

**BEFORE THE OHIO POWER SITING BOARD**

<b>In the Matter of the Application of</b>	)	
<b>Paulding Wind Farm III LLC for a</b>	)	<b>Case No. 15-1737-EL-BTX</b>
<b>Certificate of Environmental</b>	)	
<b>Compatibility and Public Need for the</b>	)	
<b>Timber Road III Transmission Line</b>	)	

**PAULDING WIND FARM III LLC’S MEMORANDUM CONTRA TO PETITION  
TO INTERVENE BY CAMPAIGN FOR AMERICAN AFFORDABLE AND  
RELIABLE ENERGY**

**I. INTRODUCTION**

This proceeding involves an application for a transmission line and switchyard for two certificated wind farms in Paulding County. A Cleveland-based consortium of unnamed coal industry participants – Campaign for American Affordable and Reliable Energy (“CAARE”) – has filed a petition to intervene that makes no showing of any legitimate interest in this proceeding. Notably, although this is CAARE’s third petition to intervene in proceedings relating to the Timber Road Wind Farms<sup>1</sup> in Paulding County, Ohio, CAARE has **never** disclosed a single member and has **never** alleged a single local interest in Benton or Harrison Township or Paulding County, Ohio. Because CAARE has no legitimate interest in this proceeding and will unduly delay the proceedings, the petition to intervene should be denied.

On December 8, 2015, Paulding Wind Farm III LLC (“Applicant”) filed an application for a certificate of environmental compatibility and public need for the Timber Road III Transmission Line and Point of Interconnect Switchyard in Paulding

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<sup>1</sup> CAARE filed petitions to intervene in the proceedings to amend the certificates issued for the Timber Road I Wind Farm and the Timber Road III Wind Farm (OPSB Case Nos. 15-2030-EL-BGA and 15-2031-EL-BGA). The transmission line which is the subject of this case will deliver electricity generated by the Timber Road I and Timber Road III Wind Farms from the collection substation for the Timber Road III Wind Farm to the Timber Road III Point of Interconnect. Paulding Wind Farm III, LLC

County, Ohio. The proposed facility will consist of a new 138 kV transmission line and a new POI switchyard which will be used to deliver power generated by the Timber Road I Wind Farm and the Timber Road III Wind Farm to the regional power grid. The Timber Road III Wind Farm collection substation will be located along Road 124 just west of the intersection with Road 33 in Harrison Township. The Timber Road III transmission line will run south from the collection substation to the existing 138 kV Lincoln-Sterling Circuit where the proposed Timber Road III POI switchyard will be constructed.<sup>2</sup>

The preferred transmission line route will traverse approximately 8.6 miles of land in Harrison and Benton Townships, connecting the wind farm collection substation and the Timber Road III POI switchyard. The alternate transmission line traverses approximately 11.6 miles of land in Harrison and Benton Townships, connecting the wind farm collection substation and the Timber Road III POI switchyard. The POI switchyard is proposed to be on approximately 2.1 acres in an area enclosed by a chain link fence and will be located on the south side of State Route 114 in Benton Township, just east of the intersection with Town Highway 27, immediately west of the existing Timber Road II POI switchyard.

CAARE seeks leave to intervene without any regard for the application filed in this case and without good cause. CAARE's claimed interests – that some of its still unnamed members are Ohio ratepayers, taxpayers or facility owners – are generic and do not provide “good cause” for intervention. Neither CAARE nor any of its members has any alleged property or facility located in Harrison or Benton Townships or even in Paulding County, Ohio, where the Timber Road III Transmission Line and Switchyard

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<sup>2</sup> The POI switchyard will be constructed under separate application (see Letter of Notification filed by Paulding Wind Farm III LLC on February 22, 2016 in OPSB Case No. 16-0353-EL-BLN).

are proposed to be located. Moreover, CAARE's stated interests are nothing more than objections to wind farms generally and have no nexus to the proposed transmission line.

CAARE previously filed petitions to intervene – nearly identical to the petition filed in this case – in the amendment proceedings in which Applicant and Paulding Wind Farm LLC seek to amend the certificates issued for the Timber Road I Wind Farm and the Timber Road III Wind Farm (see Petition to Intervene in OPSB Case Nos. 15-2030-EL-BGA and 15-2031-EL-BGA (January 28, 2016)).<sup>3</sup> CAARE makes no attempt to tailor its previously-filed petition to intervene in the Timber Road Wind Farm amendment proceedings to this *transmission line* application proceeding. Notably, CAARE's stated interest in this application proceeding is the exact same as the interests stated in its petitions to intervene in the amendment proceedings wherein CAARE alleges potential "problems" with "wind power" and "wind turbines" but makes no mention of the *transmission line* which is the subject of this Application proceeding.

CAARE's intervention would unjustly and unduly delay and prejudice the proceeding. Accordingly, the Board should deny the petition for lack of good cause.

## **II. BACKGROUND**

On December 8, 2015, Paulding Wind Farm III LLC filed an application for a certificate of environmental compatibility and public need for the Timber Road III Transmission Line and Point of Interconnect Switchyard in Paulding County, Ohio (the "Application"). On February 5, 2016, after Applicant filed a supplement to the

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<sup>3</sup> Paulding Wind Farm LLC and Paulding Wind Farm III LLC opposed CAARE's intervention in the amendment proceedings (See Memorandum Contra to Petitions to Intervene (February 9, 2016)), highlighting that CAARE has no real interest in the Timber Road Wind Farm projects and that CAARE's intervention was merely a mechanism for CAARE to assert its general opposition to wind farms and an attempt to re-argue issues that were addressed and disposed of when the Board issued the certificates for the Timber Road I and Timber Road III Wind Farms.

Application, the Board filed a letter stating that the Application was in compliance with Ohio Administrative Code (“OAC”) chapter 4906-01 et seq. CAARE filed its petition to intervene in the Application proceeding on February 29, 2016.

CAARE’s petition claims it was recently incorporated in Ohio for several purposes, the first two of which are to “meet the need for consistent advocacy for affordable and reliable American energy” and to “protect, preserve and promote America’s affordable and reliable coal-fired electricity generation, transmission and distribution and the Coal Industry that supports it....” (Petition at 3.) CAARE claims it has its principal place of business at an undisclosed location in Cleveland, Ohio, but does not name any of its members or allege that any of its members own or operate a facility within the certified project areas or anywhere in Paulding County, Ohio. (Id.)

### **III. ARGUMENT**

Intervention is not warranted. CAARE states no interest that supports intervention and its stated interests are unrelated to the proposed transmission line. On the contrary, CAARE’s petition in this Application proceeding is merely a recitation of its petitions to intervene in the amendment proceedings in OPSB Case Nos. 15-2030-EL-BGA and 15-2031-EL-BGA and a reiteration of its general opposition to wind farms. Furthermore, filing essentially the same petition to intervene in this Application proceeding evidences the unjust delay already caused by CAARE to the prejudice of the Applicant. Because CAARE has no good cause to intervene, the Board should quickly deny the petitions.

**A. Standard of Review**

CAARE's petition for intervention is governed by Rule 4906-2-12 of the Ohio Administrative Code. Under that rule, the petitioner must show good cause for the intervention. OAC 4906-2-12(B). In considering whether good cause exists, the Board or the Administrative Law Judge may consider (a) the nature and extent of petitioners' interest, (b) the extent to which the petitioners' interest is represented by existing parties, (c) the petitioners' 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 an existing party. *Id.* Since CAARE cannot satisfy these requirements, the Board should deny CAARE's petition to intervene in the Application proceeding.

**B. Intervention is not warranted**

CAARE identifies no interest warranting intervention. Rather, its stated interests are outside the scope of the transmission line Application. Allowing intervention would therefore unjustly complicate and delay the case. The petition should be denied.

**1. The nature and extent of CAARE's interests do not support intervention.**

Intervention is not proper because CAARE claims that some of its members "are property owners of facilities in Ohio" or "Ohio taxpayers." (Petition at 3.) "It is not enough for a person seeking to intervene in a proceeding such as this to merely state that he or she resides in a county wherein the project under consideration is proposed to be sited." *See In the Matter of the Application of Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry ¶ 13(March 2, 2010). Importantly, CAARE does not even claim

residence in Paulding County, Ohio or that any of its members have any location, facility or operations in Paulding County.

CAARE does not have any location or operations in proximity to either the primary or alternate route of the Timber Road III Transmission Line and Switchyard, and states no plausible interest in this Application proceeding. By way of contrast, the Ohio Farm Bureau Federation (“OFBF”) has filed a petition for leave to intervene stating that the OFBF represents the interests of the over 490 families in the Paulding County Farm Bureau and continues “to work with wind farm developers, government leaders and interested community stakeholders” concerning wind energy development in Paulding County. (Motion to Intervene of the Ohio Farm Bureau Federation at 4-5 (December 21, 2015).)

CAARE’s petition also stands in stark contrast with the litany of “business operations” cases it cites. (Petition at 7-8.) In each of those cases, the persons allowed to intervene claimed a local personal interest in a proposed development.<sup>4</sup> Here, CAARE does not allege either a personal interest or state how its “business operations” will be affected by the proposed Transmission Line project.

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<sup>4</sup> Those cases allowed intervention:

- by persons claiming that new turbines in a shared area might physically impair their ability to transmit microwave radio or broad-band signals in the area, *see, e.g., In the Matter of the Application of Hardin Wind Energy LLC*, No. 11-3446-EL-BGA, Entry at ¶ 8-9 (July 29, 2011), *In the Matter of the Application of Buckeye Wind LLC*, No. 08-666-EL-BGN Entry ¶ 2 (October 30, 2009), and *In the Matter of the Application of Champaign Wind, LLC*, No. 12-160-EL-BGN (October 22, 2012), or
- by persons claiming actual physical interference with allowed use of real property, *see, e.g., In the Matter of the Application of Buckeye Wind LLC*, No. 08-666-EL-BGN, Entry ¶ 3-5 (September 1, 2009) (alleging potential may limit access to golf course), *In the Matter of the Application of the City of Hamilton and American Municipal Power, Inc.*, Nos. 10-2439-EL-BSB & 10-2440-EL-BTX, Entry at ¶ 5 (October 4, 2011) (transmission line on farm property), *In the Matter of the Application of American Transmission Systems*, No. 04-264-EL-BTX, Entry at ¶ 4-5 (November 23, 2004) (transmission line in area permitted for landfill expansion).

CAARE does not claim any presence in the Benton or Harrison Townships or even in Paulding County.

It is also irrelevant that some CAARE members may be “Ohio electric ratepayers served by electric distribution companies in Ohio.” (Petition at 3.) If that were a valid interest, then every ratepayer in Ohio could intervene in this proceeding, a nonsensical result. CAARE’s alleged rate and reliability concerns do not support intervention in this Application proceeding and have “no true nexus” with the Board’s review of the Application. *See, e.g., In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company*, Case No. 06-309-EL-BTX, Entry ¶ 8-9 (November 20, 2006) (denying petition to intervene due to alleged rate and reliability interests in transmission line case).

Finally, CAARE’s stated interests are entirely unrelated to the proposed Transmission Line project. CAARE appears to have only a competitive, generalized opposition to wind farms and lacks any relevant personal interest in the Application proceeding.

2. Relevant interests will be adequately represented and investigated.

Because CAARE has no real or relevant interest in the Application proceeding, CAARE’s petition should be denied. *See In the Matter of the Application of Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry ¶ 13 (March 2, 2010) (denying intervention for lack of any individual interests in the proceeding). To the extent that CAARE claims any local interest in the proposed Transmission Line (which it does not), those interests will be adequately represented by the OFBF given its involvement in the community with farmers, small businesses and residents, including almost 500 member families of the Paulding County Farm Bureau. (OFBF Petition at 4-5, filed December 21, 2015.)

Of note, the Board’s Staff will investigate and advise the Board of its recommendations on the Application. Therefore, there is no good cause for CAARE’s

petition. *See, e.g., In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify its System Reliability Tracker Component of its Market-Based Standard Service Offer*, No. 04-1820-EL-ATA, Finding & Order ¶ 20 (Feb. 9, 2005) (denying motions to intervene because intervention was not necessary to consider movants' concerns); *In the Matter of the Commission's Investigation Into the Pass Through of Access Charge Reductions by Certain Regulated Entities*, No. 98-842-TP-COI, Finding & Order ¶ 5 (Sept. 30, 1999) (denying motion for intervention premised, in part, on alleged need to ensure that the terms of a Stipulation were being followed because the Commission was "undertaking that role" itself); *Fairview General Hosp. v. Fletcher*, 69 Ohio App. 3d 827, 835 (10<sup>th</sup> Dist. App. 1990) (denying intervention when the movant sought to protect speculative economic interests and interests in quality health care that were adequately represented by state agency).

3. CAARE will not contribute to a just and expeditious resolution of the amendment proceedings.

CAARE's involvement in this proceeding is unnecessary and will not contribute to a just and expeditious resolution. CAARE has raised no issue relevant to the proceeding or specific to the proposed Transmission Line. It would be neither just nor expedient to allow CAARE to intervene here in order to attack wind power generally without regard for the limited scope of the Application. The Board can arrive at a just and expeditious resolution without CAARE's involvement.

4. Granting CAARE intervention in the Application proceeding will unduly delay the proceedings and cause unjust prejudice to Paulding Wind Farm III LLC

CAARE's participation in the Application proceeding will cause unnecessary delay and prejudice to Paulding Wind Farm III LLC. As expressed above, CAARE has



no real interest in the Application. CAARE's petition in this case disregards the scope of the Application and, when viewed in conjunction with previously filed petitions to intervene in the related amendment proceedings (OPSB Case Nos. 15-2030-EL-BGA and 15-2031-EL-BGA), is already causing the Applicant undue delay and expense. CAARE's continued intervention will only cause the Applicant to suffer additional unjust prejudice in the form of needless litigation, including discovery, litigation and any appeals from the Board's ruling in this proceeding. These facts do not support CAARE's intervention in this proceeding.

#### **IV. CONCLUSION**

CAARE has failed to show good cause for intervening in this transmission line proceeding, and its petition to intervene should be denied.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 15th day of March 2016.

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Summary: Memorandum Memorandum Contra to Petition to Intervene by Campaign for American Affordable and Reliable Energy electronically filed by Mr. Michael J. Settineri on behalf of Paulding Wind Farm III LLC