

ORIGINAL

IN THE SUPREME COURT OF OHIO

**Union Neighbors United, Robert
McConnell, Diane McConnell, and Julia
F. Johnson,**)
)
)
and)
)
**Champaign County and Goshen, Salem
and Union Townships,**)
)
Appellants,)
)
v.)
)
Ohio Power Siting Board,)
)
Appellee.)

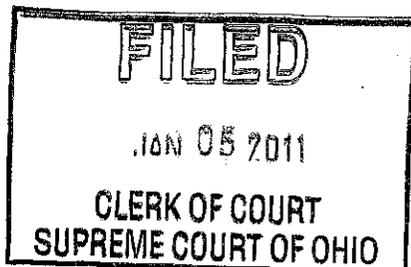
Case No. 2010-1554

Appeal from the Ohio Power Siting Board,
Case No. 08-666-EL-BGN, *In the Matter of
the Application of Buckeye Wind, LLC for a
Certificate to Install Numerous Electricity
Generating Wind Turbines in Champaign
County to be Collected at an Electrical
Substation in Union Township, Champaign
County, Ohio.*

**BRIEF OF AMICUS CURIAE OHIO FARM BUREAU FEDERATION
IN SUPPORT OF APPELLEE OHIO POWER SITING BOARD**

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I. STATEMENT OF THE CASE AND FACTS

On March 22, 2010, the Ohio Power Siting Board (OPSB) modified and approved an application for a Certificate of Environmental Compatibility and Public Need in Case 08-666-EL-BGN concerning the Buckeye Wind Project in Goshen, Rush, Salem, Union, Urbana, and Wayne Townships, located in Champaign County, Ohio. Once completed Buckeye Wind LLC's (Buckeye) facility will include 54 wind turbines and related infrastructure generating a combined capacity of up to 135 megawatts.

As detailed in the Ohio Revised Code (ORC), Chapter 4906 and the Ohio Administrative Code (OAC), Chapter 4906, the OPSB is directed to prescribe reasonable regulations and devise rules for the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of economically significant wind farms (ESWF) and larger facilities. Issues concerning erosion control, aesthetics, recreational land use, wildlife protection, as well as environmental considerations concerning noise, shadow flicker and property line setback formulas were addressed in these rules. Although project approval and certification for wind farms with an overall capacity of five megawatts or more are under OPSB authority, local governments and citizens have an opportunity to participate in public information, outreach and input activities in this process. R.C. 4906.13.

In October 2009 and following an investigation of Buckeye's application, OPSB Staff filed its report recommending that the Board authorize construction of the facility subject to certain conditions. At a local public hearing held at Triad High School, North Lewisburg, 46 witnesses provided evenly divided testimony about the project. Other citizens contacted the OPSB by mail. Supporters emphasized potential economic benefits of the project and environmental attributes of wind energy. Opponents expressed concerns about potential negative

consequences including noise and shadow flicker, obstructions to aviation and impacts to wildlife and aesthetics.

In November 2009, Buckeye, OPSB Staff, and intervening parties including Union Neighbors United, the Champaign County Commissioners and six township boards of trustees, the City of Urbana, the Piqua Shawnee Tribe, the Ohio Farm Bureau Federation, the Champaign Telephone Company and the Urbana Country Club provided input during judicial hearings in the case.

The input from each of these interested parties is reflected in OPSB's Opinion, Order and Certificate. Conditions addressing environmental and social impacts of the project include:

- Buckeye cannot construct certain turbines unless the company modifies their location to meet Ohio's minimum setback requirements.
- Buckeye must establish a process to receive project-related complaints from the public, including but not limited to the topics of noise and shadow flicker. OPSB staff must receive notification of all complaints. Turbines are subject to review, and possible removal, if they exceed 30 hours per year of shadow flicker.
- Buckeye must meet all federal and state requirements for construction of turbines that may affect navigable airspace, radar or communications.
- Buckeye must repair damage to agricultural land, including field tile.
- Buckeye must provide local fire and emergency response personnel with turbine layout maps, tower diagrams and safety manuals.
- Buckeye must decommission the facility, or individual turbines, at its own expense.

- Buckeye must promptly repair all impacted roads and bridges following construction and decommissioning. The company must secure a road bond through the Champaign County Engineer.

II. THE INTEREST OF THE AMICUS CURIAE

The Ohio Farm Bureau Federation (OFBF) and member county Farm Bureaus, including Champaign County, maintain a non-profit organization representing agricultural and rural interests at state and local levels. Over 214,000 member families belong to the organization, including over 1600 families in the Champaign County Farm Bureau. Many members are involved in farm and agribusiness activities, including crop and livestock production, food processing, commodity processing, conditioning, and handling, biofuel production and greenhouse operations. Some members are involved in larger scale operations while others have small business enterprises. All are energy consumers.

Farm Bureau members have a keen interest in effective wind energy development. Along with the potential for supplementing their farm or agribusiness income, farmers engaged in wind leasing agreements want to ensure construction activities conducted on their property adhere to procedures ensuring soil and water conservation as well as air quality. Residents in rural neighborhoods also want assurances that environmental considerations – such as setbacks, noise standards, shadow flicker and other factors – are addressed with effective turbine placement. Further, area businesses want to make sure a wind facility in the community enhances local commerce and contributes to economic development. Farm Bureau represents members in all of these categories.

On the state level, OFBF has worked with utilities, energy service providers, the Public Utilities Commission of Ohio, the OPSB, other government agencies and interested

citizen/consumer groups to explore and implement new strategies and technologies to help control energy costs. Some of this work spans several decades.

OFBF is a charter member of the Ohio Department of Development – Ohio Wind Working Group, advocating for farm and rural residential energy consumers in this stakeholder process. OFBF representatives have held key positions in action teams helping create effective wind energy development policies for use by Ohio’s state and local government leaders. These activities included working with wind developers, as well as ensuring that issues surfaced by a variety of citizen’s groups with varied interests and concerns were included in constructive dialogue during the process.

On the local level, volunteer leaders with the Champaign County Farm Bureau worked with wind developers, government leaders and interested citizen/consumer groups to explore how wind energy development should be addressed. Again, Farm Bureau represented farms, small businesses and residents in a stakeholder process that included a variety of groups with varied interests and concerns. Accordingly, Farm Bureau leaders gained insight, exchanged viewpoints and shared experiences with a variety of stakeholders in this case.

Farm Bureau continues to work with interested parties on state and local levels in utility scale, renewable energy development. Farm Bureau is filing this amicus curiae brief at the request of the OPSB staff to provide Farm Bureau’s unique and learned perspective on how farmers and rural residents have worked together to address a variety of economic, environmental, property and aesthetic issues in effective wind energy development. Further, Farm Bureau expresses its continued support for the Buckeye Wind Project and OPSB approval process.

III. ARGUMENT

A. American Agriculture Holds an Important Place in the Future of Energy Development

Data from the USDA National Agricultural Statistics Service since 1900 reveal that American agriculture has taken a leadership position as a major food and fiber producer. United States Department of Agriculture, National Agricultural Statistics Service, *USDA's National Agricultural Statistics Service: An Evolving Statistical Service for American Agriculture* (July 2005), available at www.nass.usda.gov/About_NASS/evolving_nass.pdf. During the 20th Century, government leaders and interested consumer groups charged the American agricultural industry with the task of feeding and clothing a growing world population, all while utilizing fewer resources. The American agricultural industry has ably met this continuing challenge and as a result has become known as the "Breadbasket of the World." Ohio farmers joined their counterparts in other states to apply strategies, management practices and technologies to achieve this goal. As a result, local agricultural production benefits the immediate community, as well as provides food and fiber for many overseas. Current USDA projections show this challenge will continue to grow in the coming years. *Id.*

Trends in renewable energy development are impacting activities beyond fuel production and electric generation. Ohio is already a national leader in polymer production. Ohio Agriculture to Chemicals, Polymers, and Advanced Materials Task Force, *Report and Recommendations to the General Assembly and the Governor* (June 2008) available at http://bioproducts.osu.edu/pdf/OACPAM_Final_Report.pdf. Work is being done to replace many petroleum-based feed stocks for plastics, pigments, pharmaceuticals, industrial and consumer products with renewable materials. *Id.* Farmers are involved in "agbioresource" development,

working with scientists and industry leaders to create raw materials for polymer feed stocks, as well as providing ample open space to accommodate on-site production facilities.

Given provisions of the Federal Energy Security Act of 2007, as well as Ohio's Third Frontier Advanced Energy Initiative, agriculture will also be playing a key role in energy production. See R.C. 4928.64, see also State of Ohio, *Ohio Third Frontier: Advanced Energy Program*, (last visited Jan. 4, 2010), <http://thirdfrontier.com/AdvancedEnergyProgram.htm>. The Energy Futures Foundation projects the agricultural industry will be responsible for 25 percent of the nation's liquid fuel and electric generation by 2025. 25x'25 Alliance, 25x'25 Steering Committee, *25x'25 Action Plan: Charting America's Energy Future*, (February 2007) at 17, available at www.25x25.org/storage/25x25/documents/IPDocuments/Action_Plan/actionplan_64pg_11-11-07.pdf. Ohio farmers will be working to create raw materials for ethanol and biodiesel as well as providing ample open space to accommodate large, utility scale wind farms and other on-site renewable energy technologies.

With respect to food, fiber, energy and related agbioresource production, Ohio farmers are joining their counterparts in other states to apply strategies, management practices and technologies to address expanding demand and challenges in the 21st Century.

B. Energy Projects Provide Viable Economic Development Opportunities While Preserving Valuable Agricultural Land

Economic development is essential for vitality and growth, and many communities are looking for additional economic development options beyond the traditional residential and commercial development. Some communities along the outskirts of Ohio's major metropolitan areas have exercised options where land use has dramatically changed. Farmland has been transformed into housing developments, business parks and industrial sites. While new jobs,

employment, business activity and the tax revenues they create are important, they must be balanced with the development costs they generate, including transportation and utility infrastructure, and police and fire protection.

Some communities are looking at strategies, management practices and technologies that generate new economic growth, with less development cost and less land use impact. Wind farms, properly designed and built as reflected in OPSB siting guidelines could bring new resources to some communities while keeping the majority of the area agricultural, open and rural. In fact, the number of acres that will be taken out of crop or livestock production by proper siting of wind turbines on agricultural land will be minimal. *In the Matter of the Application of Buckeye Wind, LLC for a Certificate to Construct Wind-powered Electric Generation Facilities in Champaign County, Ohio*, OPSB Case No. 08-666-EL-BGN at 77-8 (Mar. 22, 2010). If done properly, this type of economic development will complement and enhance the agricultural economy, which despite its inherent uncertainties, has long remained a vital and steadfast part of the basic economic engine which makes communities work.

C. Farmers and Rural Residents With Ties to the Community See Energy Development as a Land Use Tool Which Can Sustain Farming as a Way of Life

Along with economic vitality and growth, societal and cultural benefits must be considered. Over the past several years, Farm Bureau leaders held Wind Energy Development Briefings, bringing together a variety of local leaders and residents to discuss and explore wind energy development issues in their communities. When asked to compare and contrast those who support with those who question wind energy development, Farm Bureau leaders have identified several trends. According to our observations, many who support wind energy development

come from families who have lived in their communities for three generations or more. Their jobs, businesses and/or economic livelihood are intertwined with the local community. Their land and business holdings are seen as long-term, multi-generational investments. They realize and have witnessed that there are no guarantees that their investments in land and business infrastructure will remain constant or increase in value. Even with these factors, their holdings are seen as a major resource that provides benefits for the entire community. They are looking at strategies that will provide viable options for additional farm income, provide additional resources for community services and schools, and enhance balanced land use.

In contrast, Farm Bureau leaders have observed that many of those who question wind energy development have families who have been established in their communities for less than three generations. Their jobs, businesses and/or economic livelihood might be intertwined with those in the local community, but in many cases, these are located in adjoining metropolitan areas and/or come from resources located completely out of the community. Their land and business holdings are more short-term, and more speculative in nature. They too are looking at strategies that will provide viable options for additional income as well as provide additional resources for community services and schools. However, they are opposed to any development they feel will impact their land value.

Both groups enjoy the general patchwork of farm fields that characterize much of rural Ohio. Many supporting effective wind energy development see that viewscape as their “working ground.” In speaking with local residents, Farm Bureau has heard from persons advocating effective wind energy development who see these fields as a resource they must carefully use to provide for their family and community. There have been times when some farmers have had to sell some road frontage to make ends meet; however, many would hate to give up all of this land

for houses and factories. Wind, other forms of renewable energy and agbioresource developments allow farmers to take a look at options that will help them continue farming, while providing numerous benefits for their families and their communities.

Many questioning wind energy development also see this viewscape as their “working ground”, but in a significantly different way. Many who have recently moved “out into the country” or who have purchased farmland with an eye toward development are concerned that their homes may lose value or that their plans of developing land into subdivisions or housing lots may be derailed, if the viewscape consists of wind turbines dotting farmland, rather than a rustic, albeit fairly outdated, farmland view. This type of creeping suburban development has resulted in a loss of over 7 million acres of Ohio’s prime farmland since 1950, an area roughly equivalent to 23 Ohio counties. Sara Nikolic, American Farmland Trust, *Preserving Ohio’s Farmland: A Report of Recommendations to the Ohio House Subcommittee on Growth and Land Use*” (July 2004), available at www.farmlandinfo.org/documents/29938/Preserving_Ohio_Farmland.pdf.

One of the central issues in this case involves agricultural land use. Demands for food, fiber, energy and agbioresources; coupled with finding strategies that provide additional personal and community benefits with less impact on farmland mean that Ohio agriculture in the 21st Century is going to be different. Perceptions of farms and farmland that have been generated during previous decades will have to change.

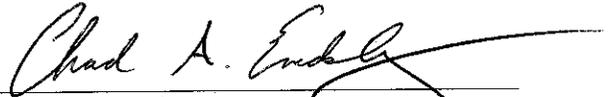
Effective wind energy development is seen as one of the first steps in this process. Farmers are working with business leaders, local governments, energy service providers and citizens groups on both sides of the issue through OPSB procedures to ensure that economic, environmental and aesthetic issues are identified and addressed. To ignore these procedures

would mean that a farmer's "working ground" would be deemed more valuable as another's viewscape than for what it can fully contribute to our food, fiber, agbioresource, and energy needs.

IV. CONCLUSION

The proposed wind farm is important to Ohio, to Champaign County, and to our members, and it should be allowed to proceed as set forth in OPSB's Opinion, Order and Certificate. Accordingly, the Ohio Farm Bureau Federation urges the Ohio Supreme Court to affirm the decisions of the Ohio Power Siting Board in this case.

Respectfully submitted,



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I certify that, on January 5, 2010, a copy of this Brief was served by regular U.S. mail

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