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

APPLICATION FOR REHEARING OF PROPOSED INTERVENORS CHAMPAIGN COUNTY RESIDENTS

Pursuant to R.C. 4906.12, R.C. 4903.10, and O.A.C. 4906-2-32(A), Proposed Intervenors 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 Matthew Earl (the "Local Residents") hereby apply for rehearing of the Board's Entry of May 17, 2018 ("Entry") in this matter denying the Local Residents' Petition to Intervene and granting the "Request for Extension of Certificates" filed by Applicants Buckeye Wind, LLC and Champaign Wind, LLC (collectively, "Applicants") to extend their certificates until May 28, 2019.[1] The specific grounds for this Application for Rehearing are as follows:

[1]The Board granted Applicant Buckeye Wind, LLC's prior request for a three-plus-year extension of its certificate from March 22, 2015 to May 28, 2018. See *In re Application of Buckeye Wind, LLC,* No. 13-0360-EL-BGA (August 25, 2014), *rehearing denied* (August 27, 2015). Prior intervenors appealed that order to the Ohio Supreme Court, but the appeal was dismissed pursuant to the parties' settlement following oral argument. See *In re Application of Buckeye Wind, LLC,* 149 Ohio St.3d 1459, 2017-Ohio-4477.

(1) The Entry is unreasonable and unlawful to the extent it denies the Local Residents' Petition to Intervene on the grounds that the petition was untimely. In particular, the Board erred by not treating Applicants' Request for Extension of Certificates as an application to amend the existing Certificates, which would and should have been treated as a new proceeding. The Local Residents' Petition—having been filed only thirteen days after Applicants' filing of their request—would have been timely in that new proceeding.

(2) Even if the Local Residents' Petition to Intervene were considered to be "untimely" because the Request for Extension of the Certificates did not commence a new proceeding, the Entry denying intervention is unreasonable and unlawful because the Local Residents established that extraordinary circumstances warrant their intervention in this new phase of the proceedings. The Entry unreasonably and unlawfully prevents the Local Residents from seeking the application of the Amended Substitute House Bill 483's ("Am.Sub.H.B. 483") set back requirements that were effective September 15, 2014, and which were mandated by the General Assembly to be applied to an amendment of existing certificates on or after the bill's effective date. See R.C. 4906.201(B)(2) & R.C. 4906.20(B)(2)(b)(ii).

(3) The Entry is unreasonable and unlawful because it illegally effects Applicants' evasion of the now-applicable setback requirements of R.C. 4906.20 and R.C. 4906.201.

(4) The Entry is unreasonable and unlawful because Applicants failed to show good cause for an extension of the Certificates.

The basis for this Application for Rehearing is set forth in detail in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

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) (Nos. 08-0666 and 12-0160, together, the "Original Proceedings").

On December 22, 2017, Buckeye Wind, LLC and Champaign Wind, LLC (together, "Applicants") submitted applications to amend (the "Applications to Amend") their respective Certificates granted in the Original Proceedings to, *inter alia*: (1) permit them to use new, larger, and more-powerful turbine models (the "New Turbines") than those approved by the Board; 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 Applications to Amend were assigned new cases numbers, Nos. 17-2516 and 17-2517, and on January 22, 2018, the Local Residents moved to intervene in those proceedings. That motion remains pending.

On April 3, 2018, Applicants filed their "Request for Extension of Certificates" in the Original Proceedings seeking to extend their Certificates (*i.e.*, the date by which they must

commence construction of Buckeye I and Buckeye II) from May 28, 2018 to May 28, 2019.[2] In their Requests for Extensions, Applicants state: "The Applicants recognize the Board's well-established practice of granting extensions by motion, however, given that intervenors litigated that issue in the Supreme Court recently and other pending litigation on that issue in other cases, the Applicants have presented the Request to the Board in a manner that will allow the Board to treat this submittal as an amendment or as a motion." Requests for Extensions at 4-5.

On April 16, 2018—only thirteen days after the filing of the Request for Extension of Certificates—the Local Residents petitioned the Board to intervene in these proceedings to oppose the requested extensions and to ensure that, if the Certificates were amended to extend the Certificates' terms, the Board would apply Am.Sub.H.B. 483's setback requirements that were effective September 15, 2014, and which were mandated by the General Assembly to be applied to an amendment of existing certificates on or after that date. See R.C. 4906.201(B)(2) & R.C. 4906.20(B)(2)(b)(ii). The Local Residents expressly contended in their Petition to Intervene "that any extension of the Certificates would constitute an amendment to those Certificates, and the Board must, therefore, follow the process for certificate amendments set forth in the Revised Code and this Board's rules." Petition to Intervene at 3.

The Local Residents possess interests that will be directly affected by construction of the Combined Facility with the New Turbines. In fact, Applicants did not object to the intervention of Local Residents Rittenhouse, Forrest, Mohr, Schmidt, Higgins, Yocom, Custer, and Earl, arguing only that the scope of their intervention should be limited. April 3, 2018. Memorandum Contra at 5-6.

[2]As noted above, the Board previously granted Buckeye Wind, LLC's motion to extend its certificate for Buckeye I from March 22, 2015 to May 28, 2018. See n.1, *supra.*

The Local Residents own property and live in Champaign County near the proposed locations for the New Turbines. 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 Applicants' proposed turbines, including turbines T100, T015, and T129. Applicants' Combined Facility will subject Downsize Farm's developmentally-disabled clients to unhealthy levels of noise and shadow flicker (indeed, it appears from Applicants' 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. The protection of these interests will be enhanced by the application and enforcement of the current setback requirements set forth in R.C. 4906.20(B)(2)(a) & (b) and 4906.201(B)(2). 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. Applicants' "Constraints Map" submitted with the Applications to Amend depicts setbacks as short as 541 feet from adjacent property lines—less than half the statutory minimum. Applications to Amend, Figure 04-1.

On May 17, 2018, the Board denied the Local Residents' Petition to Intervene in these proceedings and granted the requested extensions. *In re Application of Buckeye Wind LLC,* Nos. 08-0666-EL-BGN & 12-0160-EL-BGN (May 17, 2018). It is from that Entry that the Local Residents now seek rehearing.

II. ARGUMENT

A. Standards for Intervention

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). In addition, "[t]he board, in extraordinary circumstances for good cause shown, may grant [an untimely] petition, for leave to intervene as a party to participate in subsequent phases of the proceeding . . . ." R.C. 4906.08(B). See also O.A.C. 4906-2-12(C).

B. The Board Erred by Not Treating the "Request for Extension of Certificates" as an Application to Amend the Certificates, thereby Requiring the Commencement of a New Proceeding and Rendering the Local Residents' Petition to Intervene Timely.

In the Entry, the Board concluded that Local Residents' Petition to Intervene was not timely because it was not filed within thirty days of the original applications in these cases. Entry at 10, ¶27. Applicants, however, were required to file an application to amend their Certificates if they sought to alter one of the terms and conditions of those Certificates. That is precisely what they did through the Request for Extension of Certificates—Applicants sought to alter a material term of each of the Certificates, *i.e.,* the time within which a continuous course of construction must be commenced. Indeed, in their Request for Extension of Certificates, Applicants stated: "The Applicants recognize the Board's well-established practice of granting extensions by motion, however, given that intervenors litigated that issue in the Supreme Court recently and other pending litigation on that issue in other cases, the Applicants have presented the Request to the Board ***in a manner that will allow the Board to treat this submittal as an amendment*** or as a motion." Requests for Extension at 4-5 (emphasis added).

Had an application to amend been properly filed—or, as Applicants suggested, their "request" had been properly treated as an application to amend the Certificates—the Local Residents' Petition to Intervene, having been filed well within R.C. 4906.08(A)(3)'s thirty-day requirement for intervention, was timely. The Board, however, expressly stated that it "does not interpret a request to extend the expiration date to commence to construct as an amendment to the certificate and, therefore, does not initiate a renewed opportunity for intervention." Entry at 10, ¶27. This holding is in error, and rehearing should now be granted to correct that error.

R.C. 4906.04 provides that "[a]ny facility, with respect to which such a certificate is required, shall thereafter be constructed, operated, and maintained ***in conformity with such***

certificate and any terms, conditions, and modifications contained therein." (emphasis added). R.C. 4906.06(E) provides that "[a]n ***application for an amendment of a certificate*** shall be in such form and contain such information as the board prescribes. Notice of such an application shall be given as required in divisions (B) and (C) of this section." (emphasis added). The Board's rules, in turn, expressly provide that "***[a]pplications for amendments to certificates*** shall be submitted in the same manner as if they were applications for a certificate." O.A.C. 4906-3-11(B) (emphasis added). R.C. 4906.07 provides that the Board's chairperson "shall cause *each application* filed with the board to be investigated," that a report of that investigation be made available to the Board, the applicant, and any person requesting a copy, and that such report be made so available at least fifteen days prior to any hearing on the application. R.C. 4906.07(C) (emphasis added).[3] Indeed, the Board commences a new proceeding and assigns a new case number upon the filing of an application to amend a certificate.

The Certificates issued by the Board in these cases each contain an express term requiring a continuous course of construction to commence within five years of each Certificate's issuance, in compliance with the five-year time limit of R.C. 4906.06(A)(6).[4] By filing their Request for Extension of the Certificates, Applicants seek the amendment of that material term, and thus, an amendment of both Certificates. Such application for amendment is required to be submitted and processed in the same manner as an initial application for a certificate.

[3]While the General Assembly has mandated that all applications—including applications for an amendment to a previously-issued certificate—be investigated, only applications for an amendment that "would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility" require the Board to conduct a hearing on the application. R.C. 4906.07(B).

[4]As noted above, the Board previously granted Buckeye Wind, LLC's motion to extend its certificate for Buckeye I from March 22, 2015 to May 28, 2018. See n.1, *supra.*

A petition to intervene is timely if it is submitted within thirty days of the publication of the notice required by R.C. 4906.06. The Local Residents' Petition to Intervene was filed only thirteen days after the filing of the Request for Extension of Certificates herein, and twelve days after publication of the notice on April 4, 2018, as evidence by Applicants' Proof of Publication filed on May 17, 2018. The Petition to Intervene was, therefore, timely filed and the Board erred in holding otherwise.

C. Even If the Local Residents' Petition to Intervene Were Considered To Be "Untimely" Because the Request for Extension of the Certificates Did Not Commence a New Proceeding, the Entry Denying Intervention Is Unreasonable and Unlawful Because the Local Residents Established that Extraordinary Circumstances Warrant Their Intervention in This New Phase of the Proceedings.

In its Entry, the Board concluded "intervention deadlines . . . have long since passed years ago," Entry at 10, ¶27, and accordingly, the Local Residents were required to show that "extraordinary circumstances" justify granting their Petition. Entry at 11, ¶28 (citing O.A.C. 4906-2-12(C)).[5] As is clear from the Entry, the Board does not suggest the absence of good cause had the Petition to Intervene been, in the Board's view, timely.[6] Rather, the Board

[5]The ALJ also noted that O.A.C. 4906-2-12(C) requires petitioners to agree to be bound by agreements, arrangements and other matters previously made in the proceedings, and the Local Residents had failed to so agree. The Local Residents, however, sought intervention only to challenge the requested extensions and seek application of Am.Sub.H.B. 483's setback requirements. They did not challenge any previous agreements, arrangements or other matters previously made in the proceedings. Moreover, in their Petition, Local Residents stated that they would "abide by all Board deadlines in these cases. . . ." Petition to Intervene at 10. The Local Residents will be bound by prior actions in these proceedings, and no one, including the Local Residents, has suggested otherwise.

[6]As noted, in their Memorandum Contra to Local Residents' Petition to Intervene, Applicants acknowledge that the interests of at least some of the Local Residents—Terry and Phyllis Rittenhouse, Keith and Lori Forrest, John and Joy Mohr, Mark and Marisue Schmidt, T. Gary and Paula Higgins, Rodney Yocom, Robert and Roberta Custer, and Matthew Earl—are implicated because they "own property within the project area." Memorandum Contra at 2.

concluded that the Local Residents failed to establish extraordinary circumstances for what the Board [incorrectly] deemed was late intervention.[7]

As noted above, the Board's conclusion that Local Residents' petition was untimely is in error. Even if the Board, however, properly treated the Request for Extension of Certificates as something other than an application to amend a certificate—meaning that the deadlines for intervention ran from the filing of the original applications for siting certificates—the Board erred by concluding that the Local Residents' had not established "extraordinary circumstances" for their "late" intervention. If the Board (wrongly) adheres to its view that the Local Residents' Petition to Intervene was untimely, it should nevertheless reconsider its conclusion that the Local Residents failed to establish "extraordinary circumstances" for such late intervention in the context of these proceedings.

The first extraordinary circumstance that justifies intervention at this point in the proceedings is the fact that Applicants' requested extensions eliminate the General Assembly's command in R.C. 4906.06(A) that an "application shall be filed not more than five years prior to the planned date of commencement of construction." The granted extension will now cause the specter of this project to have been detrimentally affecting the Local Residents' property values and creating uncertainty for a period of more than ten years. See *In re Application of Lima Energy Co.,* Nos. 00-513-EL-BGN & 04-1011-EL-BGA, slip op. at 7, ¶8 (July 30, 2012) ("The purpose of the provision is to encourage the efficient use of land and to limit the applicant's ability to hold the rights to construct on the property indefinitely. Furthermore, it is important to

[7]In this regard, the Board merely stated: "Here, the petition of the Local Residents fails to demonstrate good cause to justify granting ***late intervention***." Entry at 11, ¶28 (emphasis added).

ensure that the information upon which the Board initially relied in granting the certificate is still valid and accurate.").

Second, the current setback requirements as enacted in Am.Sub.H.B. 483 did not exist during the earlier proceedings in these cases. Am.Sub.H.B. 483's setback provisions were effective September 15, 2014, and only the action of Applicants seeking an amendment to their certificates after that date—as they have done by requesting the extensions at issue herein—triggered application of those setbacks. To seek intervention prior to the filing of the Request For Extension of Certificates to address the new setback issue, before that issue was even presented to the Board by the filing of the current Request for Extension of Certificates, would have been nonsensical. The Board, in effect, is requiring proposed intervenors to seek intervention at the outset of a siting proceeding by anticipating future legislative changes (not yet existing) granting them rights to protect newly-recognized interests. If interested parties do not intervene at the inception a proceeding, then under the Board's standard set forth in its Entry, persons obtaining rights granted by the legislature after the case's commencement—such as the new setback protections that now apply in these proceedings as the result of Applicants filing their Request for Extension of Certificates herein—those parties that the legislature intended to protect are forever foreclosed from enforcing their rights before the Board..

Third, prior to the filing of the Applications to Amend and the Request for Extension of Certificates, Applicants' efforts to build the Combined Facility were opposed by Union Neighbors United, Inc. ("UNU"), intervenors in Applicants' 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 Combined Facility.[8] However, UNU has settled its disputes with Applicants, leaving the interests of the Local Residents unrepresented, and unprotected, in both these proceedings and the new proceedings on the Applications to Amend.

For all of these reasons, it would have made little sense for the Local Residents to seek intervention prior to Applicants' filing of the Request for Extension of Certificates and the pending Applications to Amend the Certificates in other respects. Together, these factors constitute extraordinary circumstances justifying the Local Residents' intervention at this time. The Board should, therefore, grant rehearing in these proceedings.

D. The Entry is unreasonable and unlawful because it illegally effects Applicants' evasion of the now-applicable setback requirements of R.C. 4906.20 and R.C. 4906.201.

The Board granted the requested extensions, but concluded "that the mere extension of the expiration date of a certificate does not constitute an amendment of the certificate as contemplated by R.C. 4906.06." Entry at 12, ¶30. Although the effect of the Entry is to amended a material term of both Certificates—the date by which Applicants must commence a continuous course of construction—the Board did not require the application of the setback requirements of R.C. 4906.20 and R.C. 4906.201 as enacted by Am.Sub.H.B. 483, apparently classifing that issue as "beyond the scope of these proceedings." Entry at 13, ¶31. Because the Board erred by not requiring the application of the new setback requirements, it should grant rehearing, follow the law enacted by the General Assembly, and require the Combined Facility to comply with R.C. 4906.20 and R.C. 4906.201.

[8] Indeed, the Board is to consider whether a proposed intervenor's interests already are adequately protected by an existing party to the proceeding before it decides to permit intervention. O.A.C. 4906-2-12(B)(1)(b).

The statutorily-mandated setback requirements are made applicable to the facility through Am.Sub.H.B. 483 (effective September 15, 2014). R.C. 4906.20 was amended 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).[9]

R.C. 4906.201 also was amended to expressly provide that Am.Sub.H.B. 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).

Any extension of Appellants' Certificates constitutes an amendment to those Certificates and the Board must follow the process for certificate amendments set forth in the Revised Code and this Board's rules. Moreover, because certificate extensions constitute amendments of the Certificates made after September 15, 2014, such extensions require application of the current

[9]The General Assembly had earlier increased the setback distance from 750 feet to 1,125 feet. R.C. 4906.20(B)(2) (as amended in Am.Sub.H.B. 59, effective Sep. 29, 2013).

setback requirements of R.C. 4906.20(B)(2)(a) & (b) and 4906.201(B)(2). Accordingly, any extension of Applicants' Certificates made after September 15, 2014 require each turbine to be setback at least 1,125 feet from the property line of the nearest adjacent (non-participating) property.

In its Entry, the Board has refused to apply current statutory setback requirements to Applicants' amended Certificates, stating that application of the statutorily-mandated setbacks "was beyond the scope of these proceedings." Entry at 13, ¶31. The Local Residents maintain that this ruling was in error. "***[A]ny*** amendment" made to a certificate after September 15, 2014 requires application of the current setbacks. Accordingly, the extensions granted by the Board require each turbine in Applicants' Combined Facility to be setback at least 1,125 feet from the property line of the nearest adjacent (non-participating) property.[10] The Board's failure to adhere to this command of the General Assembly must be corrected on rehearing.

E. The Entry is unreasonable and unlawful because Applicants have failed to show good cause for an extension of the Certificates.

Finally, in its Entry, the Board ruled that Applicants "have established good cause to the extend the end dates for the Buckeye 1 and Buckeye 2 projects from May 28, 2018 to May 28, 2019." Entry at 11, ¶29. The Board reasoned that "litigation both at the Supreme Court of Ohio and the United States Court of Appeals has created significant delays in [Applicants'] commencement of construction on these projects." *Id.* That conclusion is belied by the record in these proceedings. The record establishes that the bulk of the delay in Applicants' commencement of construction is a result of Applicants' own conduct and voluntary business

[10]As noted above, Applicants' "Constraints Map" submitted with the Applications to Amend depicts setbacks as short as 541 feet from adjacent property lines—less than half of the now-applicable statutory minimum.

decisions. The Board, therefore, erred in finding that Applicants established good cause for the requested extensions. It should now grant rehearing to correct that error.

In their Request for Extension of Certificates, Applicants recount the numerous changes they have made in the project since the Certificates were issued. For instance, Applicants acknowledge that they sought and were granted an amendment in 2014 to authorize the "sharing of the collection system between the Buckeye I Wind Project and the Buckeye II Wind Project, in addition to a shared substation and shared laydown yard." Request for Extension at 6. More recently, they submitted their Applications to Amend to "propose[ ] 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." Request for Extension at 7. These Applicant-initiated proposed amendments were not caused by protracted litigation.

And even now, Applicants acknowledge that "final designs for both Projects" are not expected to be completed until "the third quarter of 2018." Request for Extension at 8. More than nine years after filing its applications for this proposed project, Applicant is still tinkering with its design. That absurdly-long delay cannot be attributed to any action taken by the Local Residents or any other intervenors. The delay is of Applicants' own doing. Given that the bulk of any "delay" in the commencement of construction on these projects is due largely to Applicants' own conduct, Applicants have failed to show good cause for the requested extensions.

The Board's ruling completely obliterates the General Assembly's command in R.C. 4906.06(A) that an "application shall be filed not more than five years prior to the planned date of commencement of construction." As noted above, the original application for a certificate for Buckeye I was filed on April 24, 2009. The Board's Entry now allows Applicants' to delay

commencement of construction on the vastly changed project until May 28, 2019, more than ten full years after the filing of the original application. Clearly, the General Assembly did not intend the five-year time limit in R.C. 4906.06(A) be more than doubled with as scant of a showing of "good cause" as accepted by the Board in this case. The Board must, therefore, grant rehearing to reconsider the whether good cause justified the requested extensions herein.

III. CONCLUSION

For the foregoing reasons, the Local Residents respectfully urge the Board to grant the foregoing Application for Rehearing.

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 on 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 was served upon the following persons via email on June 6, 2018.

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