

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Hardin Wind :
LLC to Amend its Certificate Issued in Case : Case No. 14-1557-EL-BGA
No. 13-1177-EL-BGN :

**PETITIONER LOGAN HARDIN NEIGHBORS UNITED'S
REPLY IN SUPPORT OF ITS PETITION TO INTERVENE**

I. INTRODUCTION

Petitioner, Logan Hardin Neighbors United ("LHNU"), filed a Petition to Intervene ("Petition") in this matter pursuant to O.A.C. 4901-1-13. Having done so, if Hardin Wind, LLC ("Hardin Wind") objects to the Petition, it is incumbent for Hardin Wind to establish that LHNU has "no good cause for the intervention." O.A.C. 4906-7-04(B).

Hardin Wind has failed in its efforts. Rather than recognize the significant changes to the original Application sought by the Amendment to Amend the Certificate (the "Amendment") and how these changes will impact the residents living around or near Indian Lake, Hardin Wind simply argues that certain of the legal issues LHNU has raised allegedly have no merit. Besides being just plain wrong, whether LHNU has a right to intervene does not depend upon the merits of the arguments it might raise at the Hearing (which is where the merits should be debated), but on whether LHNU can show "good cause" for the intervention under the standards under O.A.C 4906-7-04(B).

II. STANDARD OF REVIEW

LHNU's Petition is governed by Rule 4906-7-04 of the Ohio Administrative Code. Under the Rule, LHNU must show "good cause" for the intervention. O.A.C. 4906-7-04(B). In considering whether good cause exists, the Ohio Power Siting Board (the

“Board”) or the Administrative Law Judge may consider: (a) the nature and extent of LHNU’s interest; (b) the extent to which LHNU’s interest is represented by existing parties; (c) LHNU’s potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and (d) whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice any existing party. *Id.*

III. ARGUMENT

A. The Amendment To The Application Proposes Significant Changes To The Original Application Which Will Impact The Interests Of The Residents Comprising LHNU

On September 12, 2014, Hardin Wind filed its Amendment. The Amendment proposes adding six new collection lines, shifting collection lines, relocating 10 access roads, having two new access roads, relocating one of the four permitted met towers, shifting five turbine locations and relocating the project collector substation. The Amendment also proposes for consideration two new turbine models.

The changes proposed in the Amendment are significant and there is no question that the residents living around Indian Lake comprising LHNU are personally impacted by those changes and have an interest in the relocation of roads, adding and moving collector lines, shifting of certain turbine locations and relocating the project collector substation. Insofar as LHNU has a real and legitimate interest in the issues raised by the Amendment, the Petition should be granted.

B. The Merits Of LHNU's Legal Arguments Should Be Determined At A Hearing, Not At The Petition To Intervene Stage

In its Petition, LHNU set forth the nature and extent of its interests, in part, by addressing certain legal issues LHNU may raise at the Hearing. In its Memorandum Contra, Hardin Wind disputes some of these legal issues. But, a Hearing before the Board is the proper forum for legal issues to be addressed, with evidence and witnesses; the petition to intervene stage is not the proper forum for debating legal issues.

C. LHNU Has Good Cause To Intervene

1. LHNU Has Real Interests In The Application Before The Board

LHNU has stated above why its residents living around Indian Lake will be seriously impacted by the many changes the Amendment proposes to the Application. LHNU will not repeat here what is stated there. It is sufficient to observe that the residents will be impacted by the proposed changes and have a real and legitimate interest in protecting their property, Indian Lake and Indian Lake State Park. Hardin Wind has not, and cannot, assert otherwise.

2. LHNU's Interest Are Not Represented By Existing Parties

LHNU's interests are not represented by any other party in this case. No other potential intervener or existing party has raised the issues that LHNU raised in its Petition. No other party to the Proceeding can adequately address those issues. Hardin Wind cannot seriously suggest that the Public Utilities Commission Staff (the "Staff") will represent LHNU's interest and address the legal issues LHNU has raised. LHNU

should have the opportunity to present its issues at a full Hearing before the Board.

3. Allowing LHNU To Intervene Will Contribute To A Just And Expeditious Resolution Of The Issues Involved In The Proceeding

LHNU will contribute to the just and expeditious resolution of the issues involved in the proceeding. As a non-profit group in Ohio focused on educating the public about renewable energy use, LHNU is very knowledgeable regarding wind turbines generation plants and the effect they have on residents living within the project areas. In its Memorandum Contra, Hardin Wind can only argue: "The Board can arrive at a just resolution without LHNU's involvement, and such involvement will only cause delay". First, one can argue that the Board can arrive at a "just resolution" without any petitioner's involvement. If this is the case, than only the Staff needs to be involved at the hearings and no petitioner should be allowed to intervene. Second, other than simply making the statement, Hardin Wind does not explain how LHNU's involvement "will only cause delay". Simply, expressing a statement does not make it true.

4. Granting The Requested Intervention Will Not Unduly Delay The Proceeding Or Unjustly Prejudice Any Existing Party

Granting LHNU's Petition will not unduly delay the proceedings or cause unjust prejudice to Hardin Wind. Hardin Wind does not dispute that LHNU's Petition was timely filed. Nor does it dispute that the Board has not issued a procedural schedule or otherwise ruled in this proceeding. While Hardin Wind claims that LHNU's participation "will cause

unnecessary delay” it does not state how LHNU’s intervention will cause any delay. Under Hardin Wind’s theory, no petitioner should be allowed to intervene since their intervention “will cause undue delay”. Hardin Wind also alleges that granting LHNU’s Petition will cause it “unjust prejudice”. Hardin Wind does not explain how such “unjust prejudice” will occur. The only possible “prejudice” is that Hardin Wind will have to defend its Amendment on the merits with LHNU being able to question its Amendment and the proposed changes through the cross examination of witnesses and introduction of evidence at the Hearing. This is not “unjust” prejudice. It is merely a full and impartial hearing with interested parties allowed to intervene and represent their interests.

IV. CONCLUSION

For the reasons set forth above, Logan Hardin Neighbors United respectfully moves the Commission to grant its Petition to Intervene.

Respectfully submitted,



Mark S. Yurick (0039176)

Counsel of Record

Email: myurick@taftlaw.com

Direct: (614) 334-7197

Mike A. Byers (0016092)

Email: mbyers@taftlaw.com

Direct: (614) 220-0213

TAFT STETTINIUS & HOLLISTER LLP

65 East State Street, Suite 1000

Columbus, Ohio 43215

Telephone: (614) 221-2838

Facsimile: (614) 221-2007

Attorneys for Petitioner Logan Hardin

Neighbors United

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Motion for Extension of Time* was served this 7th day of November, 2014 via U.S. first class mail, postage prepaid, upon the following:

M. Howard Petricoff
Michael J. Settineri
Scott Guttman
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

Thomas G. Lindgren
Steven Beeler
Assistant Attorneys General
Public Utilities Section
Office of Ohio Attorney General Mike DeWine
180 E. Broad Street, 6th Floor
Columbus, OH 43215

Chad A. Endsley
Ohio Farm Bureau Federation
280 North High Street
P.O. Box 182383
Columbus, OH 43218

William E. Campbell
9523 Heron Way
Belle Center, OH 43310

James E. Klink
11316 Northlake Drive
Lakeview OH 43331

Herbert J. Stevenson
18504 County Road 75
Belle Center, OH 43310

Anthony & Devin Elsasser
6051 Twp. Road 200
Belle Center, OH 43310

Joseph J. Grant
20616 US Highway 68N
Belle Center, OH 43310

James Rudolph
P.O. Box 509
Lima, OH 45802-0509


Michael A. Byers

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Summary: Reply In Support of Petitioner, Logan Hardin Neighbors United's Petition to
Invervene electronically filed by Mark Yurick on behalf of Logan Hardin Neighbors United