

BEFORE THE OHIO POWER SITING BOARD

In the Matter of the Application of)	
Buckeye Wind, LLC, for a Certificate)	
to Install Numerous Electricity)	Case No. 08-0666-EL-BGN
Generating Wind Turbines in)	
Champaign County to be Collected at)	
an Electrical Substation in)	
Union Township,)	
Champaign County, Ohio)	

In the Matter of the Application of)	
Champaign Wind, LLC, for a Certificate)	
to Install Numerous Electricity)	Case No. 12-0160-EL-BGN
Generating Wind Turbines in)	
Champaign County to be Collected at)	
an Electrical Substation in)	
Union Township,)	
Champaign County, Ohio)	

**RESPONSE OF BUCKEYE WIND LLC AND CHAMPAIGN WIND LLC TO THE
OBJECTION OF CHAMPAIGN COUNTY, GOSHEN TOWNSHIP, UNION
TOWNSHIP, AND WAYNE TOWNSHIP**

Having recently settled years of litigation with Union Neighbors United (“UNU”), Buckeye Wind LLC and Champaign Wind LLC are continuing development of their respective wind farms. In addition to continuing to invest in Champaign County by making lease payments, Champaign Wind and Buckeye Wind have reduced turbine locations and are amending both projects as a result of the UNU settlement. Buckeye Wind and Champaign Wind are also seeking to extend their respective certificates, and jointly submitted an extension request in a manner that complies with all of the amendment procedures of the Board. As Buckeye Wind and Champaign Wind noted in their request, doing so allows the Board to either characterize the request as an amendment application or a motion. Either way, any party opposing the extension would be able to raise objections to the Board for consideration.

For example, Champaign County and Goshen Township, Union Township, and Wayne Township (collectively the “Townships”)¹ filed an objection to the extension and argue that the extension request should be combined with Buckeye Wind’s and Champaign Wind’s pending amendment applications. Through their objection, they have been provided with due process regardless of whether the request is characterized as an amendment application or a motion. Moreover, the County and the Townships are not entitled to a hearing on the request because the request does not involve a change in the facility or any increase in environmental impacts. *See* R.C. 4906.07(B) (addressing when a hearing is required on an amendment application). Champaign County and the Townships have been able to make their opposition to the extension known to the Board, and no further due process is required or mandated.

It is also worthwhile to note that Buckeye Wind and Champaign Wind complied with the public notice requirements for an amendment application. A copy of the request was sent via Federal Express to local public officials, local libraries, and all intervenors in the original dockets on April 3, 2018. A mass public notice mailing, including a copy of the request, was sent via regular U.S. mail to all property owners in the original project areas on April 4, 2018. In addition, a public notice regarding the extension was published in the Urbana Daily Citizen, a newspaper of general circulation in Champaign County, on April 4, 2018. A copy was also served on the Champaign County prosecutor’s office (which represents the Townships in addition to the County) on April 3, 2018. Members of the public as well as governmental bodies in the project area have received appropriate notice of the request and have had well over a month to comment on it.

¹ Champaign County and Goshen Township filed their objection on May 3, 2018. Union Township and Wayne Township joined in the objection May 10, 2018.

As to Champaign County's and the Townships' objections, they are without merit. First, contrary to any claim by the County and the Townships, it is obvious litigation delays have played a major role in pushing back the beginning of actual construction on the projects. There has been nearly eight years of litigation between the two projects, and neither Buckeye Wind nor Champaign Wind instigated that litigation. Also worth noting is that the County and Goshen and Union Townships brought appeals to the Supreme Court of Ohio that created delays. Litigation is the overwhelming reason for the delays in actual construction of the projects, and justifies the one-year extension request. *See e.g. In the Matter of the Application of Black Fork Wind Energy, LLC Regarding its Certificate of Environmental Compatibility and Public Need Issued in Case No. 10-2865-EL-BGN*, Order on Certificate, at ¶ 1 dated December 7, 2017.

Champaign County and the Townships also disregard the fact that the pending amendment applications for the projects stemmed from a settlement reached with UNU in 2017 to resolve litigation before the Supreme Court of Ohio. As a result of that settlement, Buckeye Wind and Champaign Wind filed applications with the Ohio Power Siting Board seeking approval to reduce the 108-turbine location design to a 50-turbine maximum build and make other modifications to the projects. Indeed, the settlement of the Supreme Court litigation along with continued and ongoing efforts to develop the projects show good cause for the extension.

There is also no reason to "merge" the request into the pending amendment applications as requested by Champaign County and the Townships. The changes contemplated by the request and the pending amendment applications are entirely different. The request simply asks for an extension of the certificates for one year. The changes proposed in the amendment applications relate to physical changes to the projects including relocation of a substation, modification of access roads and collection lines, relocation of a single meteorological tower,

and the option to use additional, more efficient turbine models with updated technology for both projects. Given the difference in the request versus the amendment applications, there is no reason to “merge” the two, especially given that Buckeye Wind and Champaign Wind have presented the request in a way that allows it to be characterized as an amendment application.

Champaign Wind and Buckeye Wind have made a significant investment in Champaign County and are more than willing to discuss issues the County and Townships may have regarding the projects. But as to the County’s and Township’s objections to the certificate extensions, those objections are without merit. The extension request should be granted.

Respectfully submitted,

/s/ Michael J. Settineri

Michael J. Settineri (0073369), Counsel of Record
Ryan D. Elliott (0086751)

MacDonald W. Taylor (0086959)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

(614) 464-5462

(614) 719-5146 (fax)

mjsettineri@vorys.com

rdelliott@vorys.com

mwtaylor@vorys.com

*Attorneys for Buckeye Wind LLC and
Champaign Wind LLC*

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 11th day of May 2018.

/s/ Michael J. Settineri

Michael J. Settineri

Ms. Sarah Chambers
Thompson Hine LLP
41 S. High Street, Suite 1700
Columbus, OH 43215
Sarah.chambers@thompsonhine.com

Mark M. Feinstein, Law Director
City of Urbana
205 South Main Street
Urbana, OH 43078
Mark.feinstein@ci.urbana.oh.us

Mr. Philip B. Sineneng
Thompson Hine LLP
41 S. High Street, Suite 1700
Columbus, OH 43215
Philip.sineneng@thompsonhine.com

Chad Endsley
Chief Legal Counsel
Ohio Farm Bureau Federation
280 N. High Street
Columbus, OH 43215
cendsley@ofbf.org

Mr. Daniel A. Brown
Brown Law Office LLC
204 South Ludlow Street, Suite 300
Dayton, OH 45402
dbrown@brownlawdayton.com

Mr. Jack A. Van Kley
Van Kley & Walker, LLC
132 Northwoods Blvd., Ste. C-1
Columbus, OH 43235
jvankley@vankleywalker.com

Ms. Jane A. Napier
Assistant Prosecuting Attorney
Champaign County
200 North Main Street
Urbana, OH 43078
jnapier@champaignprosecutor.com

Mr. Werner Margard
Assistant Attorney General
Public Utilities Section
180 E. Broad Street, 6th Floor
Columbus, OH 43215
Werner.margard@ohioattorneygeneral.gov

Mr. Gene Park
Piqua Shawnee Tribe
1803 Longview Drive
Springfield, OH 45504
Ewest14@woh.rr.com

Mr. John Stock
Mr. Mark D. Tucker
Benesch Friedlander Coplan & Aronoff LLP
41 S. High St, Suite 2600
Columbus, OH 43215
j.stock@benesch.aws.com
m.tucker@beneshlaw.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/11/2018 1:37:37 PM

in

Case No(s). 08-0666-EL-BGN, 12-0160-EL-BGN

Summary: Response to Objection of Champaign County, Goshen Twp, Union Twp and Wayne Twp electronically filed by Mr. Michael J. Settineri on behalf of Buckeye Wind LLC and Champaign Wind LLC