

ORIGINAL

IN THE SUPREME COURT OF OHIO

Champaign County and Goshen, )  
Union and Urbana Townships, )  
 )  
Appellants, )  
 )  
v. )  
 )  
Ohio Power Siting Board, )  
 )  
Appellee. )

Case No. 2014-1210

**On Appeal from the Ohio Power  
Siting Board, Case No. 13-360-EL-BGA**  
*In the Matter of the Application of Buckeye  
Wind, LLC, to Amend its Certificate Issued  
in Case No. 08-666-EL-BGN*

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**APPELLANTS CHAMPAIGN COUNTY AND GOSHEN, UNION AND URBANA  
TOWNSHIPS' MERIT BRIEF**

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## **I. STATEMENT OF FACTS AND PROCEEDINGS**

On March 19, 2013, Intervening Appellee Buckeye Wind, LLC (“Applicant”) filed an amendment to its Certificate of Environmental Compatibility and Public Need for the construction, operation and maintenance of a wind-powered electric generation facility in Champaign County (“Certificate”) previously granted March 10, 2010. The amendments were as follows: adjust the construction staging areas; move one staging area 1.3 miles west; shift the project substation by 1,000 feet; add a new access road; modify four previously approved access roads; and move the electric collection line system underground. Four Champaign County political subdivisions, consisting of the Champaign County Board of County Commissioners and Boards of Trustees of Goshen, Union, and Urbana Townships intervened in the amendment matter. The Administrative Law Judge’s (“ALJ”), by entry of November 21, 2013, found that only three proposed changes in the amendment application require a hearing under R.C. 4906.07(B), because they may result in a substantial change in the location of all or a portion of the facility: the movement of one staging area 1.3 miles west; shifting the project substation by 1,000 feet; and the addition of a new access road. Applicant withdrew one proposed change on December 16, 2013, being the movement of one staging area 1.3 miles west. An evidentiary hearing was held on January 6, 2014, on the two remaining amendments found by the ALJ to require a hearing. Although there were objections to the scope of the hearing, Appellee Ohio Power Siting Board (“OPSB”) thereafter approved all amendments to the Application on February 18, 2014. Appellant’s Application for Rehearing was also denied by Appellee OPSB with respect to the issues on appeal herein, by entry of May 19, 2014.

Appellants Champaign County and Goshen, Union and Urbana Townships (collectively "County and Townships") filed their notice of their appeal to the Ohio Supreme Court from the following attached orders of the OPSB in Case No. 13-360-EL-BGA ("Project Amendment"): (1) Opinion, Order and Certificate entered on February 18, 2014 ("Order of February 18, 2014"); and (2) Entry on Rehearing entered on May 19, 2014 ("Order of May 19, 2014").

As this is an appeal of an amendment to the first wind project within the state of Ohio approved by the OPSB, the County and Townships are collectively concerned with the Project Amendment's limited scope and the Appellee OPSB's failure to hold necessary hearings and to establish or modify conditions which are, in essence, commonplace in more recent cases.

## II. ARGUMENT

### STANDARD OF REVIEW:

R.C. §4903.13 provides that this Court will reverse, vacate, or modify any OPSB order that is unlawful or unreasonable. *R.C. § 4903.13*. A factual issue in an OPSB decision will be reversed if the appellant sustains its burden to demonstrate that the Board's factual determination was manifestly against the weight of the evidence and was so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. *Chester Twp. v. Power Siting Comm.* (1977), 49 Ohio St.2d 231, 361 N.E.2d 436. Furthermore, an order must show, "in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed . . . in reaching its conclusion." *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-

Ohio-990, 885 N.E.2d 195, ¶30 (referring to its review of a PUCO order under the same statute). A "legion of cases" establishes that the Board "abuses its discretion if it renders an opinion on an issue without record support." *Id.*

**FIRST PROPOSITION OF LAW:**

**The Board's approval of Applicant's amendments in its Order of February 18, 2014 and its Order of May 19, 2014, without holding a required hearing was unreasonable and unlawful, as such amendments would result in a material increase in the environmental impact of the facility or a substantial change in the location of all or a portion of such facility.**

There is very little guidance as to what would be considered a "material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility" for a wind project. *R.C. §4906.07(B)* However, this Court has given an example of what is not a material increase or a substantial change. In the decision in the appeal of the underlying Certificate, it was stated that, for an amendment, "surely not every issue (e.g., whether white or gray screws are used in the control room)" would be subject to hearing. *In re Application of Buckeye Wind, LLC, (2012) 131 Ohio St.3d 449, 457.* The amendments not heard by Appellee OPSB herein are not even remotely similar to the example provided by this Court. In fact, the subject amendments are very substantial changes to the facility and will have material increase on the impacts of the facility on Champaign County which were not foreseeable at the hearings on the original certificate application held in November 2009. Therefore, the ALJ's finding that three of the amendments did not require a hearing, and the approval of finding by Appellee OPSB, was manifestly against the weight of the evidence. Further, the Order of

the ALJ of November 21, 2013 and Appellee OPSB's Orders do not show in sufficient detail the facts in the record upon which the order is based and the reasoning followed.

Specifically, the adjustments to the construction staging areas for utilization of both Buckeye I (OPSB Case No. 08-0666-EL-BGN) and Buckeye II (OPSB Case No. 12-0160-EL-BGN) wind projects are significant changes in and may have a significant impact upon Champaign County due to traffic and road maintenance concerns. In utilizing the same staging areas for not one but two projects, essentially doubling the estimated turbines and construction traffic, there certainly are significant impacts which were not foreseeable in the approval of the original certificate or in the Buckeye II Wind Project and, therefore, could not be addressed at that time. This is the first time Applicant has indicated that Buckeye I and Buckeye II may be built at the same time. Further, this is the first time Applicant has stated anything other than Buckeye I and Buckeye II are separate and independent projects. It is certainly reasonable that there may be a material increase in the environmental impact on Champaign County as well as the facility if the construction staging area is used for both Buckeye I and Buckeye II and those impacts should be explored through hearing.

The burying of electric collection lines in the rights-of-way and relocation of two of four identified access roads which end at a right-of-way are significant changes and would have a material increase in the environmental impact of the facility as they will entail concerns with road use which should be agreed upon by the Applicant and Appellants County and Township and which was not addressed originally in the Buckeye I Wind Project. Unlike in the Buckeye II Wind Project and other projects subsequent to the Buckeye I Wind Project, there is no condition for the negotiation of a Road Use

Maintenance Agreement (“RUMA”) to the original Certificate. Certainly the manner in which access roads will abut the existing public rights-of-way is not addressed in the Certificate conditions and would materially increase the impact of the facility on Champaign County. Further, there are no requirements for burying the electrical collection lines in the rights-of-way set forth by Appellee OPSB including, but not limited to: the depth of such lines, the media in which the lines will be encased, emergency procedures, *etc.* Certainly, a RUMA would be the proper document to address these concerns. Although the Buckeye I Wind Project did not originally include a condition for a RUMA (as it was the first wind project in the State of Ohio and also the first wind project before the Appellee OPSB), a RUMA is a standard condition of subsequent projects and this oversight should be addressed at this time due to the nature of the amendments.

The comparison between the conditions set forth in Buckeye I and Buckeye II, which Appellants County and Townships have highlighted by the lack of RUMA in Buckeye I, reflects that conditions set forth in these Certificates are evolving over time. The arguments that were dismissed by Appellee OPSB in Buckeye I, such as a RUMA, were actually suggested by Appellee OPSB in Buckeye II. Therefore, Appellant County and Townships believe it would also be reasonable for Appellee OPSB to review all the conditions of the Certificate approved in 2010 for Buckeye I to ascertain if there were modifications necessary at the current time, with additional information gleaned and legislation enacted after the approval of Buckeye I in 2010. Further, due to the lack of now commonplace conditions such as the requirement of a RUMA, amendments to

Buckeye I would materially increase the environmental impacts of the facility on Champaign County.

**SECOND PROPOSITION OF LAW:**

**The Board's approval of the amendments in its Order of February 18, 2014 and its Order of May 19, 2014, without hearing was unreasonable and unlawful, as it denied Appellants County and Townships the only opportunity to be heard.**

Appellants County and Townships have pertinent information regarding the amendments not heard by Appellee OPSB. Certainly, due to these amendments, the Champaign County Sheriff and the Champaign County Engineer would have testimony regarding traffic safety and right-of-way concerns not present in the Project originally. Further, there are other township, county and city officials who would have relevant testimony regarding the significant positive and negative effects of the amendments not heard herein. Unfortunately, with the OPSB approving the amendments without hearing by its Order of February 18, 2014 and May 19, 2014, the Boards have been denied any opportunity to present evidence on such amendments and, therefore, have been denied due process.

One of the due process requirements recognized by this Court was the opportunity to confront and cross-examine witnesses, even before an administrative tribunal. See *Ohio Assn. of Pub. School Emp., AFSCME, AFL-CIO v. Lakewood City School Dist. Bd. of Edn.* (1994), 68 Ohio St.3d 175, 624 N.E.2d 1043. Both the Fourteenth Amendment of the Constitution and Section 16, Article I of the Ohio Constitution require that administrative proceedings comport with due process. See *Mathews v. Eldridge* (1976), 424 U.S. 319; *LTV Steel Co. v. Indus. Comm'n* (2000), 140 Ohio App.3d 680; *Egbert v.*

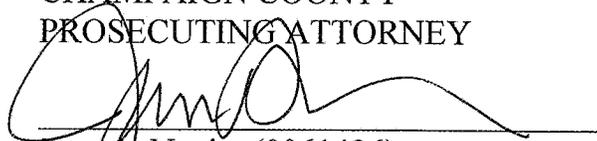
*Ohio Dep't of Agriculture* (2008), 2008-Ohio-5309. Basically, due process insists upon fundamental fairness, and a hearing implies that a fair hearing must occur. See *Lassiter v. Dep't of Social Serv.* (1981), 452 U.S. 18, 24; *Clayman v. State Med. Bd.* (1999), 133 Ohio App.3d 122, 127, citing *State ex rel. Ormet v. Ind. Comm'n* (1990), 54 Ohio St.3d 102, 104.

### III. CONCLUSION

Accordingly, Appellants County and Townships submit that Appellee OPSB's Orders of February 18, 2014 and May 19, 2014 are unlawful and unreasonable and should be reversed. This Honorable Court should remand the Orders to the Ohio Power Siting Board for further hearing to rectify the errors as identified herein.

Respectfully submitted,

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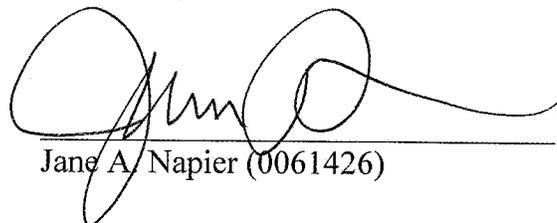
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BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of )  
Buckeye Wind LLC for an Amendment to )  
its Certificate to Install and Operate a ) Case No. 13-360-EL-BGA  
Wind-Powered Electric Generation Facility )  
in Hardin County, Ohio. )

ENTRY

The administrative law judge finds:

- (1) On March 10, 2010, the Board issued an Opinion, Order, and Certificate granting the application of Buckeye Wind LLC (Buckeye) for a certificate to construct a wind-powered electric generating facility in Champaign County, Ohio. *In re Buckeye Wind LLC*, Case No. 08-666-EL-BGN (*Buckeye I*). The Board granted Buckeye's application pursuant to a joint stipulation filed by Buckeye, the Ohio Farm Bureau Federation (OFBF), and the Staff which included 70 specific conditions.
- (2) On March 19, 2013, Buckeye filed an application to amend the certificate issued in *Buckeye I*. In its amendment application, Buckeye proposes the following six changes in the amendment application: adjust the construction staging areas; move one staging area 1.3 miles west; shift the project substation by 1,000 feet; add a new access road; modify four previously approved access roads; and move the electric collection line system underground.
- (3) R.C. 4906.07(B) provides that the Board shall hold a hearing on an application for an amendment of a certificate, if the proposed change would result in a material increase in any environmental impact of the facility, or a substantial change in the location of all or a portion of the facility. In conformance with this statutory provision, Ohio Adm.Code 4906-5-10(B)(1)(a) provides that the administrative law judge (ALJ) shall schedule a hearing in an amendment case, if the proposed change would result in any significant adverse environmental impact of the certified facility or a substantial change in the location of all or a portion of such certified facility.

- (4) Staff filed its investigative report (Staff Report) on November 1, 2013. In its report, Staff states it has reviewed the application and notes that Buckeye has proposed changes to the construction staging areas, project substation, access roads, and electric collection line system. Staff found that Buckeye is not proposing to relocate or add wind turbines under this proposed amendment. Staff recommends the Board find the proposed amendment to the Certificate poses minimal social and environmental impacts, provided that the amendment includes the following conditions:
- (a) Buckeye shall adhere to all conditions of the original certificate in *Buckeye I*;
  - (b) Buckeye shall construct the facilities as approved in *Buckeye I* and as further modified by the proposed amendment and replies to Staff data requests in this proceeding;
  - (c) Buckeye shall exercise reasonable efforts to coordinate activities at the western construction staging area with the city of Urbana in the event that the installation of the city's planned sewer line extension coincides with the installation of the western construction staging area; and
  - (d) Within six months of completing construction, Buckeye shall either communicate the location of the buried electric collection lines to the Ohio Utilities Protection Service or become a member of the Ohio Utilities Protection Service.
- (5) As stated previously, R.C. 4906.07(B) sets forth two separate and distinct reasons that would require the Board to hold a hearing on an amendment application. The first being that the proposed amendment would result in a material increase in any environmental impact of the facility. The ALJ finds that none of the six proposed changes in the amendment application would result in a material increase in any environmental impact of the facility. Therefore, R.C.

4906.07(B) does not require a hearing with regard to environmental impact of the facility, as amended.

The second reason necessitating a hearing is if there is a substantial change in the location of all or a portion of the facility. The ALJ finds that the following three proposed changes in the amendment application do not require a hearing under R.C. 4906.07(B), because they do not result in a substantial change in the location of all or a portion of the facility: adjustments to the construction staging areas; modifications to four previously approved access roads; and the movement of the electric collection line system underground. Therefore, R.C. 4906.07(B) does not require a hearing with regard to these three changes.

However, the ALJ finds that the following three proposed changes in the amendment application require a hearing under R.C. 4906.07(B), because they may result in a substantial change in the location of all or a portion of the facility: the movement of one staging area 1.3 miles west; shifting the project substation by 1,000 feet; and the addition of a new access road. Accordingly, a hearing should be held solely to consider the portion of the amendment application related to these three changes under the provision in R.C. 4906.07(B), which requires a hearing if there is a substantial change in the location of all or a portion of the certified facility.

- (6) In order to facilitate the Board's timely consideration of Buckeye's application, parties should adhere to the following procedural schedule:
  - (a) December 23, 2013 - Deadline for the filing of all direct testimony.
  - (b) The hearing shall commence on January 6, 2014, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio, Hearing Room 11-C, 180 E. Broad Street, Columbus, Ohio.
  - (c) Due to the limited scope of the hearing, the ALJ finds that no briefing schedule is necessary; however, at the close of the hearing,

parties will be permitted the opportunity to make oral closing statements.

- (7) In addition, given the limited scope of the hearing, the ALJ finds that the response time for discovery should be shortened to 10 calendar days. Discovery requests and replies shall be served by hand delivery, facsimile transmission, or electronic message, unless otherwise agreed to by the parties. An attorney serving a discovery request shall attempt to contact the attorney upon whom the discovery request will be served in advance to advise him/her that a request will be forthcoming, unless otherwise agreed by the parties. To the extent that a party has difficulty responding to a particular discovery request within the 10-day period, counsel for the parties should discuss the problem and work out a mutually satisfactory solution. In addition, the ALJ finds that any memorandum contra should be filed and served within eight calendar days of the filing of a motion and any reply to a memorandum contra should be filed and served within five calendar days of the filing of a memorandum contra.
- (8) On various dates, the Board of Commissioners of Champaign County (Champaign), Boards of Trustees of Union and Urbana townships, and the OFBF filed motions to intervene. No memoranda contra were filed in response to these motions to intervene. The ALJ finds that the motions to intervene filed by Champaign, Boards of Trustees of Union and Urbana townships, and the OFBF are reasonable and should be granted.
- (9) On March 27, 2013, the city of Urbana (Urbana) filed a petition for leave to intervene. In support of its motion to intervene, Urbana notes that Buckeye's application to amend would shift a construction staging area to a location that is more than a mile closer to the city's eastern corporation limit. Urbana asserts that the shift in the construction staging area would potentially interfere with the extension of a city sewer main to a nearby business. Urbana also claims that no other existing party adequately represents Urbana's interests in this matter, that its participation in this matter will allow the Board to reach a just and expeditious

resolution of this proceeding, and that granting its intervention will not create undue delay or prejudice.

- (10) On April 11, 2013, Buckeye filed a response to Urbana's petition to intervene. Buckeye asserts that the only issue raised by Urbana relates to the relocation of the western staging area and the potential sewer line extension or damage the sewer line once installed. Buckeye states that it is agreeable to Urbana's limited intervention in this proceeding so the parties can address Urbana's concerns; however, Buckeye does not believe Urbana's unlimited participation in this proceeding is warranted given the delays and duplicative issues the city's unlimited intervention could raise.
- (11) The ALJ agrees with Urbana that no other existing party adequately represents Urbana's interests in this matter, that its participation in this matter will allow the Board to reach a just and expeditious resolution of this proceeding and not create undue delay or prejudice. Accordingly, the ALJ finds that Urbana's motion to intervene is reasonable and should be granted.
- (12) On March 29, 2013, Diane McConnell, Robert McConnell and Julia Johnson (Petitioners) filed a petition for leave to intervene. Petitioners claim they have a direct and substantial interest in the proceeding due to the potential impacts of the wind project on their residences, land, roads, and community. In addition, Petitioners assert that the Board previously found they had a sufficient stake warranting intervention in both *Buckeye I* and in *In Re Champaign Wind, LLC*, Case No. 12-160-EL-BGN (*Buckeye II*). According to Petitioners, because Buckeye's amendment application involves requests to change locations and/or construct facilities in the projects areas for *Buckeye I* and *Buckeye II*, they have an equal interest in an amendment to the certificate that would authorize these projects.
- (13) On April 12, 2013, Buckeye filed a memorandum contra Petitioners' petition to intervene. Buckeye asserts that Petitioners' interests do not warrant intervention. Buckeye asserts that many of the changes involved with the amendment application, if approved, would be more

favorable to Petitioners, such as the location of the staging areas or traffic and road damage. Buckeye also claims that Champaign will adequately represent any concerns that Petitioners have about traffic delays and road damage. Buckeye also asserts that granting the intervention of Petitioners will add unnecessary delay and prejudice to this proceeding. On April 19, 2013, Petitioners filed a reply to Buckeye's memorandum contra.

- (14) Upon review, the ALJ finds good cause to grant the motion to intervene filed by Petitioners.
- (15) On February 6, 2013, as amended on March 15, 2013, Buckeye filed a motion for waivers of certain filing requirements contained in the Ohio Adm.Code.
- (16) On July 2, 2013, Staff filed a notice that, with the exception to the request for waiver of Ohio Adm.Code 4906-17-05(B)(5), it did not object to any of the requested waivers. However, Staff notes that it reserved the right to require information from Buckeye in areas covered by the requested waivers if Staff determines it to be necessary during the course of the investigation.
- (17) On July 18, 2013, Buckeye filed a notice of withdrawal of the request for waiver from Ohio Adm.Code 4906-17-05(B)(5).
- (18) On March 29, 2013, Champaign filed a memorandum contra to Buckeye's request for certain of the requested waivers. Champaign agrees with Buckeye that it should be granted waivers from the application requirements that are not applicable to the amendment proposed in this case, but disagrees with the extent of the waivers requested. Champaign contends that some of the amendments proposed in this case involve modifying the location of the current staging areas and shifting a large portion of the collection line system in order to utilize the facilities involved in *Buckeye II*. On March 29, 2013, Petitioners filed a memorandum in opposition to certain of the waivers sought by Buckeye. Buckeye filed a reply to the memoranda contra the motion for waivers filed by Champaign and Petitioners.
- (19) The Board has previously found that an intervenor in a Board proceeding lacks standing to oppose the grant or

denial of a waiver request, as that decision is in the sole discretion of the Board. *Buckeye I*, Entry (July 31, 2009) at 8. However, in *Buckeye I*, the Board acknowledged that it has been the Board's practice to consider an intervenor's arguments in opposition to a motion for waivers. *Id.* at 8-9. Accordingly, the ALJ will consider Petitioners' and Champaign's arguments in consideration of Buckeye's motion for waivers.

- (20) Buckeye first requests a waiver of Ohio Adm.Code 4906-17-02 that requires a summary and overview of the proposed project including a statement of the general purpose and description of the facility. Buckeye contends that information relating to the turbines and other facilities unrelated to the collection lines was previously reviewed by the Board in *Buckeye I*. As a result, Buckeye proposes that it not be required to provide the Board with information concerning the certificated facilities that are not related to the collection lines or other proposed changes. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-02.
- (21) Buckeye requests a waiver of Ohio Adm.Code 4906-17-03 that requires the applicant to submit detailed information on the type of wind turbines of the project, the number of turbines, capacity figures, land area requirements and a detailed project schedule. Buckeye similarly requests a waiver from the requirements of this rule that do not relate to the collection lines and other proposed changes in the project's design. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-03.
- (22) Buckeye requests a waiver from Ohio Adm.Code 4906-17-04 which relates to the selection of the project area for the wind generation facility. Buckeye claims that the information under this rule is not applicable, as siting of the project was completed and approved in *Buckeye I*. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-04.

- (23) Buckeye seeks a waiver of Ohio Adm.Code 4906-17-05 that requires the applicant to submit a wide range of information on the location for the facility including the features geology and hydrology of the project area site. According to Buckeye, it provided information required by the rule in *Buckeye I* and the proposed changes in the collection line system and access roads and relocation of the construction staging area and substation have little relevance to the information required by this subsection. However, Buckeye states that it will provide updated maps of the project area site and layout map, grade elevations, and information on how the proposed change in collection line design relates to the collection line system of the project.
- (24) The ALJ finds good cause to grant the motion for a waiver of Ohio Adm.Code 4906-17-05. As the memoranda contra and the motion waivers filed by Champaign and Petitioners only applied to Ohio Adm.Code 4906-17-05(B)(5) and that portion of Buckeye's waiver request has been withdrawn, the ALJ finds that the issues raised in the memoranda contra the motion for waiver of Ohio Adm.Code 4906-17-05 are moot.
- (25) Buckeye seeks a waiver of Ohio Adm.Code 4906-17-06 which requires the applicant submit financial information, capital costs and intangible costs, and operation and maintenance expenses. Buckeye states that it will provide a description of the current ownership of the project area, but good cause exists to support this waiver because the proposed collection line design modification and other proposed design changes have little to no impact on the overall capital cost of the project. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-06.
- (26) Buckeye seeks a waiver from Ohio Adm.Code 4906-17-07 which requires information to assess the environmental effects of the facility. Buckeye claims that the Board reviewed the environmental impact of the project in *Buckeye I* and the proposed design changes are discrete changes in the project design that have little relevance to the information required under this subsection. Petitioners object to Buckeye's motion for waiver from Ohio Adm.Code

4906-17-07. Petitioners state that, while they do not believe the amendment application needs to describe the environmental impacts of the portions for the project that will remain unchanged, the Board needs to examine the environmental impacts of the relocated changed elements of the facility, including a construction staging area, substation, and access roads. As to Petitioners opposition to Ohio Adm.Code 4906-17-07, Buckeye asserts that they only make the general statement that the environment impacts of the relocated elements of the project should be identified. Buckeye also claims the proposed changes in the amendment application will have minimal if any bearing on air emissions, water discharges, and solid waste generation, and that it addressed the design changes impact to surface waters and existing agricultural land in its application. The ALJ finds that the issues raised by the Petitioners regarding the environmental impacts of the amendment project are adequately addressed in the amendment application. Therefore, Buckeye's motion for a waiver of Ohio Adm.Code 4906-17-07 is warranted and should be granted.

- (27) Buckeye requests a waiver of Ohio Adm.Code 4906-17-08(A) which relates to health and safety issues. Buckeye contends that the waiver is warranted as it previously provided this information to the Board in *Buckeye I*. Buckeye also contends that none of the information required by this rule is relevant to the proposed changes to the project's design.
- (28) Champaign objects to a waiver from Ohio Adm.Code 4906-17-08(A)(2)(a). Champaign claims that noise levels in the proposed staging areas as well as along the new collection line routes and access roads during the construction phase should be important information needed for the determination of the Board. Petitioners also object to Buckeye's motion for waivers of Ohio Adm.Code 4906-17-08(A)(2)(a), (c), and (d). Petitioners state that these provisions require the applicant to describe the noise impacts of the project's construction activities on neighboring properties and describe noise-sensitive areas and mitigation measures that will be followed to reduce noise impacts. Petitioners assert that the proposed changes in the amendment application will produce noise and the Board should be informed about the actual noise impacts of

the changed and relocated facility components. Petitioners also object to the waiver from Ohio Adm.Code 4906-17-08(A)(3), as it requires the applicant to identify any impact to public and private water supplies from its activities and facility components and the Board needs to know if any of the proposed changes will affect nearby water supplies.

- (29) As to the Petitioners and Champaign's opposition to its motion for waiver from Ohio Adm.Code 4906-17-08(A)(2)(a), (c), and (d), Buckeye states that it supplied all of this information in its initial application in *Buckeye I* and the Board approved a certificate with conditions directed at these concerns. According to Buckeye, nothing in the amendment application changes the type of construction equipment described in the initial application or the general sound levels provided in the initial application. With regard to Petitioners' objection related to impact on nearby water supplies as a result of the design changes, Buckeye asserts that they have failed to provide any specific comments on how relocating construction lines, staging areas, a substation, and access roads will impact the private and public water supplies in the area. Buckeye asserts that it provided extensive information regarding its investigation of any impact the project would have on water supply in the area to the Board in *Buckeye I*, and nothing about the changes proposed in the amendment application warrant resubmittal of this information.
- (30) The ALJ agrees that the information necessary under Ohio Adm.Code 4906-17-08(A) was provided by Buckeye in its initial application in *Buckeye I* and the Board approved a certificate with conditions directed at these concerns. There is nothing in the amendment application that changes the type of construction equipment described in the initial application or the general sound levels provided in the initial application or the impact on water supplies. Therefore, good cause exists to warrant granting the motion for waiver of Ohio Adm.Code 4906-17-08(A)(2)(a), (c), and (d).
- (31) Buckeye requests a waiver of Ohio Adm.Code 4906-17-08(B) that requires information related to vegetation and animal life surveys with the facility's project area boundary in

*Buckeye I* and, given the close proximity of the relocated collection lines and staging areas to the prior locations, Buckeye requires that it not be required to provide survey information for both vegetation and animal life for the entire project area. Buckeye requests a waiver to provide survey information on the areas of the forest that will be temporarily disturbed, as well as a survey of the areas of scrub-shrub area that will experience a temporary disturbance with no permanent disturbance. Buckeye states that it proposes to submit the following information, including a map showing the information required under Ohio Adm.Code 4906-17-08(B)(1)(a): vegetation and animal life surveys in areas where the relocated collection lines are routing through forestland or scrub-shrub a summary of stream crossing and wetland delineation studies; and a list of major species from the surveys and an estimate on the impact of construction of the relocated collection lines, staging areas, access roads, and substation. Buckeye also requests a waiver from the requirement of Ohio Adm.Code 4906-17-08(B)(3) because this rule addresses the impact of operation which is more relevant to the operation of the turbines, and not the buried collection lines access roads, staging areas, and substation. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-08(B)(3).

- (32) Buckeye requests a waiver from Ohio Adm.Code 4906-17-08(C) which requires the applicant to provide information on land uses within five miles of the facility, the number of residential facilities within 1,000 feet of the facility boundary, turbines, setbacks, land use impacts, structures to be removed and relocation and plans for the future use of the site, and economic impact. Buckeye states that it provided this information to the Board in *Buckeye I* and the information will be unchanged by the proposed collection line redesign, the relocation of the staging areas, and other proposed changes.
- (33) Champaign objects to the request for a waiver of Ohio Adm.Code 4906-17-08(C)(3). Champaign states that the probable impact of the construction of the project on public services and facilities is an essential factor in the Board's

determination in this case. Champaign disagrees with Buckeye's assertions that the information has previously been provided in *Buckeye I*. Champaign claims the cumulative impact may be different than previously provided in *Buckeye I* and *Buckeye II*.

- (34) Because the cumulative impact of *Buckeye I* and *Buckeye II* projects is not at issue in the amendment application, the ALJ finds no merit to Champaign's objections and finds good cause to grant the waiver of Ohio Adm.Code 4906-17-08(C).
- (35) Buckeye seeks a waiver from Ohio Adm.Code 4906-17-08(D) which requires the applicant to submit general information regarding the cultural impact of the facility. Buckeye states that it provided this information to the Board in *Buckeye I*. Buckeye proposes that, given the limited nature of the design changes, the requirements of subsection Ohio Adm.Code 4906-17-08(D) be waived, with the exception that Buckeye be required to provide a map in accordance with Ohio Adm.Code 4906-17-08(D)(1) and estimate the impact of the collection line redesign and relocation of the construction staging areas, access roads, and substation on the landmarks set forth in the map. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-08(D).
- (36) Buckeye requests a waiver from Ohio Adm.Code 4906-17-08(E) that requires information regarding public interaction programs, insurance, radio and television interference, military radar interference, the impact on roads and bridges, and the decommissioning plan for the facility. Buckeye states that it is not proposing to modify its certificate in regard to any condition of these topics, and the proposed change in collection line design and the other design changes have minimal bearing on the information required by this rule.
- (37) Champaign objects to the waiver of Ohio Adm.Code 4906-17-08(E)(1), (2), (5), and (6). Champaign claims that this information is critical in order for Buckeye to set forth the necessary modifications to its public information programs

and insurance protection, as well as the anticipated impact to roads, bridges, and decommissioning plans due to the proposed amendments.

- (38) The ALJ finds that, because the application is not proposing to modify the existing certificate of *Buckeye I* related to public interaction programs, insurance, radio and television interference, military radar interference, the impact on roads and bridges, and the decommissioning plan for the facility, good cause exists to grant the requested waiver of Ohio Adm.Code 4906-17-08(E)(1), (2), (5), and (6).
- (39) Buckeye seeks a waiver from Ohio Adm.Code 4906-17-08(F), that requires the applicant to provide the Board with information regarding the facility's impact on agricultural land. Buckeye states that it provided this information to the Board in *Buckeye I* and it seeks a waiver so that it would only provide information relating to the collection line redesign and the relocation of the construction staging area, access roads, and substation. There were no objections to the motion for waiver of this rule. The ALJ finds that good cause exists to warrant granting Buckeye's motion for waiver of Ohio Adm.Code 4906-17-08(F).
- (40) The ALJ wishes to clarify that, although he is willing to grant the requested waivers, this does not preclude Staff or the Board from requesting the waived information, and Buckeye must provide to Staff and the Board any and all waived information requested in this proceeding.

It is, therefore,

ORDERED, That the procedural schedule for this proceeding be adopted as set forth in finding (6). It is, further,

ORDERED, That the procedures set forth in finding (7) be adhered to. It is, further,

ORDERED, That the motions to intervene filed by the Board of Commissioners of Champaign County, Boards of Trustees of Union and Urbana townships, the city of Urbana, the Ohio Farm Bureau Federation, Diane McConnell, Robert McConnell and Julia Johnson are granted. It is, further,

ORDERED, That Buckeye's motion for waivers filed on February 6, 2013, as amended on March 15, 2013, be granted. It is, further,

ORDERED, That a copy of this entry be served upon all interested persons of record.

THE OHIO POWER SITING BOARD

s/Scott Farkas

By: Scott E. Farkas  
Attorney Examiner

CMTP/sc

**This foregoing document was electronically filed with the Public Utilities**

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**11/21/2013 8:15:02 AM**

**in**

**Case No(s). 13-0360-EL-BGA**

**Summary: Administrative Law Judge Entry orders a procedural schedule, grants motions to intervene filed by the Board of Commissioners of Champaign County, Boards of Trustees of Union and Urbana townships, the city of Urbana, the Ohio Farm Bureau Federation, Diane McConnell, Robert McConnell & Julia Johnson, and grants Buckeye's motion for waivers filed on 02/06/2013, as amended on 03/15/2013. - electronically filed by Sandra Coffey on behalf of Scott Farkas, Attorney Examiner, Public Utilities Commission of Ohio**

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Buckeye )  
Wind, LLC, to Amend its Certificate Issued ) Case No. 13-360-EL-BGA  
in Case No. 08-666-EL-BGN. )

ORDER ON CERTIFICATE AMENDMENT

The Ohio Power Siting Board, coming now to consider the above-entitled matter, having appointed an administrative law judge (ALJ) to conduct the hearing, having reviewed the exhibits introduced into evidence, and being otherwise fully advised, hereby issues its Order on Certificate Amendment in accordance with R.C. Chapter 4906.

APPEARANCES:

Vorys, Sater, Seymour and Pease LLP, by M. Howard Petricoff, Michael J. Settineri, and Miranda R. Leppla, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008, on behalf of Buckeye Wind, LLC.

Mike DeWine, Ohio Attorney General, Werner Margard and John H. Jones, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215, and Sarah Anderson and Summer Plantz, Assistant Attorneys General, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215, on behalf of Staff.

Van Kley & Walker, LLC, by Jack A. Van Kley, 132 Northwoods Blvd., Suite C-1, Columbus, Ohio 43235 and by Christopher A. Walker, 137 North Main Street, Suite 316, Dayton, Ohio 45402, on behalf of Diane McConnell, Robert McConnell, and Julia F. Johnson.

Kevin S. Talebi and Jane A. Napier, Assistant Prosecuting Attorneys, 200 North Main Street, Urbana, Ohio 43078, on behalf of Champaign County Board of Commissioners, and Union and Urbana Township Boards of Trustees.

Breanne Parcels, 205 South Main Street, Urbana, Ohio 43078, on behalf of the city of Urbana.

Chad A. Endsley, Chief Legal Counsel, 280 North High Street, P.O. Box 182383, Columbus, Ohio 43215-2383, on behalf of the Ohio Farm Bureau Federation.

OPINION:I. Summary of the Proceeding

On March 22, 2006, the Board issued an Opinion, Order, and Certificate granting the application of Buckeye Wind, LLC (Buckeye or Applicant) for a certificate to construct a wind-powered electric generating facility in Champaign County, Ohio. *In re Buckeye Wind, LLC*, Case No. 08-666-EL-BGN (*Buckeye I*). On May 28, 2013, the Board issued an Opinion, Order, and Certificate granting the application of Champaign Wind, LLC for a certificate to construct a wind-powered electric generating facility in Champaign County, Ohio. *In re Champaign Wind LLC*, Case No. 12-160-EL-BGN (*Buckeye II*).

On March 19, 2013, Buckeye filed an application to amend the certificate issued in *Buckeye I*. In its amendment application, Buckeye proposes six changes to the certificate issued by the Board in *Buckeye I* including: adjusting the construction staging areas; moving one staging area 1.3 miles west; shifting the project substation by 1,000 feet; adding a new access road; modifying four previously approved access roads; and moving the electric collection line system underground. On February 6, 2013, as amended on March 15 and 19, 2013, Buckeye filed a motion for waivers of Ohio Adm.Code 4906-17-02, 03, 04, 05, 06, 07, 08(A), 08(B), 08(C), 08(D), 08(E), 08(F).

On March 22, 2013, Buckeye filed proof of service with the Board indicating that copies of the amendment application had been served upon local government officials and an area library, in accordance with R.C. 4906.06 and Ohio Adm.Code 4906-5-10(B). On May 16, 2013, Buckeye filed proof of public notice of the amendment application that was published in Champaign County on April 1, 2013, in the *Urbana Daily Citizen*. On November 1, 2013, Staff filed a report (Staff Report) evaluating the amendment application (Staff Ex. 1).

By Entry issued November 21, 2013, the ALJ found that none of the six proposed changes in the amendment application would result in a material increase in any environmental impact of the facility. The ALJ also found that the following three proposed changes in the amendment application did not require a hearing under R.C. 4906.07(B), because they did not result in a substantial change in the location of all or a portion of the facility: adjustments to the construction staging areas; modifications to four previously approved access roads; and the movement of the electric collection line system underground. However, the ALJ found that the changes in the amendment application relating to the movement of one staging area 1.3 miles west, shifting the project substation by 1,000 feet, and the addition of a new access road, required a hearing under R.C.

4906.07(B), because they may result in a substantial change in the location of all or a portion of the facility. Therefore, the ALJ scheduled a hearing on January 6, 2014, solely to consider the portion of the amendment application related to the movement of one staging area 1.3 miles west, shifting the project substation by 1,000 feet, and the addition of a new access road. The November 21, 2013 Entry also granted the motions to intervene filed by the Board of Commissioners of Champaign County (Champaign), Boards of Trustees of Union and Urbana townships (Townships), the Ohio Farm Bureau Federation (Farm Federation), city of Urbana (Urbana), and Diane McConnell, Robert McConnell, and Julia Johnson (Citizen Intervenors), and granted Buckeye's motion for waivers of Ohio Adm.Code 4906-17-02, 03, 04, 05, 06, 07, 08(A), 08(B), 08(C), 08(D), 08(E), 08(F).

On December 16, 2013, Buckeye filed a notice of withdrawal of its request to shift the western construction staging area as proposed in its amendment application. On December 23, 2013, Urbana filed a response to Buckeye's notice of withdrawal of its request to shift the western construction staging area. Urbana noted that, given Buckeye's withdrawal of the portion of its amendment application for the relocation of the western construction staging area, which was its principal reason for intervening in this case, Urbana had no other issues to address at the hearing.

On December 23, 2013, Staff filed the testimony of Stuart M. Siegfried and the Applicant filed the testimony of Michael Speerschneider. No other parties filed testimony. The hearing was held as scheduled on January 6, 2014.

## II. Applicable Law

Buckeye is a corporation and a person under R.C. 4906.01(A) and is certificated to construct, operate, and maintain a major utility facility under R.C. 4906.10, in accordance with the Board's Order in *Buckeye I*.

Pursuant to R.C. 4906.10, the Board's authority applies to major utility facilities and provides that such entities must be certified by the Board prior to commencing construction of a facility. In accordance with R.C. Chapter 4906, the Board promulgated rules, which are set forth in Ohio Adm.Code Chapter 4906-5, prescribing regulations regarding applications for major utility facilities and amendments to certificates.

R.C. 4906.07 requires that, when considering an application for amendment of a certificate, the Board shall hold a hearing "if the proposed change in the facility 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 other than as provided in the alternates set forth in the application." In conformance with this statutory provision, Ohio

Adm.Code 4906-5-10(B)(1)(a) provides that the ALJ shall schedule a hearing in an amendment case, if the proposed change would result in any significant adverse environmental impact of the certified facility or a substantial change in the location of all or a portion of such certified facility. An applicant is required to provide notice of its application for amendment in accordance with R.C. 4906.06(B) and (C), and Ohio Adm.Code 4906-5-10(B).

By Entry of November 21, 2013, the ALJ found that none of the six proposed changes in the amendment application would result in a material increase in any environmental impact of the facility. The ALJ also found that the portions of the amendment application related to the construction staging areas, modifications to four previously approved access roads, and the movement of the electric collection line system underground did not require a hearing under R.C. 4906.07(B), because they did not result in a substantial change in the location of all or a portion of the facility.

However, the ALJ found that the three remaining proposed changes in the amendment application required a hearing under R.C. 4906.07(B), because they may result in a substantial change in the location of all or a portion of the facility including: the movement of one staging area 1.3 miles west, shifting the project substation by 1,000 feet, and the addition of a new access road. In accordance with these findings, the ALJ scheduled a hearing on January 6, 2014, solely to consider the portion of the amendment application related to these three changes under the provision in R.C. 4906.07(B).

### III. Hearing

At the commencement of the January 6, 2014 hearing, the Citizen Intervenors entered an objection to the scope of the hearing and moved to allow questions regarding the portion of the amendment application that includes the relocation and burial of the electrical lines. The Applicant opposed the motion. While noting that the Citizen Intervenors failed to file an interlocutory appeal of the November 21, 2013 Entry that established the scope of the hearing, the ALJ denied the motion. At the hearing, Michael Speerschneider testified on behalf of the Applicant and Stuart Siegfried testified on behalf of Staff. No other witnesses testified on behalf of any parties.

Michael Speerschneider, chief permitting and public policy officer for EverPower Wind Holdings, Inc., and an officer of Buckeye, described the proposed amendments to the certificate issued in *Buckeye I* including, the collection line system, the location and size of three construction staging areas, the location of four access roads, the addition of a new access road, and the location of the project substation. He explained that the proposed amendment will result in significantly less impact on the environment and the local

community, primarily as a result of eliminating overhead collection lines in favor of underground lines. He also noted that another benefit of the proposed design is that the majority of the collection line system, all staging areas, and the substation will now share the same locations as the collection line system, staging areas and substation approved in *Buckeye II*. Mr. Speerschneider indicated that the new access road will be an improvement to the overall design because it will allow for a direct route from another nearby construction staging area for four other turbines. He also claimed that the new access road will not create any environmental concerns. With respect to the substation location, he explained that, if the amendment is approved, the current location for the *Buckeye I* substation will be abandoned and the substation will be placed in the same location as the *Buckeye II* substation and avoid the impacts of two substations. (Buckeye Ex. 1 at 2-5.)

Staff witness Stuart Siegfried explained that his testimony is limited to only the shifting the project substation by 1,000 feet and the addition of a new access road, because the Applicant had withdrawn the portion of the application that proposed the movement of one staging area 1.3 miles west. Mr. Siegfried indicated that no other Staff analysis was needed with respect to the movement of the substation because the substation approved by the Board in *Buckeye I* will be eliminated and the remaining substation will be constructed on the location already analyzed by Staff and approved by the Board in *Buckeye II*. (Staff Ex. 2 at 4.) Mr. Siegfried stated that the new access road will be approximately 2,600 feet in length with a permanent disturbance of 20 feet. Mr. Siegfried also referenced the application noting that the new access road will reduce construction related traffic on a public road. (Staff Ex. 2 at 6.)

#### IV. Staff Investigation of Proposed Amendment

With its amendment, the Applicant is proposing to modify certain components of the wind farm previously certified in *Buckeye I*, including changes to the construction staging areas, project substation, access roads, and the electric collection line system. The Applicant is not proposing to relocate or add wind turbines under this proposed amendment. (Buckeye Ex. 2 at 2; Staff Ex. 1 at 1-2.)

In its report of investigation, Staff found that, with this amendment, the Applicant is proposing to adjust the sizes and locations of three construction staging areas, which are identical to those approved by the Board in *Buckeye II*. The Applicant initially proposed to move the western staging area 1.3 miles west of its initial location to a parcel that the Applicant indicates it controls. The portion of the amendment application related to the shift of the western staging area was later withdrawn by the Applicant. (Buckeye 1 at 5, 11; Staff Ex. 1 at 2-3.) Staff also noted that the eastern and southern staging areas are proposed to be relocated at the request of the landowners within the same parcels as

initially planned and would allow it to use the same staging areas for both the *Buckeye I* and *Buckeye II* projects. Staff did not conduct an additional analysis of the proposed staging areas in this amendment proceeding. (Buckeye Ex. 2 at 7; Staff Ex. 1 at 2.)

Staff reported that the Applicant has proposed to move the project substation within the same parcel as initially approved. The amendment related to the proposed move of the substation would entail the temporary disturbance of approximately five acres, with permanent disturbance estimated at 1.75 acres. The Applicant indicated that the proposed change to the substation location would allow it to use the same substation for both *Buckeye I* and *Buckeye II* projects. The size and location of the amended substation area are identical to those approved by the Board in *Buckeye II*. Because the size and location of this project component has been previously approved by the Board and, therefore, found to have been reasonable, Staff did not conduct an additional analysis of the proposed substation location in this amendment proceeding. (Buckeye Ex. 2 at 6; Staff Ex. 1 at 3.)

The Applicant is also proposing a new access road, as well as relocations of four previously approved access roads. These amendments would entail a permanent disturbance 20 feet in width, while temporary disturbance would typically include vegetation clearing to a width of 55 feet. Staff found that these disturbance parameters are consistent with those from the initial application. (Staff Ex. 1 at 3.)

In addition, the Applicant is proposing to relocate four access roads from their previously approved locations. The Applicant indicated that the proposed relocated access roads are all located in farm fields, with no tree clearing required. First, the Applicant proposes to shift the access road to Turbine 40, which is approximately 1,000 feet in length, approximately 750 feet to the west. Staff found that this new route, which would parallel the original route, would be further from a wetland and follow a relocated collection line route. Second, the Applicant is proposing to relocate the north-to-south access road to Turbine 36 at the landowner's request. Staff found that the shift is approximately 500 feet east of its approved location and would follow a relocated collection line. A third proposed change would extend one of the relocated access roads east-west approximately 2,100 feet between Ault Road and Turbine 44. Staff noted that this modification would avoid a stream crossing consistent with a suggestion made by Staff during a field investigation for *Buckeye I*. The fourth proposed modification would shift approximately 625 feet of the access road that extends from United States (U.S.) Highway 36 to Turbine 21 approximately 470 feet to the east, so that it is within the same parcel as the eastern construction staging area. According to Staff, this proposed shift would move the access road's connection to U.S. Highway 36, so that it is no longer directly in front of a residence. (Buckeye Ex. 2 at 6; Staff Ex. 1 at 3-4.)

Under the amendment application, the Applicant has also proposed the construction of a new access road running north and south between Turbines 16 and 18. Staff found that this new access road reduces the need to use Perry Road and instead follows an approved collection line route. Staff determined that, although located largely in an active agricultural field, the Applicant estimates that the new access road would have temporary impacts to forested areas of 0.14 acres and would require a stream crossing near Turbine 18; however, a crossing structure is already in place at that location. (Buckeye Ex. 2 at 6-8; Staff Ex. 1 at 3-4.)

Staff explained that, as initially proposed, the electric collection system would have been approximately 65.4 miles of which approximately 40 miles would have been overhead lines. As proposed with this amendment, Staff notes that the electric collection system would total 41.1 miles all of which would be installed underground on parcels of participating landowners. Of the 41.1 miles, Staff determined that there are 7.32 miles that were not reviewed and approved in *Buckeye I* or *Buckeye II*. As a result, Staff focused its review in this proceeding on the 7.32 miles of new collection line routing. According to Staff, the Applicant is proposing to use direct burial methods, such as with the use of a cable plow or trencher, to install the electric collection line in most areas and open trenches for installation in areas where the direct burial methods may not be as appropriate. Other installation techniques may be used in certain locations to facilitate the avoidance of specific resources. The 7.32 miles of relocated electric collection system would involve the crossing of three streams, two wetlands, and three roads. Staff also noted that the Applicant intends to install the collection line at these three road crossings using directional drilling and that, as such, any direct impacts to the road at the crossing locations would be avoided. (Buckeye Ex. 2 at 5; Staff Ex. 1 at 4-5.)

Staff recommended the Board find the proposed amendment to the Certificate poses minimal social and environmental impacts, provided that the amendment includes the following recommended conditions:

- (1) The Applicant shall adhere to all conditions of the original certificate for *Buckeye I*.
- (2) The Applicant shall construct the facility as approved in *Buckeye I*, and as further modified by the proposed amendment and replies to Staff data requests in this proceeding.
- (3) Within six months of completing construction, the Applicant shall either communicate the location of the buried electric

collection lines to the Ohio Utilities Protection Service (OUPS) or become a member of the OUPS.

(Staff Ex. 1 at 7.)<sup>1</sup>

#### V. Conclusion

As noted previously, R.C. 4906.07(B) requires that, when considering an application for amendment of a certificate, the Board shall hold a hearing if the proposed change in the facility would result in:

1. any material increase in any environmental impact of the facility, or
2. a substantial change in the location of all or a portion of such facility.

In conformance with this statutory provision, Ohio Adm.Code 4906-5-10(B)(1)(a) provides that a hearing shall be scheduled in an amendment case, if the proposed change would result in any significant adverse environmental impact of the certified facility or a substantial change in the location of all or a portion of such certified facility. Under the amendment application, the Applicant proposed changes to four project components, including the construction staging areas, project substation, access roads, and the electric collection line system. No changes are proposed to relocate or add wind turbines.

With regard to the first of the two criteria requiring a hearing in an amendment application, upon review of the amendment application and the evidence of record, we find that none of the proposed changes in the application would result in a material increase in any environmental impact of the facility. Therefore, the Board finds that a hearing to consider the first criteria was not required pursuant to R.C. 4906.07(B).

Turning to the second of the two criteria, the Board finds that the portions of the amendment application regarding adjustments to the construction staging areas, modifications to four previously approved access roads, and the movement of the electric collection line system underground did not require a hearing under R.C. 4906.07(B), because they did not result in a substantial change in the location of all or a portion of the facility. However, because the portions of the amendment application related to shifting the project substation by 1,000 feet and the addition of a new access road of approximately

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<sup>1</sup> In the Staff Report, Staff initially recommended a condition addressing the shift of the western staging area proposed in the amendment application. This condition was no longer applicable following Buckeye's withdrawal of that portion of its amendment application.

2,600 feet in length may result in a substantial change in the location of all of a portion of the facility, we find that a hearing was required under R.C. 4906.07(B). As such, a hearing was appropriately held on these portions of the amendment application.

In considering the portion of the amendment application that was the subject of the hearing because it would result in a substantial change, as noted previously, the record reflects that the adjustments to the sizes and locations of the eastern and southern staging areas were proposed at the request of the landowners within the same parcels as initially planned (Buckeye Ex. 2 at 7; Staff Ex. 1 at 2). Also, the proposed changes to the construction staging areas would allow Buckeye to use the same staging areas for both the *Buckeye I* and *Buckeye II* projects which we have previously determined reasonable and approved (Buckeye Ex. 2 at 7; Staff Ex. 1 at 2). In addition, the Applicant will no longer use the project substation initially planned for *Buckeye I* and, instead, will use the substation approved by the Board in *Buckeye II*. As a result, the Applicant will use the same substation for both the *Buckeye I* and *Buckeye II* projects, effectively eliminating a substation (Buckeye Ex. 1 at 2-5). Further, the modifications to four previously approved access roads will all be located in farm fields and will require no tree clearing. The modifications to two access roads will now follow relocated collection lines, one access road will avoid a stream crossing, and another access road will avoid being placed directly in front of a residence. The additional new access road proposed in the application reduces the need to use Perry Road and, instead, follows an approved collection line route. (Buckeye Ex. 2 at 6; Staff Ex. 1 at 3-4.) No issues were raised at the hearing regarding these portions of the amendment application.

As for the remainder of the amendment application that was not within the scope of the January 6, 2014 hearing, a portion of this relates to the electric collection line system. The record reflects that approximately 40 miles of the total 65.4 miles of the electric collection line system originally approved to be overhead is now proposed to be placed underground. In addition, all of the 41.1 miles will be installed on parcels of participating landowners. Of the 41.1 miles, Staff determined that there were 7.32 miles that had not previously been reviewed and approved in *Buckeye I* or *Buckeye II*. In order to avoid specific resources, the Applicant proposes to use direct burial methods to install the electric collection line in most areas or open trenches where the direct burial methods may not be as appropriate, as well as other installation techniques. In addition, the Applicant intends to install the collection lines for the 7.32 miles using directional drilling at three road crossings which will avoid any direct impacts to the road at the crossing locations (Buckeye Ex. 2 at 5; Staff Ex. 1 at 4-5.)

We note that the ALJ denied the motion of the Citizen Intervenors at the commencement of the hearing to expand the scope of the hearing. Specifically, while

expressing agreement with Staff's finding that the applicant use directional drilling on the 7.32 miles of the electrical system, the Citizen Intervenors also sought to expand the hearing because they wanted to make sure that the decision of this Board required directional drilling be done for the entire length of the electrical lines. "Now, we are not as much concerned about the locations of the lines as we are about whether the installation of those lines is going to cut through the roads in the community. We have a commitment from the applicant in response to the Staff's data requests that the 6.3 miles of line in brand-new locations will use horizontal directional drilling to go under the roads instead of cutting through them. "We want to make sure that the decision of this Board requires directional drilling to be done of that extra 24 miles of electrical lines as well the 6.35 miles that the Applicant's already committed to use directional drilling for." (Tr. at 9). The Citizen Intervenors made no argument that the location of the electrical collection system required a hearing in accordance with R.C. 4906.07(B). It is clear that the Citizen Intervenors merely wanted to ensure that directional drilling was used for burying the electrical lines. It is noteworthy that the Citizen Intervenors never filed an interlocutory appeal of the November 21, 2013 ALJ Entry; rather, they made an untimely motion for the same relief at the commencement of the hearing. Notwithstanding the merits of this procedural blemish, we agree with the ruling of the ALJ that R.C. 4906.07(B) does not require that the scope of the hearing include consideration of the Citizen Intervenors' issue regarding the utilization of directional drilling. Moreover, while not raised as an issue by the Citizen Intervenors, we find that the movement of the electrical system at the same location, from above ground to underground, does not result in a substantial change in the location of all or a portion of the facility previously approved by the Board. Therefore, there was no statutory requirement under R.C. 4906.07(B) to hold a hearing on this portion of the amendment application.

Based upon the record in this proceeding, the Board concludes that, pursuant to R.C. Chapter 4906, Buckeye's amendment application should be approved, subject to the conditions set forth in *Buckeye I* and the Staff Report. Accordingly, Buckeye's certificate, issued in *Buckeye I*, should be amended to provide for adjusting the construction staging areas, shifting the project substation by 1,000 feet, adding a new access road, modifying four previously approved access roads, and moving the electric collection line system underground.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Buckeye is a corporation and a person under R.C. 4906.01(A).
- (2) Buckeye's electric generation facility is a major utility facility under R.C. 4906.01(B)(1).

- (3) On March 19, 2013, Buckeye filed an application in this proceeding to amend the certificate issued in *Buckeye I*.
- (4) The proposed amendment would involve adjusting the construction staging areas, shifting the project substation by 1,000 feet, adding a new access road, modifying four previously approved access roads, and moving the electric collection line system underground.
- (5) In accordance with R.C. 4906.06 and Ohio Adm.Code 4906-5-10(B), Buckeye served copies of the amendment application upon local government officials and a public library and filed its proof of service on March 22, 2013. Public notice of the proposed amendment was also published in Champaign County, Ohio and filed with the Board on May 16, 2013.
- (6) On November 1, 2013, Staff filed a report evaluating the amendment application.
- (7) By Entry issued November 21, 2013, the ALJ found that none of the six proposed changes in the amendment application would result in a material increase in any environmental impact of the facility. The ALJ also found that the following three proposed changes in the amendment application did not require a hearing under R.C. 4906.07(B), because they did not result in a substantial change in the location of all or a portion of the facility: adjustments to the construction staging areas; modifications to four previously approved access roads; and the movement of the electric collection line system underground. However, the ALJ found that the changes in the amendment application relating to the movement of one staging area 1.3 miles west, shifting the project substation by 1,000 feet, and the addition of a new access road, required a hearing under R.C. 4906.07(B), because they may result in a substantial change in the location of all or a portion of the facility.
- (8) Champaign, Townships, Farm Federation, Urbana, and the Citizen Intervenors were granted intervention in this proceeding.

- (9) By Entry issued November 21, 2013, the ALJ granted Buckeye's motion for waivers of Ohio Adm.Code 4906-17-02, 03, 04, 05, 06, 07, 08(A), 08(B), 08(C), 08(D), 08(E), 08(F).
- (10) On December 13, 2013, Buckeye filed a notice of withdrawal of its request to shift the western construction staging area.
- (11) On December 23, 2013, Urbana filed a response to Buckeye's withdrawal of its request to shift the western construction staging area and noted that it had no other issues to address at the hearing.
- (12) An evidentiary hearing was held on January 6, 2014, to consider the portion of the amendment application related to shifting the project substation by 1,000 feet, and the addition of a new access road.
- (13) The basis of need criteria in R.C. 4906.10(A)(1) is not applicable to this case. The application satisfies the criteria in R.C. 4606.10(A)(2) through (8).
- (14) Based on the record, in accordance with R.C. Chapter 4906, the certificate of environmental compatibility and public need for Buckeye's electric generation facility, issued in *Buckeye I*, should be amended to permit: adjusting the construction staging areas; adding a new access road; modifying four previously approved access roads; and moving the electric collection line system underground, subject to the conditions set forth in *Buckeye I* and this Order.

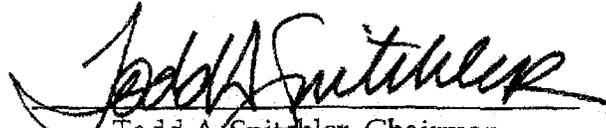
ORDER:

It is, therefore,

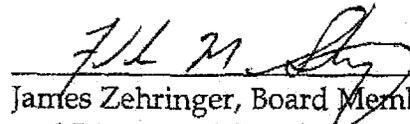
ORDERED, That Buckeye's amendment application be approved, subject to the conditions set forth in *Buckeye I* and this Order. It is, further,

ORDERED, That a copy of this Order on Certificate Amendment be served upon all interested persons of record.

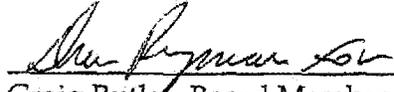
THE OHIO POWER SITING BOARD

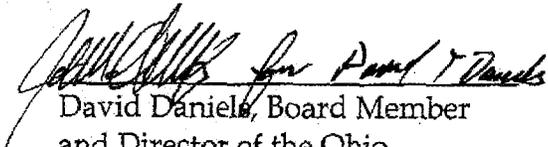
  
Todd A. Snitchler, Chairman  
Public Utilities Commission of Ohio

  
David Goodman, Board Member  
and Director of the Ohio  
Development Services Agency

  
James Zehringer, Board Member  
and Director of the Ohio  
Department of Natural Resources

  
Theodore Wymyslo, Board  
Member and Director of the  
Ohio Department of Health

  
Craig Butler, Board Member  
and Interim Director of the Ohio  
Environmental Protection Agency

  
David Daniels, Board Member  
and Director of the Ohio  
Department of Agriculture

  
Jeffrey Techak, Board Member  
And Public Member

SEF/sc

Entered in the Journal  
**FEB 18 2014**

  
Barcy F. McNeal  
Secretary

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application )  
of Buckeye Wind, LLC, to Amend ) Case No. 13-360-EL-BGA  
its Certificate Issued in Case No. )  
08-666-EL-BGN. )

ENTRY ON REHEARING

The Board finds:

- (1) On March 22, 2006, the Board issued an Opinion, Order, and Certificate granting the application of Buckeye Wind, LLC (Buckeye), for a certificate to construct a wind-powered electric generation facility in Champaign County, Ohio. See *In re Buckeye Wind, LLC*, Case No. 08-666-EL-BGN (*Buckeye I*).
- (2) On March 19, 2013, as revised on December 16, 2013, Buckeye filed an application to amend the certificate issued in *Buckeye I*. In its amendment application, as revised, Buckeye proposed the following five modifications to the certificate issued by the Board in *Buckeye I*: adjusting the construction staging areas; shifting the project substation by 1,000 feet; adding a new access road; modifying four previously approved access roads; and moving the electric collection line system underground.
- (3) R.C. 4906.07(B) sets forth two separate and distinct reasons that would require the Board to hold a hearing on an amendment application. The first being that the proposed amendment would result in a material increase in any environmental impact of the facility. The second reason necessitating a hearing is if there is a substantial change in the location of all or a portion of the facility.
- (4) By Entry of November 21, 2013, the administrative law judge (ALJ), in considering the first reason for a hearing, found that none of the five proposed changes in the amendment application would result in a material increase in any environmental impact of the facility that

necessitated a hearing under R.C. 4906.07(B). With regard to the second reason requiring a hearing, the ALJ found that the portions of the amendment application related to the construction staging areas, modifications to four previously approved access roads, and the movement of the electric collection line system underground did not require a hearing under R.C. 4906.07(B), because they did not result in a substantial change in the location of all or a portion of the facility. However, the two remaining proposed modifications in the amendment application related to shifting the project substation by 1,000 feet and the addition of a new access road required a hearing under R.C. 4906.07(B), because they may result in a substantial change in the location of all or a portion of the facility. In accordance with these findings, the ALJ scheduled a hearing on January 6, 2014, solely to consider the portion of the amendment application related to these two modifications under the provision in R.C. 4906.07(B).

- (5) On February 18, 2014, the Board issued its Order on Certificate Amendment in this case (Order) approving the amendment application subject to the conditions set forth in *Buckeye I* and the Order.
- (6) R.C. 4906.12 states, in pertinent part, that R.C. 4903.02 to 4903.16, and 4903.20 to 4903.23, apply to a proceeding or order of the Board as if the Board were the Public Utilities Commission of Ohio (Commission).
- (7) R.C. 4903.10 provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.
- (8) Ohio Adm.Code 4906-7-17(D) states, in relevant part, that any party or affected person may file an application for rehearing within 30 days after the issuance of a Board order in the manner and form and circumstances set forth in R.C. 4903.10.

- (9) On March 20, 2014, the Board of Commissioners of Champaign County, Ohio, and the Boards of Trustees of the townships of Union, Urbana, and Goshen (collectively, County/Townships), which had been granted intervention, filed an application for rehearing of the Order. Although not styled separately, the County/Townships raise four assignments of error.
- (10) On March 28, 2014, Buckeye filed a response to the County/Townships' application for rehearing. Buckeye states that it opposes the application for rehearing because all of the changes are minor in nature and such changes do not constitute substantial changes in the location of all of or a portion of a facility under R.C. 4906.07(B). Buckeye also states that, in the event the Board grants rehearing, the hearing should take place as soon as possible and should be limited to the relocation of the construction staging areas, the modifications of the four previously approved access roads, and changes to the electrical collection line system.
- (11) By Entry issued April 10, 2014, in accordance with Ohio Adm.Code 4906-7-17(I), the ALJ granted the application for rehearing solely for the purpose of affording the Board additional time to consider the issues raised therein.
- (12) In their first assignment of error, the County/Townships claim that the Board erred when it found that the adjustments to the construction staging areas, modification of four previously approved access roads, and the movement of the electric collection line system underground did not require a hearing because they did not result in a substantial change in the location of all or a portion of the facility. The County/Townships assert that these amendments are very substantial changes to the facility and will have significant impacts on Champaign County. The County/Townships contend that the adjustment to the construction staging areas may have significant impact upon the facility due to traffic concerns because the estimated turbines and construction traffic will be doubled. In addition, the County/Townships claim that the relocated staging area

may affect the infrastructure in the abutting rights-of-way due to the same concerns.

- (13) We find no merit to this first assignment of error. The Entry establishing the scope of the hearing was issued on November 21, 2013; however, the County/Townships failed to file an interlocutory appeal of the Entry. It is worth noting that, at no time prior to or during the hearing, did the County/Townships introduce any evidence or witnesses on matters they now seek rehearing. Rather, they waited until after the hearing and issuance of the Order to argue that the amendments to the certificate required a hearing because they resulted in a substantial change in the location of all or a portion of the facility. Contrary to the assertions of the County/Townships, the traffic and right-of-way concerns identified by the County/Townships in their application for rehearing do not constitute a substantial change in the location of the facility. Further, the adjustments to the staging areas proposed in this amendment are all located within the same parcels as initially planned and approved by the Board in *Buckeye I*. Therefore, the proposed amendments do not result in a substantial change in the location of all or a portion of the facility. Accordingly, a hearing on these issues was not required under R.C. 4906.07, and the County/Townships' first assignment of error should be denied.
- (14) In their second assignment of error, the County/Townships contend that the Board erred because burying electric collection lines in the rights-of-way and relocating two of four identified access roads, which end at a right-of-way, are significant changes in and have significant impact on the facility. They argue that, because these changes will entail concerns with road use, they should be agreed upon by Buckeye and the County/Townships. Further, they contend that, because there is no Road Use Maintenance Agreement (RUMA) to the certificate issued in *Buckeye I*, the manner in which access roads will abut the existing public rights-of-way is not addressed in the certificate conditions.

- (15) We find no merit to this second assignment of error. First, we would note that the lack of a RUMA as a condition to the *Buckeye I* certificate is a matter that should have been addressed in the proceeding involving *Buckeye I*, and it is untimely to raise such issues in this proceeding. Further, as we noted previously, a concern over road use related to a feature of an amendment to a certificate is not a jurisdictional basis under R.C. 4906.07(B) for holding a hearing. Moreover, the record reflects that all of the proposed relocated access roads involved in the amendment application are located in farm fields and all disturbances are consistent with the disturbances from the initial application approved in *Buckeye I*. Such modifications were thoroughly reviewed and considered in our Order and found to be appropriate and in compliance with the statutory requirements for our approval of amendments to certificates for major facilities. In addition, the Order approved the amendment subject to the conditions in the certificate for *Buckeye I*, as well as the conditions set forth in the Order, several of which specifically address the issues raised by the County/Townships in this assignment of error. For example, Condition 56 of the *Buckeye I* certificate requires that, prior to the commencement of construction, Buckeye shall secure a road bond(s), or other similar surety, through the Champaign County Engineer's Office to provide adequate funds to repair any damage to public roads resulting from the construction or decommissioning of the proposed facility. Buckeye shall submit proof of the bond or other similar surety, for Staff's approval in coordination with the Ohio Department of Transportation (ODOT). Further, Condition 23 of the *Buckeye I* certificate requires that any permanent road closures, road restoration, or road improvements necessary for construction and operation of the proposed facility shall be coordinated with the appropriate entities, including, but not limited to, the Champaign County Engineer, ODOT, local law enforcement, and health/safety officials. Also, Condition 24 of the *Buckeye I* certificate requires that, at its expense, Buckeye shall promptly repair all impacted

roads and bridges following construction to at least their condition prior to the initiation of construction activities. Thus, although no specific RUMA is referenced in these conditions or in the certificate issued in *Buckeye I*, the conditions required in *Buckeye I* will ensure the same protections as a RUMA. These include that Buckeye secure a road bond or similar surety that ensures repair from any damage to public roads resulting from the construction or decommissioning of the proposed facility. Accordingly, the Board finds that the second assignment of error set forth by the County/Townships should be denied.

- (16) In their third assignment of error, the County/Townships contend that the Board erred because there are no requirements for burying the electrical collection lines in the rights-of-way set forth by the Board, including the depth of such lines, the media in which the lines will be encased, and emergency procedures.
- (17) We find no merit to the third assignment of error. Initially, we note that, in the *Buckeye I* application approved by the Board, Buckeye proposed placing underground several miles of electric interconnect lines involved in this project. Thus, any concerns with the depth of these lines, the media in which the lines would be encased, and any emergency procedures are issues that should have been raised by the County/Townships in that proceeding in which they were intervening parties. Nevertheless, requirements for the burial of electrical lines in the rights-of-way that would include the depth of such lines, the media in which lines would be encased, and any emergency procedures, would, if applicable, be established by state and federal agencies with jurisdiction over the safety and engineering of electrical systems. Such requirements would be in addition to any requirements set forth in R.C. Chapter 4906. Further, the safe construction and operation of the electrical systems involved with the *Buckeye I* project and amendments necessarily require that Buckeye comply with all state and federal requirements related to the burial of electric lines, as well as any requirements of

entities involved with the delivery of safe electricity in this project. Such requirements are included with the conditions set forth by the Board in its approval of the certificate issued in *Buckeye I*. Specifically, Condition 4 of the *Buckeye I* certificate requires that Buckeye obtain and comply with all applicable permits and authorizations as required by federal and state entities prior to the commencement of construction and/or operation of the facility, as appropriate. Such requirements, if applicable, would include depth of burial, media in which lines will be encased, and emergency procedures. In addition to this condition, the Board notes that the underground electrical collection system to be employed by Buckeye will be interconnected with the electrical system of the Dayton Power and Light Company (DP&L). As such, Buckeye's electrical system will necessarily have to meet all applicable electrical requirements and standards set forth by DP&L, all applicable general tariff terms and conditions of DP&L, and any and all other authorizing agencies. Such standards include the National Electrical Safety Code, which establishes the standards for the safe installation, operation, and maintenance of electric power systems. Therefore, the Board finds that the third assignment should be denied.

- (18) In their fourth assignment of error, the County/Townships claim that the Board erred because there are other township, county, and city officials who would have relevant testimony regarding the significant positive and negative effects of the amendments not heard and traffic safety and right-of-way concerns not present in the project originally. According to the Board/Townships, because the Board denied any opportunity to present evidence on such amendments, they were denied due process.
- (19) We find no merit to the fourth assignment of error. In this case, the Board found that the ALJ's determination on the portions of the amendment application for which a hearing was required was appropriate. As we noted previously, neither the County/Townships nor any other party filed an interlocutory appeal of the

November 21, 2013 Entry establishing the scope of the hearing. That would have been the proper time within this proceeding to challenge the defined scope of the hearing. Further, the County/Townships never sought to expand the scope of the hearing, either prior to the hearing, at the commencement of the hearing, or at the conclusion of the hearing, and they chose not to proffer, at any time during the hearing, any evidence or testimony on matters they now seek rehearing. In addition, other than claiming generally that there are potential witnesses who would have relevant testimony regarding the positive and negative effects of the amendments, traffic safety, and right-of-way concerns that were not heard, the County/Townships raise nothing specific in their application for rehearing related to the Board's jurisdictional basis under R.C. 4906.07 for holding a hearing on an amendment application. Specifically, the County/Townships never argue in their application for rehearing that there were persons who may have provided testimony regarding the environmental impact of the proposed amendment application or how the proposed amendment to the application may result in a substantial change in the location of the facility; both of which would have constituted the basis necessitated a hearing under R.C. 4906.07. Moreover, the Board emphasizes that our Order in this case clearly sets forth the basis and record evidence supporting for our decision to approve the amendment to the certificate in accordance with the statutory requirements in R.C. Chapter 4906. Accordingly, the Board finds that the fourth assignment of error set forth by the County/Townships should be denied.

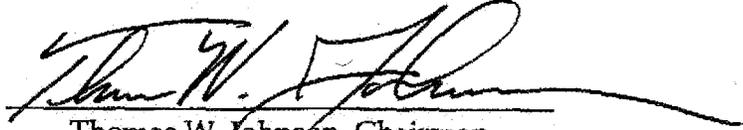
ORDER:

It is, therefore,

ORDERED, That the application for rehearing filed by the County/Townships be denied in its entirety. It is, further,

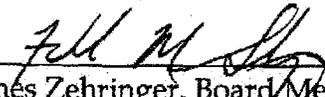
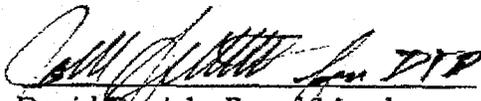
ORDERED, That a copy of this Entry on Rehearing be served upon all interested persons of record.

THE OHIO POWER SITING BOARD



Thomas W. Johnson, Chairman  
Public Utilities Commission of Ohio

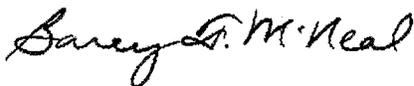
David Goodman, Board Member  
and Director of the Ohio  
Development Services Agency

  
James Zehringer, Board Member  
and Director of the Ohio  
Department of Natural Resources  
Lance Himes, Board  
Member and Interim Director of the  
Ohio Department of Health  
Craig Butler, Board Member  
and Director of the Ohio  
Environmental Protection Agency  
David Daniels, Board Member  
and Director of the Ohio  
Department of Agriculture

Jeffrey J. Lechak, Board Member  
and Public Member

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Entered in the Journal  
**MAY 19 2014**



Barcy F. McNeal  
Secretary