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September 30, 2014

Honorable Tom Johnson
Chairman, Public Utilities Commission of Ohio
180 E. Broad Street
Columbus, OH 43215

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RE: 13-990-EL-BGN

Dear Chairman Johnson

I write to support of the Board finding that: (1) Omega Crop Company LLC ("Omega"), has standing to seek rehearing of the decision issued by the Board in Case No. 13-990-EL-BGN; and (2) Omega's September 23, 2014 application for rehearing in that case should be granted by the Board. As you know, Omega is an owner of property adjacent to the wind farm property that has been identified by 6011 Greenwich Wind Park in certificate case13-0990-EL-BGN.

I, along with Senators Manning, Skindell and Representative Boose supported the request by Omega and many of their neighbors in Greenwich Township for a second local public hearing. Granting the request seemed sensible-since the first local was scheduled at a time inconvenient for many of the rural neighbors, who are farmers and were engaged in farming activities. Unfortunately, the OPSB did not grant this request prior to issuing a decision.

On September 23, 2014, Omega filed an application for rehearing in which it requested that the Board find that it has standing to seek rehearing. The application indicates that there are legal and other problems that are present in the case; a case where 62% of the proposed 25 turbines will violate the minimum setback requirements that apply under prior law (and more aggressively violate the minimum setback requirements that are contained in current law). The setback violations appear to be occurring in circumstances where many owners of property adjacent to the wind farm property have not consented to the minimum setback violations and are objecting to the proposed wind park.

In addition to violating the minimum setback requirements, it appears that the Board has not complied with Section 4906.20 by, among other things, effectuating a rule compliant with the version of Section 4906.20(B)(2), Revised Code established by HB 59. This is the version of this statute that was in effect when the certification application in Case No 13-990-EL-BGN was in effect. Although the Board rescinded prior rules in Case No. 12-1981-GE-BRO (containing the old minimum setback requirements rule), and adopted new Chapters 4906-1 through 4906-7, it does not appear that the Board filed the new rules with the Joint Committee on Agency Rule Review (JCARR). Thus, the new rules never went into effect.

Lastly, I am attaching comments that I submitted in Case No. 08-1024-EL-ORD, the rule making proceeding initiated by the Board following the passage of HB 562. In these comments I expressed the view that before the minimum setback requirements can be evaded through waivers secured by wind farm developers, the waivers must be secured from all owners of property within the wind farm property plus all owners of property adjacent to the wind farm property. I continue to believe that this view is the only one that can be reasonably and lawfully adopted by the Board based on the plain meaning of the statutory language.

Sincerely,

William J. Seitz

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BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Power Siting Board's Adoption of Chapter 4906-17 of the Ohio Administrative Code and the amendment Of Certain Rules in Chapters 4906-1, 4906-5 and Rule 4906-7 17 of the Ohio Administrative Code to Implement Certification Requirements For Electric Generating Wind Facilities.	)))))))	Case No. 08-1024-EL-ORD

COMMENTS
OF
SENATOR BILL SEITZ

I submit these comments to respond to the comments submitted by the American Wind Energy Association ("AWEA") on the proposed wind turbine siting rules. I was the principal draftsman of the language in HB 562 that required promulgation of the proposed rules. As such, I participated in numerous meetings with numerous stakeholders to develop the language.

I strenuously urge rejection of the American Wind Energy Association's suggestions that the rules be revised to delete reference to "need criteria" and consideration of alternative sites. The entire driving concept of the HB 562 language was that economically significant wind farms would be subject to the statutory criteria, and otherwise treated in all respects as if they were subject to the criteria applicable to facilities of 50 megawatts or more. It was most definitely not my intent that the Ohio Power Siting Board would be limited to

the specific criteria stated in HB 562, and the entire basis of our legislation was that such facilities would be subject to all of the requirements applicable to facilities of 50 megawatts or more, with particular additional emphasis on the statutorily established criteria applicable to economically significant wind farms.

Despite the technical game of "gotcha" that the AWEA's comments attempt to play, and I express no opinion on whether their technical parsing of the interplay between the statutory language in HB 562 and the remaining requirements and concepts found in Chapter 4906 is correct, the language that AWEA acknowledges to apply is sufficiently broad to include the inclusion of these other concepts. The enumerated criteria include, but are not limited to, the specific provisions listed. The fact of the matter is that HB 562 set forth a minimum statutory setback; in determining whether that minimum should be exceeded in any particular case, the Ohio Power Siting Board obviously ought to consider the existence or absence of other suitable alternative sites, and of whether the facility is needed at all. Wind turbine farms provide an important new source of energy for Ohio, but at a great cost in their intrusion into viewsheds and potential damage to adjacent private properties that are not benefited, directly or indirectly, by the facility.

I also disagree with AWEA's suggestion to delete reference in the proposed rules to "buffer areas". Setbacks and buffer areas are not necessarily the same thing. A buffer area could include topographic or vegetative or structural factors which warrant a greater or lesser degree of setback than the minimum setback required in the statute. I do not think that the concept of "buffer

area" is so vague as to require a precise definition, and I think the concept is a good one that should be retained.

I do agree that the process should make provision for submitting truly confidential and trade secret data under seal. I am not certain that the proposed rule should specifically make provision for submitting the data under seal – as I view that to be already permitted. But it is certainly true that in our discussions that resulted in the language of HB 562, it was acknowledged that an applicant should be able to secure adequate trade secret protection for truly confidential information.

Finally, AWEA suggests that the owner or lessee of the land itself where the wind turbines are situated should have the same right to waive the minimum setbacks as do adjacent landowners. While this is a fair comment, the language suggested by AWEA is not suitable. Their language suggests that if all owners or lessees of the project site "or" owners of property adjacent to the turbine agree to such waiver, then minimum setbacks may be waived. Under this language, if all owners or lessees of the project site agree to the waiver, but owners of adjacent property do not, then the waiver would nonetheless be effective. "Or" should be changed to "and" in both places in which that language occurs – because under AWEA's language, if all owners of the project site agree to waive, but all lessees do not, we have the same problem – the language technically would permit the waiver to be effective under AWEA's construct. I would argue that only where the waiver is universally agreed to by all owners and

all lessees and all owners of adjacent property should the waiver ever be considered to be valid.

Thank you for the opportunity, as the principal draftsman of the subject language, to offer these comments.

Respectfully submitted,

Bill Seitz

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