

## **BEFORE THE OHIO POWER SITING BOARD**

In the Matter of the Application of South Field	)	
Energy LLC for a Certificate of Environmental	)	
Compatibility and Public Need to Construct an	)	Case No. 15-1716-EL-BGN
Electric Generation Facility in Columbiana	)	
County, Ohio	)	

In the Matter of the Application of South Field	)	
Energy LLC for a Certificate of Environmental	)	Case No. 15-1717-EL-BTX
Compatibility and Public Need for a 345kV	)	
Transmission Line in Columbiana County, Ohio	)	

### **SOUTH FIELD ENERGY LLC’S RESPONSE TO KENNETH JOHNSON’S PETITION TO INTERVENE**

#### **I. INTRODUCTION**

The Ohio Power Siting Board should not allow Kenneth Johnson to intervene in the above-captioned cases because he has not stated any valid, vested interest affected by the proposed gas-fired electric generation facility and associated interconnection facilities at issue. Mr. Johnson’s petition claims that he is a director and member of the Ohio Valley Jobs Alliance (“OVJA”) and that he is a resident of Columbiana County. Mr. Johnson’s residence somewhere in Columbiana County, however, does not support intervention. He doesn’t say where he lives and makes no claim to live on land affected by the proposed facilities. Mr. Johnson fails to allege any real interests in these cases that warrant his intervention in his personal capacity, and his intervention would unduly delay and complicate the cases. The Board should deny his petition to intervene in these proceedings.

#### **II. BACKGROUND**

South Field Energy LLC (“SFE” or “the Applicant”) filed an application to construct a state-of-the-art 1,105 megawatt natural gas-fired electric generation facility in Yellow Creek Township, Columbiana County, Ohio (the “Generation Facility”) in Case No. 15-1716-EL-BGN.

SFE has also filed an application to construct an approximately three and one-half mile generator lead line, switchyard and related facilities in Madison and Yellow Creek Townships, Columbiana County, Ohio (collectively, the “Interconnection Facilities” and, with the Generation Facility, the “Facilities”).<sup>1</sup> Ultimately, the Interconnection Facilities will interconnect the Generation Facility with the existing American Transmission System, Incorporated (“ATSI”) 345kV transmission circuit.

Mr. Johnson seeks to intervene in both cases in his personal capacity.<sup>2</sup> Although the Generation Facility and Interconnection Facilities have different anticipated impacts from construction and operation, Mr. Johnson does not differentiate between the two in his petition. Regardless, Mr. Johnson makes no showing that he has any interest that will be affected by either of the Facilities.

### **III. ARGUMENT**

#### **A. Standard of Review**

Mr. Johnson’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). Whether good cause exists depends upon a discretionary determination of (a) the nature and extent of the petitioner’s interest, (b) the extent to which the petitioner’s interest is represented by existing parties, (c) the petitioner’s potential contribution to a just and expeditious resolution of the issues involved in the proceeding, and (d) whether granting the

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<sup>1</sup> The application for the Generation Facility will be referred to as the “Generation Application,” the application for the Interconnection Facilities will be referred to as the “Interconnection Application,” and together they will be referred to as the “Applications.”

<sup>2</sup> Petition to Intervene at 2 (stating “Mr. Johnson seeks to intervene in these proceedings in his personal capacity, as a life-long resident of Columbiana County.”)

requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.  
*Id.*

**B. Intervention is not warranted**

Mr. Johnson cannot intervene simply because he resides in Columbiana County or because he claims a position with OVJA or because he simply restates statutory criteria as if they are his actual, personal interests. Because Mr. Johnson claims no actual, personal interest that will be directly affected by the Facilities, his petition should be denied.

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

**a. Mr. Johnson cannot intervene in the cases merely because he lives in Columbiana County.**

The Board has held that “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). Yet Mr. Johnson's only specific allegation in the petition is that he is a “life-long resident of Columbiana County.” Petition at 2, 9. Legally, that is not enough.

Furthermore, residence – whether life-long or current – is not factually relevant. Mere residence in the county proves nothing. “The county is irregular in shape, has a total area of 534 square miles, and is composed of 18 townships.”<sup>3</sup> The Generation Facility is proposed to be located in Yellow Creek Township and the Interconnection Facilities are proposed to be located in Yellow Creek and Madison Townships, near the border of the townships. Mr. Johnson does not claim to live or work in either township, and does not claim to live on land affected by the proposed Facilities.

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<sup>3</sup> See <http://www.columbianacounty.org/>

Mr. Johnson's residence in Columbiana County does not warrant intervention.

**b. Mr. Johnson cannot intervene to assert interests that are not his own.**

Mr. Johnson should not be allowed to intervene to protect ambiguous alleged interests in Columbiana County – including alleged “local property interests” or alleged interests in unidentified “roads and infrastructure” or unspecified “cultural, recreation and socioeconomic interests.” Petition at 5, 9. Mr. Johnson personally alleges no such interests – he does not state whether he owns property or where, he does not specify any cultural, recreation or socioeconomic impact that would affect him personally, and he does not say anything about how the Facilities would impact roads and infrastructure in any way personal to him.

Mr. Johnson cannot intervene either as a representative of the Columbiana County community generally or as a member of OVJA.<sup>4</sup> Although Mr. Johnson claims to be a director of OVJA, there is no such entity registered to do business in Ohio, and any intervention by Mr. Johnson in his alleged director capacity would be under the intervention umbrella of OVJA – and not in his personal capacity. And because Mr. Johnson makes no showing that he is personally affected by the proposed Facilities, he cannot intervene simply to present general challenges to gas-fired electric generation facilities or on behalf of other allegedly affected individuals. *In the Matter of the Application of Black Fork Wind Energy, LLC*, 10-2865-EL-BGN, Entry ¶12 (Aug. 30, 2011) (allowing Ms. Davis to intervene to the extent her property was within the boundaries of the proposed project but not to assert general objections to energy policy or to represent other affected landowners).

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<sup>4</sup> OVJA filed joint petitions with Mr. Johnson. Those petitions should be denied for the reasons stated in SFE's responses being separately filed today.

Mr. Johnson's petition is otherwise either irrelevant or inflated with alleged interests that simply parrot statutory criteria unsupported by any individual showing or allegation.<sup>5</sup>

**c. The cases cited by Mr. Johnson do not support intervention because he claims no cognizable interest affected by the proposed Facilities.**

Mr. Johnson's petition finds no support in the litany of prior cases in which intervention was allowed. *See* Petition at 6-9. In those cases, intervention was allowed for people residing within or adjacent to the footprint of those facilities who alleged specific, direct affects from the proposed facilities.<sup>6</sup> *See, e.g., In the Matter of the Application of Buckeye Wind LLC*, 13-360-EL-BGA, ¶12-14 (Nov. 21, 2013) (granting application by residents who live within project boundaries and detailed the potential effects on their use of local land and roads); *In the Matter of the Application of Buckeye Wind LLC*, 08-666-EL-BGN, ¶5-7 (July 31, 2009) (granting intervention to local non-profit whose members owned residential real estate adjacent to facility); *In the Matter of the Application of Champaign Wind LLC*, 12-160-EL-BGN, ¶19-23, 23 (Aug. 2, 2012) (granting unopposed intervention to association identifying members by name who own property and reside within footprint of project). Mr. Johnson presents no specifics in his petition that warrant intervention.

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<sup>5</sup> For example, insofar as Mr. Johnson echoes OVJA's alleged interests in tax treatment of the Facilities, environmental impacts, full and fair proceedings or grid reliability, his allegations are equally overbroad, invalid, insufficient, speculative and remote to warrant intervention. *See* South Field Energy's Response to Ohio Valley Job Alliance's Petition to Intervene (filed contemporaneously and incorporated herein).

<sup>6</sup> *See also In the Matter of the Application of Columbus Southern Power Company* 02-2153-EL-BTX, ¶7-8 (Jan. 29, 2004) (granting unopposed intervention to owners of property adjacent to planned transmission line). *See also In the Matter of the Application of American Municipal Power –Ohio, Inc.* No. 06-1358-EL-BGN, Entry at 1 & 3 (Dec. 4, 2007) (granting motions to intervene of NRDC, OEC and Sierra Club and distinguishing prior matter where petitioners were not property owners and did not allege any interest in the environmental impacts of the facility) & *Id.*, Motion at 3-5 (Oct. 25, 2010) (alleging the exact number of members and the direct effects related to its primary environmental purpose); *In the Matter of the Application of Columbia Gas Ohio*, 11-3534-GA-BTX, Entry ¶5, 8 & 11 (Dec. 21, 2011) (granting unopposed intervention to entities owning land interests to that would be traversed by proposed pipeline and to Sierra Club whose members asserted specific interest in specific park).

## **2. Relevant interests will be adequately represented and investigated.**

Because Mr. Johnson has no real or relevant interest in these cases, his 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). Of note, the Board's Staff will investigate and advise the Board of its recommendations on the Applications. Therefore, there is no good cause for Mr. Johnson'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).<sup>7</sup>

## **3. Mr. Johnson will not contribute to a just and expeditious resolution of the case.**

Mr. Johnson has not identified any actual interest that will be directly affected by the Facilities. He shows no nexus between the Facilities and his requested intervention because he fails to disclose his address or activities in Columbiana County or his alleged specific, personal interests affected by the Facilities – or his lack thereof. Mr. Johnson has raised no issue relevant to the proceedings or specific to the proposed Facilities. It would be neither just nor expedient to allow Mr. Johnson to intervene here simply to contest the Applications according to all statutory criteria absent a real, personal interest that will be directly affected. The Board can arrive at a just and expeditious resolution without Mr. Johnson's intervention.

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<sup>7</sup> *See also 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 (10th 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).

**4. Granting Mr. Johnson intervention in these cases will unduly delay the proceedings and cause unjust prejudice to SFE.**

Mr. Johnson's participation in the Application proceedings will cause unnecessary delay and prejudice to SFE. As expressed above, Mr. Johnson has no real interest in the Applications. His petition disregards the scope of the Applications and are already causing Applicant undue delay and expense by proposing to litigate every facet of the Facilities despite not being directly affected by any part of them. Mr. Johnson's continued intervention will only cause the Applicant to suffer additional unjust prejudice in the form of needless discovery, litigation and any appeals from the Board's rulings in these proceedings. These facts do not support Mr. Johnson's intervention in the Application proceedings.

**IV. CONCLUSION**

Mr. Johnson has not shown that he has any personal interests that will be affected by the proposed Facilities. Moreover, he does not claim to live on property affected by the proposed Facilities and raises no issues specific to the Applications themselves. Mr. Johnson has failed to show good cause for intervening in these cases and his 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 21st day of March 2016.

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Summary: Response to Kenneth Johnson's Petition to Intervene electronically filed by Mr. Michael J. Settineri on behalf of South Field Energy LLC