

November 11, 2014

Governor John Kasich
State of Ohio
Riffe Center, 30th Floor
77 South High Street
Columbus, OH 43215-6117

Dear Governor Kasich:

The undersigned residents of Ohio communities affected or threatened with industrial wind development wish to bring to your attention the untenable situation we face due to the failure of the Ohio Power Siting Board (“OPSB”) to protect the public interest. We assert that the OPSB has not adopted rules that adequately and faithfully implement the requirements of siting statutes. Moreover, it has acted in ways that contribute to public confusion resulting in the loss of due process. The actions and omissions of the OPSB have abridged our fundamental constitutional right to be protected and secure in the possession of our property. We call for legal reforms to curb the errors and failures in the Board’s administration of the wind power siting program over the past six years.

For example, the OPSB was supposed to complete a mandatory five-year review of its rules through a proceeding it initiated in July 2012; to this end it issued orders adopting new rules in Case No. 12-1981-GE-BRO. Throughout that rulemaking proceeding, OPSB invited the input of utilities, wind developers, parties who recently filed applications, and their attorneys. However, the Board never notified or solicited the input of members of the public who intervened in OPSB matters. The Board did not even notify intervenors who were extensively involved in the development of the Board’s original wind power siting rules in 2008-09. Furthermore, the Board never filed notice of the proposed or final rules in the Register of Ohio, presumably because the OPSB and PUCO are exempt from the notice-and-comment rulemaking requirements of R.C. Chapter 119. In sum, while the Board’s recent rulemaking was open to utilities, wind developers, other regulated entities, and their attorneys, the process was entirely “under the radar” as far as the public was concerned.

Furthermore, under Ohio law, agencies such as the OPSB must file newly adopted rules with the Joint Committee on Agency Rule Review (“JCARR”) so that the rules can be evaluated by the General Assembly based on specified legal criteria. Yet, although the OPSB adopted its new set of rules on February 18, 2014, the OPSB has not filed its newly adopted wind power siting rules with JCARR and is thereby denying the public an opportunity to address the mismatch between the OPSB’s rules and the requirements specified by the Ohio General Assembly.

Time and again OPSB’s hearing process has proven hostile to public participation. Before approving a power siting certificate, the Board must hold both a “public hearing” at which any interested party may be heard and an “evidentiary hearing” at which only the applicant, Board Staff, and approved intervenors may participate. But the Board representatives conducting public hearings refuse to answer questions about the project and refer members of the public back to the wind developer for responses to their questions. In evidentiary hearings, the Board routinely imposes a discriminatory

double standard by requiring intervenors (usually members of the public) to submit live expert witness testimony while allowing developers to submit reams of documentary information as “evidence” without expert support. The Board delegates the oversight and conduct of both hearings to an Administrative Law Judge employed by the PUCO, who then prepares the written decision and certificate for the Board’s approval (usually at a single meeting with minimal discussion). No Board member participates in the hearings, which calls into question the depth of the Board members’ understanding of the issues they are called on to decide.

From the perspective of local property owners, who strongly object to the placement of wind farms near their homes and property, we must spend our time and our own money to do the job that the OPSB should be doing for the public and yet we feel we are being undercut by the OPSB at every turn. The net result of OPSB actions works to effectively deprive us of any meaningful opportunity to be heard. At the same time, the OPSB is issuing, over the strong objections of local property owners and local government officials, more certificates authorizing the construction of new industrial wind facilities that intend to violate the minimum setback requirements in current law. In other cases, the OPSB is allowing certificated wind farms to evade the General Assembly’s new setback requirements by improperly extending the life of those certificates before the effective date of the setback requirements.

Contrary to the statutory requirements enacted by the General Assembly, the OPSB is complicit in and protective of unfair and unreasonable wind industry practices. Examples include:

1. Permitting legal notice of public hearings to appear at times when the public is least likely to see them;
2. Scheduling public hearings at times the public is least able to attend;
3. Allowing wind companies to conduct required public information meetings without specifying the location of proposed wind turbines;
4. Allowing wind companies to meet the Board’s public notification requirements using maps that lack necessary detail, such as roads or parcel boundaries, to enable landowners to assess the potential impact on their properties;
5. Enabling wind companies to negotiate unfair and one-sided contracts that obligate the signer to waive impacts they often do not understand; that burden the entirety of a property for up to 45 years; that are negotiated using a divide and conquer strategy ; that include no right of rescission; and that include onerous and overbroad confidentiality clauses. Oftentimes, the property owner is elderly and may not be in a position to understand or negotiate in his or her best interest.
6. Failing to establish clear and enforceable standards for audible noise and instead allowing the use of vague “design goals” that fail to consider worst-case impacts;

7. Failure to establish any standards at all for inaudible low frequency noise emissions;
8. Refusing to consider a report from a Wisconsin power siting proceeding that cited new scientific findings regarding low frequency noise from wind turbines and concluded that there is now enough evidence to classify low-frequency noise and infrasound from wind turbines as “a serious issue, possibly affecting the future of the wind industry.”
9. Failing to require that setback waivers be obtained from all adjacent property owners as required by law;
10. Failing to require wind developers to specifically articulate the alleged benefits accruing to the described project area and, instead, accepting alleged benefit claims that pertain to unrelated and distant communities even though the impact/burden of the project is borne by the local property owners;
11. Failing to accord due weight to local governments who object to applications on the basis of harms to the community’s economic health and welfare or cultural identity;
12. Failing to adopt rules for siting industrial wind turbines near public and private recreational areas, including Indian Lake as well as numerous golf courses and equestrian facilities;
13. Extending certificate expiration dates without following the statutory requirements for amendment of certificates, such as the requirements for investigation by the OPSB staff and for public hearing to consider substantive changes in the assumptions underlying the original certificate;¹
14. Failing to consider cumulative impacts in areas where multiple projects are sited;
15. Failing to require developers to establish a complaint resolution protocol acceptable to the community prior to issuing a certificate; and
16. Blaming insufficient funding/lack of resources to fully carry out their duties.

As the Ohio Supreme Court has stated, “It is axiomatic that the federal and Ohio constitutions forbid the state to take private property for the sole benefit of a private individual.” *Norwood v. Horney* (2006), 110 Ohio St.3d 353, 365. Yet that is exactly what the Power Siting Board has repeatedly permitted to occur. The constitutionally protected property rights of Ohioans are being harmed in favor of industrial wind development. These massive industrial power plants are being imposed in rural residential communities by private for-profit developers. The developments are structured as limited liability

¹ Chief among these changes is the dramatic increase in blade length which increases vibration and low frequency emissions as well as recent medical studies concerning related health effects.

companies owned more often than not by foreign private equity firms. These massive industrial power plants are not public utilities and are not empowered with the right of eminent domain but through the faulty administration of the law by the Ohio Power Siting Board that is effectively the result. Ohio's administration of wind power development is unregulated under the guise of regulation.

We request that you halt further consideration of any active industrial wind power siting case until lawful rules are established, eliminate the exemption from rulemaking due process currently afforded to the Ohio Power Siting Board under Revised Code Chapter 119, and require that any application for certificate amendment or extension be subjected to the due process of meaningful public notice, a full investigation, and a fair hearing. If the State of Ohio is unable to administer a fair regulatory program that protects her citizens, siting decisions must be returned to local zoning and control.

Should you have any questions or require additional information, please contact Julie Johnson at juliejohnson@ctcn.net or call 614-284-6151. Thank you for your consideration.

Respectfully Submitted,

Signed by Residents of Ohio Whose Names and Addresses are Attached Hereto.

cc:

Lt. Governor Mary Taylor
Riffe Center, 30th Floor
77 South High Street
Columbus, OH 43215-6117

Senator Keith Faber, President
Ohio Senate
1 Capitol Square, 2nd Floor
Columbus, OH 43215

Speaker William Batchelder
Ohio House of Representatives
77 S. High St – 14th Floor
Columbus, OH 43215

Senator William Seitz, Chairman
Senate Public Utilities Committee
Ohio Senate
1 Capitol Square
Columbus, Ohio 43215

Rep. Peter Stautberg, Chairman
House Public Utilities Committee
77 South High Street – 11th Floor
Columbus, Ohio 43215

Chairman Tom Johnson
Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, Ohio 4321