

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 MEMORANDUM CONTRA TO
KENNETH JOHNSON’S
NOTICE OF INTERLOCUTORY APPEAL AND APPLICATION FOR REVIEW**

I. INTRODUCTION

The Administrative Law Judge (“ALJ”) did not allow Kenneth Johnson to intervene in these cases because Mr. Johnson stated no valid, personal interest affected by the proposed facilities. Mr. Johnson’s interlocutory appeal is equally lacking in merit and alleges little more than his residence somewhere in the 534 square miles that make up Columbiana County. The ALJ correctly found Mr. Johnson’s unspecified residence to be insufficient to warrant intervention. The Board should affirm.

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 in Case No. 15-1717-EL-BTX 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”).¹ Ultimately, the Interconnection Facilities will interconnect the Generation Facility with the existing American Transmission System, Incorporated (“ATSI”) 345kV transmission circuit.

Mr. Johnson sought to intervene in both cases in his personal capacity as a resident of Columbiana County.² The ALJ denied the petition, holding that “living in the county of a proposed project is not enough on its own to warrant intervention” and that “Mr. Johnson does not claim any specific interest that would be directly affected by the project.”³

III. ARGUMENT

A. Standard of review

To intervene, Mr. Johnson was required to show good cause. O.A.C. 4906-2-12(B). Whether good cause exists depends upon a discretionary determination of (a) the nature and extent of Mr. Johnson’s interest, (b) the extent to which his interest is represented by existing parties, (c) his 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.*

When his petition to intervene was denied, Mr. Johnson took this interlocutory appeal under O.A.C. 4906-2-29(A)(2).

B. Intervention was properly denied.

Mr. Johnson’s appeal rests only on the allegations that he lives at an undisclosed location in Columbiana County and that he is a member and director of OVJA, whose primary mission is

¹ 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.”

² OVJA Petition to Intervene at 2 (Mar. 4, 2016) (stating “Mr. Johnson seeks to intervene in these proceedings in his personal capacity, as a life-long resident of Columbiana County.”)

³ Entry at 5 ¶ 15 (June 6, 2016)

to protect and promote jobs, including those related to coal-fired generation.⁴ 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. Mr. Johnson has no actual, personal interest that will be directly affected by the Facilities. Therefore, the entry denying intervention should be affirmed.

1. Mr. Johnson’s actual interests do not support intervention.

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

“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 personal factual allegation in these cases is that he is a “life-long resident of Columbiana County.”⁵ Legally, that is not enough.

Furthermore, residence – whether life-long or current –in Columbiana County does not demonstrate anything of relevance. “The county is irregular in shape, has a total area of 534 square miles, and is composed of 18 townships.”⁶ 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.

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

⁴ OVJA Notice of Appeal at 3&4 (June 9, 2016).

⁵ Notice of Appeal at 3; Petition at 2, 9.

⁶ *See* South Field Energy’s Response to OVJA Petition at 10 n.20 (Mar. 21, 2016) (citing <http://www.columbianacounty.org/>).

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

Mr. Johnson may not 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.”⁷ Mr. Johnson personally alleges no such interests – he does not claim to own property, does not say where he lives, does not specify any cultural, recreation or socioeconomic impact that would affect him personally in his professional or personal activities, and he does not say anything about how the Facilities would impact his use of roads and infrastructure.

Nor may Mr. Johnson intervene as a member or director of OVJA.⁸ Any intervention by Mr. Johnson as an alleged member or director of OVJA would be under the umbrella of OVJA – and not in his personal capacity. 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).

Mr. Johnson’s appeal is otherwise either irrelevant or inflated with alleged interests that simply parrot statutory criteria unsupported by any individual showing or allegation.⁹

⁷ Petition at 5, 9. *See also* Notice of Appeal at 2-3, 9.

⁸ OVJA filed a joint Notice of Interlocutory Appeal with Mr. Johnson. OVJA’s interlocutory appeal should be denied for the reasons stated in SFE’s Memorandum Contra to OVJA’s appeal, which is being separately filed today and is incorporated here by reference.

⁹ For example, insofar as Mr. Johnson echoes OVJA’s alleged interests in environmental impacts, full and fair proceedings or grid reliability, his allegations are equally overbroad, invalid, insufficient, speculative and remote to warrant intervention. *See* SFE’s Memorandum Contra to Ohio Valley Job Alliance’s Notice of Interlocutory Appeal (filed contemporaneously and incorporated herein).

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 appeal is not supported by prior cases in which intervention was allowed. 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. *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 named residents who live within project boundaries and detailed the potential effects on their specific use of local land and roads); *In the Matter of the Application of Champaign Wind LLC*, 12-160-EL-BGN, ¶19-23, 25 (Aug. 2, 2012) (granting unopposed intervention to association identifying members by name who own property and reside within footprint of project).¹⁰ Mr. Johnson's petition presents no specifics that warrant intervention.

Because Mr. Johnson has no real or relevant interest in these cases, his petition was correctly 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).

2. Relevant interests will be adequately represented and investigated.

Relevant interests will be adequately represented and investigated without Mr. Johnson. Board Staff fully investigated each and every aspect of the proposed Facilities and issued

¹⁰ *See also 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); *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 identified members owned residential real estate adjacent to facility); *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 National Resource Defense Council, Ohio Environmental Council, 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, 2007) (alleging the exact number of members and the direct effects related to its primary environmental purpose); *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).

comprehensive Reports of Investigation regarding the applications, including specific conditions recommended for each Application.¹¹

Other general issues of alleged concern to Mr. Johnson are adequately represented by intervenors whose actual interests extend to those issues. Intervenors American Transmission Systems, Inc. and the Ohio Edison Company have expressed a direct interest in the interconnection of the Facility to the regional transmission grid.¹² Interests in land use and economic impact are central to the Columbiana County Director of Development (“CCDD”), who has intervened “to ensure that the” Facilities “are consistent with the CCDD’s plans for land use and economic development.”¹³ And interests in issues of health, safety and public welfare will be represented by Yellow Creek Township, which “is charged with the responsibility, both legal and practical, to represent the interests and concerns of each and every member of its constituency” and “will ensure that the Board has complete and accurate information before rendering its decision on the proposed Applications.”¹⁴

In these circumstances, petitions to intervene are routinely denied. *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

¹¹ Staff Reports of Investigation (May 20, 2016).

¹² ATSI & OEC Petition to Intervene at 3-4 (Feb. 17, 2016).

¹³ Columbiana County Development Department Petition to Intervene at 2 (May 12, 2016).

¹⁴ Yellow Creek Township Petition to Intervene at 5 (May 12, 2016).

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).

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 any alleged specific, personal interests affected by the Facilities. 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.

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 has already caused Applicant undue delay and expense by proposing to litigate every facet of the Facilities despite not being directly affected by any part of them. As predicted, Applicant is being prejudiced by Mr. Johnson’s continued litigation 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 failed to

show good cause for intervening in these cases. The Board should affirm the entry denying his petition to intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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s/ Michael J. Settineri

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6/14/2016 4:58:25 PM

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Case No(s). 15-1716-EL-BGN, 15-1717-EL-BTX

Summary: Memorandum Contra to Kenneth Johnson's Notice of Interlocutory Appeal electronically filed by Mr. Michael J. Settineri on behalf of South Field Energy LLC