BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of Buckeye Wind LLC to Amend Its Certificate Issued in Case No. 08-0666-EL-BGN	))))	Case No. 17-2516-EL-BGA
In the Matter of the Application of Champaign Wind LLC to Amend Its Certificate Issued in Case No. 12-0160-EL-BGN	))))	Case No. 17-2517-EL-BGA

PETITION TO INTERVENE OF CHAMPAIGN COUNTY RESIDENTS

Pursuant to R.C. 4906.08(A)(3) and O.A.C. 4906-2-12, Champaign County residents Terry and Phyllis Rittenhouse, Keith and Lori Forrest, John and Joy Mohr, Brent and Johnna Gaertner, Mark and Marisue Schmidt, Carrie Apthorpe, Jim and Georgianna Boles, Bill and Carmen Brenneman, T. Gary and Paula Higgins, Brian and Bayleigh Halterman, Rodney Yocom, Robert and Roberta Custer, and Mathew Earl (the "Local Residents") hereby petition the Ohio Power Siting Board for an order granting their intervention as parties in this proceeding.

This Petition to Intervene is supported by the Memorandum In Support set forth below.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF PETITION TO INTERVENE

I. INTRODUCTION

Buckeye Wind LLC filed its application for a certificate to construct the 55-turbine Buckeye Wind Project ("Buckeye I") in Champaign County on April 24, 2009. On March 22, 2010, the Board issued its Opinion, Order, and Certificate granting the requested certificate (the "Buckeye I Certificate"). *In re Application of Buckeye Wind LLC,* No. 08-0666-EL-BGN (March 22, 2010).

Champaign Wind LLC filed its application for a certificate to construct the 56-turbine Buckeye II Wind Project ("Buckeye II") in Champaign County on May 15, 2012. On May 23, 2015, the Board issued its Opinion, Order, and Certificate granting the requested certificate (the "Buckeye II Certificate"; together with the Buckeye I Certificate, the "Certificates"). *In re Application of Champaign Wind LLC,* No. 12-0160-EL-BGN (May 23, 2015).

Pursuant to the pending Applications to Amend in this proceeding, Buckeye Wind LLC and Champaign Wind LLC (together, "Applicant") seek to have the OPSB amend their respective Certificates to, *inter alia*: (1) permit them to use new, larger, more-powerful turbine models (the "New Turbines") than those approved by the OPSB; and (2) reduce the total number of turbines to be constructed to 50 turbines (the "Combined Facility"), to be located among 55 approved turbine sites.

The Local Residents seek the OPSB's permission to intervene in this new proceeding because they possess interests that will be directly affected by construction of the Combined Facility with the New Turbines. The Local Residents own property and live in Champaign County. They pay Champaign County property taxes. They are consumers of electricity. They will be affected by the excessive noise and shadow flicker caused by the Combined Facility. In

addition, Local Residents Robert and Roberta Custer own and operate a Medicaid-certified facility for developmentally-disabled persons, the "Downsize Farm," at 806 N. Parkview Road in Champaign County. Downsize Farm serves over sixty (60) individuals. It is located in close proximity to Applicant's proposed turbines, including turbines T100, T015, and T129. Applicant's Combined Facility will subject Downsize Farm's developmentally-disabled clients to unhealthy levels of noise and shadow flicker (indeed, it appears from Applicant's shadow flicker map that the Downsize Farm will be subjected to shadow flicker for more than thirty (30) hours per year). Applications to Amend, Exhibit F, Figure 2.

Prior to the filing of the Applications to Amend, Applicant's efforts to build the Combined Facility were opposed by Union Neighbors United, Inc. ("UNU"), intervenors in Applicant's previous cases before the Board. While UNU prosecuted its opposition to the Combined Facility, UNU protected the Local Residents' interests that will be adversely affected by the Facility. However, UNU has settled its disputes with Applicant, leaving the interests of the Local Residents unrepresented, and unprotected, in this proceeding.

Pursuant to R.C. 4906.201(B)(2), amendment of the Certificates at this time – after September 15, 2014 – subjects the Certificates to the current statutory turbine setback requirement: 1,125 feet from the property line of the nearest adjacent property. Indeed, O.A.C. 4906-4-08(C)(2) requires that Applicant submit a map with the Applications to Amend establishing that each turbine is 1,125 feet from the nearest adjacent (nonparticipating) property line:

> For wind farms only, the applicant ***shall provide a map(s)*** . . . showing the proposed facility, habitable residences, and parcel boundaries of all parcels within a half-mile of the project area. . . . ***Include on the map the setbacks for wind turbine structures in relation to property lines . . . consistent with no less than the following minimum requirements***:

* * *

(b) ***The wind turbine shall be at least one thousand, one hundred, twenty-five feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the property line of the adjacent property at the time of the certification application.*** (Emphasis added).

The Applications to Amend do not include the required map establishing that the Combined Facility complies with R.C. 4906.201(B)(2) and O.A.C. 4906-4-08(c)(2). Instead, Applicant's "Constraints Map" depicts setbacks of only 541 feet from adjacent property lines – less than half the statutory minimum. Applications to Amend, Figure 04-1.

And finally, by the Applications to Amend, Applicant seeks approval to use turbines that are completely different from the models that have been approved by the Board: (1) the New Turbines are substantially more powerful (up to 4.2MW, compared to 1.6 to 2.5MW) than the approved turbines; and (2) the rotor diameters for the New Turbines are greater (up to 459 feet, compared to 303 to 338 feet) than the approved turbines. These substantial changes in the turbine models create a number of adverse environmental impacts that are not addressed by Applicant in its Applications to Amend.

First, Applicant has not presented a scientifically-valid noise modeling analysis for the New Turbines. Applicant asserts that its "new [noise] modeling analysis demonstrates that each phase of the Amended Facility remains compliant with the permitted noise limits." Applications, p. 45; Exhibit E. That is not correct. Applicant modeled for only one of the twenty-three new turbine models for which it seeks approval – the 2.5MW Siemans SWT-2.5-120 turbine. This is one of the least powerful of the proposed turbines, and it has a smaller rotor diameter (396 feet) than many of the more powerful models. Both of these factors greatly affect the level of obtrusive noise that will be propagated by the New Turbines. Applicant asserts that "[t]his turbine was chosen as a 'worst-case' scenario since its maximum sound power level (***107***

decibels dBA re 1pW) is as high or higher than all other turbines under consideration for the Amended Facility" (emphasis added) – but Applicant then uses a sound power level of 105.5 dBA re 1 pW^2 for its modeling – not the 107 dBA it asserts is representative.

Second, Applicant manipulates the data in its "Plot 3" noise contours map for the Combined Facility to attempt to erroneously portray compliance with a 44 dBA Buckeye II – only noise limit. Applicant does not even use its arbitrarily-lowered 105.5 dBA sound power level for this contours map model for all of the 55 proposed turbines sites – much less the 107 dBA purportedly representative sound level. Instead, Applicant artificially lowers the noise levels for 14 of the proposed New Turbines, each by 3 or 5 dBA. Nowhere does the Application, much less the existing Certificates the OPSB has granted to Applicant, specifically limit the power level at which identified turbines are permitted to operate in the Combined Facility. Moreover, by Applicant's own flawed logic, the noise limit for the Combined Facility on its Plot 3 contours map should be the lesser 43 dBA limit it cites for Buckeye I, not the higher 44 dBA Buckeye II limit.

Third, the noise limits at non-participating residences that Applicant cites as OPSB-approved for each phase of the project – 43 dBA for Buckeye I and 44 dBA at Buckeye II – are not acceptable noise levels. The World Health Organization's 2009 night noise guidelines establish that adverse health effects are experienced by people exposed to nighttime noise exceeding 40 dBA. Moreover, the granting of certificates to Applicant permitting noise at levels that cause deleterious health effects to nearby residents would not provide any immunity to Applicant from nuisance claims for the resulting health impacts suffered by the Local Residents or for the diminution of their property values.

Fourth, the New Turbines, with larger rotor diameters, will cause forty-eight (48) non-participating residences to be subjected to shadow flicker for more than 30 hours per year – the accepted maximum number of hours for such flicker, above which shadow flicker is recognized to cause significant annoyance and deleterious health effects. Applications to Amend at 47; Exhibit F. Indeed, Applicant predicts that non-participating residences will be subjected to up to seventy-one (71) hours of unhealthy shadow flicker. Exhibit F. And again, the granting of certificates to Applicant permitting shadow flicker on non-participating residences for periods exceeding the recognized safety limit, and thereby causing deleterious health effects, would not provide any immunity to Applicant from nuisance claims for those resulting health impacts suffered by the Local Residents or for the diminution of their property values.

II. ARGUMENT

A. Intervention Standard

The Local Residents meet all requirements for intervention in this proceeding, as set forth in R.C. 4903.08(A) and O.A.C. 4906-2-12(B)(1). The Board may consider the following when determining petitions to intervene:

(a) The nature and extent of the person's interest;

(b) The extent to which the person's interest is represented by existing parties;

(c) The person'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 an existing party.

O.A.C. 4906-2-12(B)(1). See also *In the Matter of the Application of Clean Energy Future—Lordstown, LLC,* No. 14-2322-EL-BGN, slip op. at 2, ¶5 (Ohio Power Siting Bd. July 28, 2015) (setting forth factors the Board considers in resolving motions to intervene); *In the Matter of the*

Application of Columbus Southern Power Co., No. 01-2153-EL-BTX, slip op. at 3, ¶8 (Ohio Power Siting Bd. Jan. 29, 2004) (same). The Ohio Supreme Court has interpreted this rule as providing that "[a]ll interested parties may intervene in [Board] proceedings upon a showing of good cause." *State, ex rel. Ohio Edison Co. v. Parrott,* 73 Ohio St.3d 705, 708 (1995) (citation omitted).

C. The Local Residents Are Entitled To Intervene

1. The Local Residents Have Real And Substantial Interests In This Matter

Each of the Local Residents has a real and substantial interest in this matter. They reside within areas that will be adversely affected by nuisance noise and shadow flicker from the Combined Facility. They have a real and substantial interest in attempting to prevent the infliction of the additional adverse impacts on their land, residences, communities, and lives that the Combined Facility is projected to create.

The Local Residents also have an interest in ensuring the proper application of the statutorily-mandated setback requirements in this case, made applicable to the new, proposed Combined Facility through Amended Substitute House Bill ("Am.Sub.H.B.") 483 (effective September 15, 2014). When first enacted as part of Am.Sub.H.B. 562, effective June 24, 2004, R.C. 4906.20 required the Board to adopt regulations governing the certification of "economically significant wind farms"—wind farms with a single interconnection to the electrical grid and capable of generating an aggregate of between five and fifty megawatts of electricity, see R.C. 4906.13(A). Those regulations were to include minimum setbacks as provided in the statute:

> The rules also shall prescribe a minimum setback for a wind turbine of an economically significant wind farm. That minimum shall be equal to ***a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure*** as

> measured from its base to the tip of its highest blade and be ***at least seven hundred fifty feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure***, if any, located on adjacent property at the time of the certification application.

R.C. 4906.20(B)(2) (as enacted in Am.Sub.H.B. 562, effective June 24, 2008) (emphasis added). The Board, by rule, applied these setback requirements to all wind projects within its jurisdiction.

R.C. 4906.20 was amended in Am.Sub.H.B. 59, effective September 29, 2013, to increase the setback requirements:

> That minimum shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be ***at least one thousand one hundred twenty-five feet*** in horizontal distance from the tip of the turbine's nearest blade at ninety degrees ***to the exterior of the nearest, habitable, residential structure***, if any, located on adjacent property at the time of the certification application.

R.C. 4906.20(B)(2) (as amended in Am.Sub.H.B. 59, effective Sep. 29, 2013) (emphasis added). In addition, Am.Sub.H.B. 59 enacted new section R.C. 4906.201, which extended the setback requirements to wind farms generating fifty megawatts or more, such as Buckeye I and Buckeye II, certificated by the Board:

> An electric generating plant that consists of wind turbines and associated facilities with a single interconnection to the electrical grid that is designed for, or capable of, operation at an aggregate capacity of fifty megawatts or more is subject to the minimum setback requirements established in rules adopted by the power siting board under division (B)(2) of section 4906.20 of the Revised Code.

R.C. 4906.201(A) (as enacted in Am.Sub.H.B. 59, effective Sep. 29, 2013).

R.C. 4906.20 was amended once again by Am.Sub.H.B. 483, effective September 15, 2014. That section changed the setback requirements from the nearest habitable residence to the nearest adjacent property line:

> That minimum shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be ***at least one thousand one hundred twenty-five feet*** in horizontal distance from the tip of the turbine's nearest blade at ninety degrees ***to property line of the nearest adjacent property*** at the time of the certification application.

R.C. 4906.20(B)(2)(a) (as amended in Am.Sub.H.B. 483, effective Sep. 15, 2014) (emphasis added).

R.C. 4906.201 also was amended to expressly provide that Amended Substitute House Bill 483's new setback requirements apply to any amendments to existing certificates made after September 15, 2014 (the act's effective date):

> ***Any amendment made to an existing certificate after the effective date of the amendment of this section by H.B. 483 of the 130th general assembly, shall be subject to the setback provision of this section as amended by that act.*** The amendments to this section by that act shall not be construed to limit or abridge any rights or remedies in equity or under the common law.

R.C. 4906.201(B)(2) (as amended in Am.Sub.H.B. 483, effective Sep. 15, 2014) (emphasis added). Accordingly, any amendment to Applicant's Certificates made after September 15, 2014 are subject to the new setback requirements of the act and each New Turbine now is required to be setback at least 1,125 feet from the property line of the nearest adjacent (non-participating) property.

The Local Residents must be permitted to intervene in this case to protect their interests that will be directly impacted by the Combined Facility. Such intervention would be entirely consistent with Board precedent. The Board has granted numerous petitions to intervene filed by property owners whose property would be affected by a proposed project. See, *e.g., In the Matter of the Application of Buckeye Wind LLC,* No. 13-360-EL-BGA, slip op. at 5-6, ¶¶12-14 (Ohio Power Siting Bd. Nov. 21, 2013) (granting motion of proposed intervenors who claimed

that the wind project would have "potential impacts" on "their residences, land, roads, and community"). See also *In the Matter of the Application of Champaign Wind, LLC,* No. 12-160-EL-BGN, slip op. 3-6, ¶¶19-23, 25 (Ohio Power Siting Bd. Aug. 2, 2012) (granting motion to intervene of "property owners who own real estate and reside within the footprint of the" wind turbine project and who "have a direct and substantial interest in [the] matter, in light of the potential visual, aesthetic, safety, and nuisance impacts of the wind project on their residences, land, and community"); *In the Matter of the Application of American Transmission Systems, Inc.,* No. 12-1636-EL-BTX, slip op. at 1-2, ¶¶3-6 (Ohio Power Siting Bd. May 21, 2014) (granting motions to intervene of property owner along the possible alternate route of a proposed transmission line).

2. *The Local Residents' Interests Are Not Already Adequately Represented*

In light of UNU's settlement with Applicant, there are no other non-participating residents in this case to protect the interests of the Local Residents. Thus, the interests of the Local Residents are not adequately represented in this proceeding.

3. *The Local Residents Will Contribute To A Just And Expeditious Resolution Of Issues*

The Local Residents will contribute to a just and expeditious resolution of the issues in this case. The Local Residents have unique, independent perspectives on the issues outlined above to offer the Board. Their participation is crucial to an informed, balanced, and fair disposition of the interests of all parties who will be affected by the Board's disposition of Applicant's Applications to Amend the Certificates.

4. *The Local Residents' Participation Will Neither Delay This Case Nor Prejudice Parties*

The Local Residents will neither unduly delay this case nor unjustly prejudice any party. The Local Residents will abide by all Board deadlines in the case and present their information in a clear and succinct manner. No date has been set for any hearing on the Applications to Amend nor has any specific deadline been established by the Board in this proceeding. This Petition to Intervene is timely and will not unduly prejudice any existing party.

III. CONCLULSION

For the foregoing reasons, the Local Residents request the Board to grant this Petition To Intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion To Intervene was served, via regular U.S. mail, postage prepaid, this 22nd day of January, 2018, upon all parties listed in the attached Exhibit A.

/s/ John F. Stock
John F. Stock

Exhibit A

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1/22/2018 3:13:54 PM

in

Case No(s). 17-2516-EL-BGA, 17-2517-EL-BGA

Summary: Petition to Intervene of Champaign County Residents electronically filed by John F Stock on behalf of Terry Rittenhouse and Phyllis Rittenhouse and Keith Forrest and Lori Forrest and John Mohr and Joy Mohr and Brent Gaertner and Johnna Gaertner and Mark Schmidt and Marisue Schmidt and Carrie Apthorpe and Jim Boles and Georgianna Boles and Bill Brenneman and Carmen Brenneman and T. Gary Higgins and Paula Higgins and Brian Halterman and Bayleigh Halterman and Rodney Yocom and Robert Custer and Roberta Custer and Mathew Earl