, and inexpensive determination of the issues presented in matters considered under R.C. Chapter 4906.
- (14) On August 11, 2014, UNU, as well as Champaign County and Goshen, Union, and Urbana townships (jointly

County/Townships) filed memoranda contra Buckeye's motion for waivers. UNU reiterates that the request for an extension of the certificate should have been addressed as part of the *Buckeye I Amendment*. UNU argues the Board should investigate the assumptions underlying the *Buckeye I* certificate before granting an extension. The County/Townships allege Buckeye is circumventing the requirements of the amendment process and disagree with Buckeye's contention that adequate public notice has been given. The County/Townships assert that, while the statutory notice was given and a hearing is not required for an amendment application, inadequate time for review and response was given to the parties and the public.

- (15) The Board finds that, in keeping with the statutory requirements and the Board's past precedent, a request for an extension of the term of a certificate is properly filed as a motion for extension. We view Buckeye's August 4, 2014 request for waivers as an alternative, to be considered by the Board in the event the request for extension was not deemed appropriate. Therefore, the Board finds that it is unnecessary for us to rule on Buckeye's alternative motion for waivers, as the motion for extension is the appropriate procedural mechanism, thus, the only issue before us is whether good cause has been shown to grant Buckeye's requested motion for extension of the certificate.

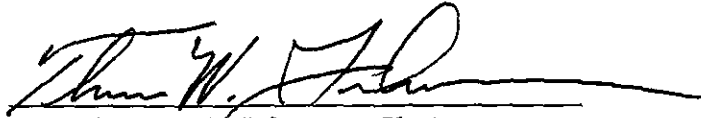
It is, therefore,

ORDERED, That the motion for an extension of time until August 8, 2014, to file a reply to Buckeye's motion for extension of the term of the certificate filed by Goshen/Union is granted. It is, further,

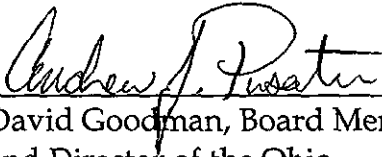
ORDERED, That Buckeye's motion to extend the term of the *Buckeye I* certificate to May 28, 2018, is granted. It is, further,

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

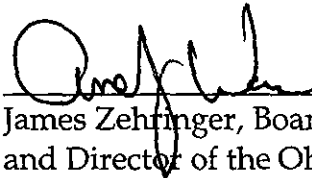
THE OHIO POWER SITING BOARD



Thomas W. Johnson, Chairman  
Public Utilities Commission of Ohio



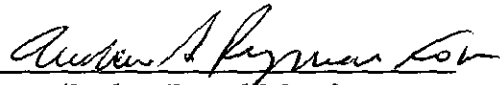
David Goodman, Board Member  
and Director of the Ohio  
Development Services Agency



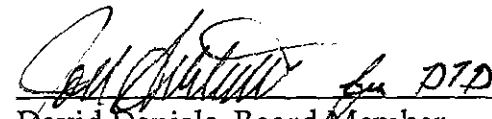
James Zehrfinger, Board Member  
and Director of the Ohio  
Department of Natural Resources



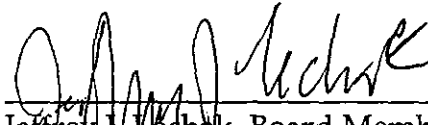
Rick Hodges, Board Member  
and Director of the Ohio  
Department of Health



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



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

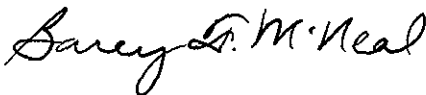


Jeffrey J. Lechak, Board Member  
and Public Member

GNS/vrm

Entered in the Journal

**AUG 25 2014**



Barcy F. McNeal  
Secretary