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## **I. STATEMENT OF THE CASE AND FACTS**

OFBF fully adopts and incorporates the statement of the case as presented by appellee Ohio Power Siting Board in its merit brief.

## **II. THE INTEREST OF THE AMICI CURIAE**

The Ohio Farm Bureau Federation (“OFBF”) is Ohio’s largest general farm organization, representing over 200,000 member families. The Ohio Farm Bureau is a federation of 87 member-county Farm Bureaus, representing all 88 counties. The Champaign County Farm Bureau is one of those member-counties, representing the 1,479 member families within Champaign County, Ohio. Farm Bureau members in every county of the state serve on boards and committees working on legislation, regulations, and issues that affect agriculture, rural areas, and Ohio’s citizens in general. 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. Members of Farm Bureau run the gamut from large to small businesses, but all are keenly aware of energy and the issues surrounding it.

Since 1919, Ohio Farm Bureau members have led the way in public policy information and issue education. Today is no different, with Farm Bureau members frequently discussing the promise of new energy alternatives, including wind energy development. Along with the potential for supplementing farm or agribusiness income, farmers are dedicated to ensuring that a landowner friendly and uniform process is used to ensure all stakeholders are given an opportunity to be involved in the siting process. Farmers, represented by the Farm Bureau, are

perhaps the most essential stakeholders in this siting process, since the wind turbines are often placed on their privately-owned land. As expressed below in further detail, farmers see the placement of these wind turbines on their farmland as complementary to their farming operations and families' livelihoods.

On the state level, OFBF has worked with utilities, energy service providers, the Public Utilities Commission of Ohio, the Ohio Power Siting Board, other government agencies and interested citizen/consumer groups to explore and implement new strategies and technologies to help control energy costs, ensure process and make way for innovative technologies. OFBF also served as 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 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 are included in constructive dialogue during the process.

On the local level, OFBF field staff and 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 at the local level. 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.

Ohio Farm Bureau continues to work with interested parties on state and local levels in utility scale, renewable energy development. OFBF and Champaign County Farm Bureau (collectively “Farm Bureau”) are filing this amici curiae brief to provide Farm Bureau’s unique viewpoint of the current approval and siting process in Ohio law, as well as the best practices OFBF believes wind utilities should use in preparing and constructing a wind farm. Farm Bureau has had a unique opportunity to assist farmers and rural residents working 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 alternative energy development throughout Ohio.

### **III. ARGUMENT**

#### **A. Ohio’s Alternative Energy Portfolio Standard is an Important Tool in Securing the Future of Energy Resources**

Ohio’s Alternative Energy Portfolio Standard (AEPS), contained in R.C. 4928.64, supports the idea that alternative energy is a viable and burgeoning tool to support energy production in the United States. Ohio Farm Bureau policy strongly supports the AEPS and its goal to provide “25x25”, or 25% of Ohio’s energy from alternative sources by the year 2025. Ohio Farm Bureau Federation, *2014 State Policies*, Policy 141: Energy, at 9, Lines 11-12 (December 2013) available at <http://ofbf.org/policy-and-politics/policy-development> (accessed March 24, 2014). Further, the American Farm Bureau Federation (AFBF), made up of member organizations from all 50 states and Puerto Rico, affirmatively states, “We support. . .using renewable electricity standards to stimulate electricity production from renewable sources such as wind, bio-mass, solar, tidal, hydroelectric, [and] methane from manure and landfills.” American Farm Bureau Federation, *Farm Bureau Policies for 2014*, Policy 401: Electric Power

Generation, at 139, Line 9.1.1 (January 2014). The provision of alternative energy supports many important benefits which accrue to all power users.

Ohio's AEPS was placed in law in 2008, after hearings in both the Senate Energy and Public Utilities Committee and the House Public Utilities Committee. 127 Sub.S.B. No 221, unofficial version available at [http://www.legislature.state.oh.us/bills.cfm?ID=127\\_SB\\_221](http://www.legislature.state.oh.us/bills.cfm?ID=127_SB_221) (accessed March 24, 2014). The original bill passed the Ohio Senate with a 32-0 vote, and the Ohio House with a vote of 93-1. 152 Ohio Senate and House Journal 110; Ohio Senate Journal, 905 (October 31, 2007) available at <http://www.legislature.state.oh.us/JournalText127/SJ-10-31-07.pdf>; Ohio House Journal, 1323 (April 22, 2008) available at <http://www.legislature.state.oh.us/JournalText127/HJ-04-22-08.pdf> (accessed March 24, 2014). Ohio utility companies have been moving forward with compliance since the statute's original implementation date of July 31, 2008.

Though the AEPS has been in place for more than five years, the legislation has not remained stagnant. In 2010, 128 Sub. S.B. 232 established better procedures for defining a utility's three percent annual cost cap, which ensures that utilities are not overly-burdened with AEPS compliance if the cost of compliance would exceed the reasonably expected cost of otherwise producing or acquiring requisite energy. 128 Sub.S.B. No 232, unofficial version available at [http://www.legislature.state.oh.us/bills.cfm?ID=128\\_SB\\_232](http://www.legislature.state.oh.us/bills.cfm?ID=128_SB_232) (accessed March 24, 2014); R.C. 4928.64(C)(3). Further, in 2012, 129 Am.Sub.S.B. 315 added a provision that allowed any new, retrofitted, refueled, or repowered generating facility in Ohio, as well as any uprated capacity of an existing electric generating facility resulting from the deployment of advanced technology to qualify as an advanced energy resource acceptable under the AEPS statute. 129 Am.Sub.S.B. 315, unofficial version available at

[http://www.legislature.state.oh.us/bills.cfm?ID=129\\_SB\\_315](http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_315) (accessed March 24, 2014); R.C. 4928.01(A)(34), 4928.64(A)(1). Throughout its history and in future discussions, one principle has been and needs to remain at the forefront: Ohio's AEPS is an important tool in securing the future of energy resources, a principle which the Ohio Farm Bureau strongly supports.

### **1. Alternative Energy Provides Benefits Which Help Support Traditional Energy Sources**

Traditionally, Ohio has derived much of its energy through the use of coal burning power plants. See U.S. Energy Information Administration, *Ohio*, (July 2012) <http://www.eia.gov/state/?sid=OH> (accessed March 18, 2014). In 2011, 78% of Ohio's net electricity generation was fueled by coal. *Id.* Being a coal-rich state, this remains a viable option and supports important economic structure of many Ohio communities. To be sure, Ohio remains ranked as the 11th coal producing state in the nation. *Id.* OFBF continues to support the utilization of coal as an economical and readily accessible source for current electrical generation needs, as well as recognizes a need for research and development in clean coal technology. Ohio Farm Bureau Federation, *2014 State Policies*, Policy 141: Energy, at 9, Lines 21-23. While traditional methods may continue to be the main source of Ohio's energy, advanced and renewable energy choices provide a unique benefit as a supplement. Ohio's AEPS statute considers "advanced" and "renewable" energy to include many sources such as clean coal, advanced nuclear, wind, solar, geothermal, biomass, and qualified hydroelectric facilities, among others (collectively, "alternative"). R.C. 4928.01(A)(34),(37). The wide array of choices in order to fulfill advanced and renewable energy credits, ensures that energy producers in Ohio can make economical decisions based on the availability of energy types. All of these new energy sources represent more environmentally friendly choices, in order to balance the environmental concerns some have with traditional energy production. In many cases, these sources provide

environmental benefits and can help support a cleaner environment while also supporting the continued use of traditional energy resources. For example, in 2013 the roughly 168 million megawatt-hours generated by just wind energy in the United States avoided 96 million metric tons of carbon dioxide from entering the environment—the equivalent of 16 million cars being removed from the road. American Wind Energy Association, *Wind Energy & Reducing Greenhouse Gas Emissions* (2013) <http://awea.rd.net/Resources/Content.aspx?ItemNumber=5097> (accessed March 18, 2014). In Ohio alone, it is estimated that current wind power avoids 585,000 metric tons of carbon dioxide emissions and saves some 240 million gallons of water annually. American Wind Energy Association, *State Wind Energy Statistics: Ohio*, (March 4, 2014), <http://awea.rd.net/Resources/state.aspx?ItemNumber=5395> (accessed March 18, 2014). These statistics show the potential environmental benefits which can accrue from new energy sources.

OFBF and AFBF support “the development of renewable fuels, clean coal, and next generation nuclear technologies in order to keep the costs of electrical energy affordable[.]” American Farm Bureau Federation, *Farm Bureau Policies for 2014*, Policy 401: Electric Power Generation, at 139, Line 9.1.3 (January 2014). Though the Ohio AEPS has been in place since 2008, Ohio electricity rates for residential, commercial and industrial users currently remain below national monthly averages. U.S. Energy Information Administration, *Ohio: Prices*, <http://www.eia.gov/state/?sid=OH#tabs-5> (accessed March 18, 2014). Alternative energy can be used to replace equivalent energy sources which may be more costly due to variable fuel pricing or older, less efficient production. See American Wind Energy Association, *Wind Energy & Reducing Greenhouse Gas Emissions*, *supra*. Because the AEPS was written to ensure that new

energy sources were incentivized while allowing the business of energy production to thrive, a careful balance is struck that on the whole protects and benefits Ohio consumers.

OFBF certainly supports the use of traditional energy sources and fully expects they will continue to be the main source of power for Ohio, however, OFBF members have also recognized with their policies that vast potential lies with new energy sources that can supplement the traditional sources, to the benefit of all Ohioans.

## **2. American Agriculture Plays an Important Role in the Future of Alternative Energy Development and Such Development Provides Protection for Rural Communities and Open Space**

Since the 1900s, American agriculture has been called upon to meet the growing demands for food and fiber to supply an expanding world. Throughout the 20th century, farmers continued to be charged with the task of feeding and clothing more of the world's population, all while using less resources on less land and with more scrutiny. Farmers rose to this challenge, and Ohio farmers joined their counterparts to apply strategies, management practices and technologies to achieve this goal. As a result, local agricultural production benefits the immediate community, the state and nation, all while also providing resources for many overseas.

Though the challenge continues to produce food and fiber, American agriculture is now looked upon to become a key player in the development of a comprehensive energy strategy. 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

[http://www.25x25.org/storage/25x25/documents/IP%20Documents/Action\\_Plan/actionplan\\_64pg\\_11-11-07.pdf](http://www.25x25.org/storage/25x25/documents/IP%20Documents/Action_Plan/actionplan_64pg_11-11-07.pdf) (accessed March 18, 2014). Corn and soybean farmers have already become huge contributors to the modern-day energy market, and America's working lands will also play a lead role in providing renewable forms of energy. *Id.* The conversion of biomass feedstocks into energy, harvesting the wind and solar energy over their farms, and converting biogas emissions are all important parts of a strategy to develop alternative energy sources. *Id.* Once again, farmers are stepping up to the plate to be a part of the solutions we all need.

While farmers certainly have a keen interest in seeing new markets developed for their skill sets, alternative energy also presents an additional important benefit for Ohio farmers and their rural communities. New energy projects of any kind require space. While Ohio still has significant amounts of rural land which might be available for new infrastructure, that same land happens to be the number one resource for the livelihood of Ohio's farmers and supports Ohio's number one industry. If that space must be instead turned into land-intensive energy projects, Ohio's farming and rural communities may suffer as the lifeblood of farming—the land—is used up for industrial construction. Preliminary reports from the 2012 Census of Agriculture show that Ohio may have actually bucked the nationwide trend of losing farmland, and actually saw a small increase in acres of farmland since 2007. Ohio's Country Journal, *Preliminary 2012 Census results provide a snapshot of Ohio Agriculture*, (February 24, 2014) <http://ocj.com/2014/02/preliminary-2012-census-results-provide-a-snapshot-of-ohio-agriculture/> (accessed March 18, 2014), U.S. Department of Agriculture, *2012 Census of Agriculture: Preliminary Report U.S. and State Data*, (February 2014), [http://www.agcensus.usda.gov/Publications/2012/Preliminary\\_Report/Full\\_Report.pdf](http://www.agcensus.usda.gov/Publications/2012/Preliminary_Report/Full_Report.pdf) (accessed March 18, 2014). This will be the first reported increase in farmland acreage since at least 1978,

the earliest comparison year provided in the most recent 2007 Census of Agriculture. U.S. Department of Agriculture, *2007 Census Volume 1, Chapter 1: State Level Data - Ohio, Table 1. Historical Highlights: 2007 and Earlier Census* (February 2009), available at [http://www.agcensus.usda.gov/Publications/2007/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_State\\_Level/Ohio/st39\\_1\\_001\\_001.pdf](http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level/Ohio/st39_1_001_001.pdf) (accessed March 18, 2014).

Alternative energy contributes to preserving open spaces by allowing farming to continue around limited energy infrastructure. Many alternative energy choices acceptable under R.C. 4928.64 provide unique opportunities to install energy development while still maintaining the open character of the land. Wind energy particularly complements the agricultural use of land, allowing for additional income and continued farming. In an economic model developed for the National Renewable Energy Laboratory to review the benefits of creating 20% of the nation's power through wind by 2030, researchers estimated that nearly \$8.8 billion in property taxes and lease payments to landowners would be realized between 2007 and 2030. U.S. Department of Energy, *20% Wind Energy by 2030: Increasing Wind Energy's Contribution to U.S. Electricity Supply*, at 210 (July 2008) available at <http://www.nrel.gov/docs/fy08osti/41869.pdf> (accessed March 18, 2014). In direct testimony of this case at the administrative hearing stage, OFBF's Director of Energy, Utility and Local Government Policy Dale Arnold testified that based on his experience, farmers could earn approximately \$4,000 to \$7,000 per turbine per year in lease payments alone from the Champaign Wind project. *Champaign Wind* (Direct Testimony of Dale R. Arnold) (November 5, 2012), Supp. at 347<sup>1</sup>. Champaign Wind's own consultant estimated lease payments to total \$975,000 per year. *In the Matter of the Application of Champaign Wind, LLC, for a Certificate to Construct a Wind-Powered Electric Generating Facility in Champaign*

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<sup>1</sup> References to Supp. refer to supplement submitted by appellants Union Neighbors United, Robert McConnell, Diane McConnell, and Julia Johnson.

County, Ohio, OPSB Case No. 12-160-EL-BGN (hereinafter *Champaign Wind*) (Opinion, Order and Certificate at 68) (May 28, 2013), UNU App. at 79<sup>2</sup>. Infrastructure for advanced or renewable energy production can create economic development for localities, while complementing and enhancing the agricultural economy—a vital and steadfast part of the basic economic engine that makes communities work.

For several years, Ohio Farm Bureau leaders have participated in Wind Energy Development briefings, bringing together local leaders and residents to discuss and explore wind energy development in their communities. Many Farm Bureau members see the landscape as “working ground” and see alternative energy development as an option to help continue farming, while providing benefits to their families and communities. The alternative is seeing farmland turned into creeping suburban development for houses, golf courses and other urban amenities. So-called “urban sprawl” resulted in the 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 <http://www.farmlandinfo.org/preserving-ohios-farmland-report-recommendations-ohio-house-subcommittee-growth-and-land-use> (accessed March 18, 2014).

While it appears Ohio may have added a small amount of farm acreage in the last few years, decades of farmland loss still define the trend. The standards set within the AEPS not only encourage the development of new energy sources but also support preserving open space and farming opportunities.

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<sup>2</sup> References to UNU App. refer to the Appellant Union Neighbors United, Robert McConnell, Diane McConnell, and Julia Johnson.

### 3. Alternative Energy Sources Can Provide Better Energy Security for All Power Users

On a national scale, the United States is the world's largest importer of crude oil and the 3rd largest importer of natural gas. CIA World Factbook, *United States, Energy*, <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (accessed March 18, 2014). The United States is only second to China for electricity consumption. *Id.* It is no secret to Americans that we vastly depend on foreign sources to fulfill our vast and varied energy needs.

The International Energy Agency believes an energy supply to be "secure" if it is adequate, affordable and reliable. International Energy Agency, *Contribution of Renewables to Energy Security*, at 13 (April 2007), available at [http://www.iea.org/publications/freepublications/publication/so\\_contribution.pdf](http://www.iea.org/publications/freepublications/publication/so_contribution.pdf) (accessed March 18, 2014). Risks to energy can take several forms, including energy market instability, technical risks from grid or transmission failure, and physical risks from natural disasters or human interference. *Id.* Alternative energy supplies can be a part of reducing these risks to energy.

The use of renewable sources can reduce the risks of market instability because they are produced within our own borders, renewable, and contribute to diversification. *Id.* at 9. While Ohio is among the top 10 energy producing states, ranked 8 in 2012, Ohio's electricity generation cannot meet Ohio's demand for electricity. U.S. Energy Information Administration, *Ohio: Profile Analysis*, (December 18, 2013) <http://www.eia.gov/state/analysis.cfm?sid=OH&CFID=14279361&CFTOKEN=3cda8e83bfac3878-8B7FAC10-237D-DA68-2451227F48CE3C2F&jsessionid=8430550cfa781535b6c256744d1945474373> (accessed March

18, 2014). Ohio instead must rely upon outside generation to supply its population with needed energy, and continue to do so at competitive prices. The U.S. Energy Information Administration estimates Ohio has untapped potential from renewable sources to help increase power generation. Potential wind capacity from both on-shore and off-shore winds alone could provide more than 54,000 additional megawatts of power to Ohio's grid. *Id.* Further energy potential from sources such as municipal solid waste and landfill gas, biofuels from switchgrass or miscanthus, and even methane from the manure of Ohio's farms all represent significant opportunities to provide more energy production. *Id.* Encouraging this production can only serve to help create more energy sources which Ohio consumers can rely upon to provide cost-effective and dependable energy for their homes and businesses.

Physical risks also exist to traditional power sources. The nation's transmission grid and centralized power plants could be subject to technical glitches, natural disasters or human interference that could quickly cripple the power supply. Renewable sources, in contrast, are geographically dispersed and contain no volatile or radioactive fuel stocks. U.S. Government Accountability Office, *Renewable Energy: Wind Power's Contribution to Electric Power Generation and Impact on Farms and Communities*, (Sept. 2004), at 2 fn4, 30 available at <http://www.gao.gov/new.items/d04756.pdf> (accessed March 19, 2014).

Ohio Farm Bureau supports the development of public policies which encourage sustainable and renewable energy production in decentralized situations for just these reasons. Ohio Farm Bureau Federation, *2014 State Policies*, Policy 141: Energy, at 9, Lines 15-16. Renewable energy sources that can be produced and utilized within our own borders, represent the unique opportunity to provide energy for our citizens by our citizens. Their unique uses can

serve to ensure that needed energy continues to be provided in an adequate supply and at affordable prices to Ohio residents.

**B. The Use of Farmland or Open Space for the Siting of Alternative Energy Infrastructure Presents a Property Rights Issue Which Must Consider Rights of Landowners to Make Beneficial Use of Their Property**

Champaign Wind has identified that all wind turbines and accompanying facilities will be placed on private property with permission granted under valid property leases. *Champaign Wind* (Opinion, Order and Certificate at 3-4) (May 28, 2013), UNU App. at 14-15. The application from Champaign Wind identifies that the project involves approximately 13,500 acres of private land from approximately 100 landowners. *Id.* at 68, UNU App. at 79. What property owners do with their land has an effect on neighbors, but the Ohio Constitution guarantees that the private property rights of a landowner should be held forever inviolate. Ohio Constitution, Article 1, Sec. 19. While it is clear that private property rights must sometimes yield to planning or zoning concerns inside of urban areas and even within rural neighborhoods to an extent, Ohio law has always “considered the right of property to be a fundamental right.” *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶38. “The rights related to property, i.e. to acquire, use, enjoy and dispose of property are among the most revered in our law and traditions.” (citations omitted.) *Id.* at ¶34. Particularly, agricultural landowners and their right to use their land as it relates to agricultural uses receive unique treatment. It is no secret that farms produce noises, sounds, smells and other disturbances that may occasionally annoy their neighbors, but Ohio law has provided protection so that farmers can use their land for agricultural purposes. *See, e.g.*, R.C. 303.01, 303.21, 519.01, 519.21, R.C. Chapter 929. These provisions of the law ensure the basic right to use agricultural property, and guarantees

that the agricultural use of property is not unduly restricted simply because of more urban sensitivities.

Alternative energy siting is certainly not traditional “agriculture” as the Revised Code defines for zoning purposes. However, alternative energy is yet another representation of the rights of rural property owners to make beneficial use of their properties. The Ohio legislature has created parameters and a regulatory scheme which must be followed to site any type of energy facility, including parameters for small scale energy projects. *See, e.g.*, R.C. 4906.04 (construction of major utility facility), R.C. 4906.20 (economically significant wind farms), R.C. 519.213 (small wind farms). The regulatory scheme and parameters set in law are further proof of the respect given to private property rights by the state of Ohio, carefully balanced with the protection, safety, and welfare of the general public.

Many farmers and rural landowners find that the construction of alternative energy serves to help secure their private property right to continue farming land or keep it as open space. The projects can provide needed stable, outside income which can support farming, as well as support the property taxes for the portion of land occupied by the infrastructure. Alternative energy projects do not happen in a vacuum, and as previously mentioned, this case and others show that there are numerous regulatory requirements which must first be complied with as well as private negotiations which must be reached, before alternative energy infrastructure even becomes possible. Though what remains at the end, is a private property owner’s choice to use his property in a certain way, with appropriate regulatory controls.

Concerns may be raised with alternative energy, specifically wind energy, over viewscape. While it is certainly true that wind turbines will occupy the viewscape of neighboring

property owners, common law provides that a landowner has a right to the use of his property, including the airspace above, so much of which he can occupy or make use of, in connection with the enjoyment of that land. *Village of Willoughby Hills v. Corrigan*, 29 Ohio St.2d 39, 50, 278 N.E.2d 658 (1972). The use of a private property owner's airspace to erect a wind turbine reflects only an assertion of this right. Further, Ohio law has rarely, if ever, recognized a right of action over an obstructed viewscape where other deed covenants, zoning regulations or an eminent domain situation were not at play. See *Mullen v. Stricker*, 19 Ohio St. 135, 143-144 (1869) ("...the law of implied grants and implied reservations, based upon necessity or use alone, should not be applied to easements for light and air over the premises of another in any case."), *State v. Schiederer v. Preston*, 170 Ohio St. 542, 544-548, 166 N.E.2d 748 (1960) ("... there is no taking of property merely because the raising of the grade of part of a street in front of land on that street, in making an improvement for street or highway purposes only, substantially interferes with the view that the owner of that land had over that street and with the relative harmony of the street with his land."), *Hardin v. Naughton*, 8th Dist. No. 98645, 2013-Ohio-1549, ¶27 ("Furthermore, Ohio law does not recognize a cause of action in private nuisance for the obstruction of view across neighboring property."). *Contra O'Neil v. Atwell*, 73 Ohio App. 3d 631, 598 N.E.2d 110 (11th Dist.1991) (finding newly constructed deck, which obstructed adjoining condominium user's view among other annoyances, was nuisance under Ohio law and under declaration of condominium ownership).

There is no question that the siting of large-scale infrastructure development should be subject to attendant laws and regulations. But while others may see energy infrastructure from their backyards, it is people like the members of Farm Bureau who have it in their backyards. To respect those private property rights, is to assure those private property owners who wish to

allow such a use of their property, that such a use is permitted so long as proper laws and regulations are followed.

**C. When a Fair and Open Process, Established Through Statute and Regulation, has been Followed, such Process Should be Upheld**

OFBF has been involved both legislatively and administratively with the development of the procedures for the approval of wind projects. In addition, OFBF has been an intervenor in the proceedings below for this project, as well as the previous proceedings for the preceding certificate affirmed in 2012. *In re Application of Buckeye Wind, L.L.C. for a Certificate to Construct Wind-Powered Electric Generation Facilities in Champaign County, Ohio*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869. In cases dealing with the siting of wind facilities and other energy producing facilities, OFBF frequently intervenes on behalf of its members and is an active participant in proceedings to ensure that the interests of farmers and rural residents are adequately represented to Ohio regulators. OFBF believes adequate process was provided, followed and prevailed in the approval of the Champaign Wind project.

Ohio Adm.Code Chapter 4906-7 provides for the rights of all parties involved with these proceedings. These include the right and ability to examine witnesses, participate in discovery by filing discovery requests, submitting interrogatories, and taking depositions. Ohio Adm. Code 4906-7-05, 4906-7-07. Parties also have the right to subpoena those people they feel are needed to adequately represent the parties' interests, as provided by Ohio Adm. Code 4906-7-08, *In re Application of Black Fork Wind Energy, L.L.C., (Black Fork)* 138 Ohio St.3d 43, 2013-Ohio-5478, 3 N.E.3d 173 at ¶18. Further, "...a party is precluded from claiming a denial of the right of cross-examination when that party did not take advantage of the opportunity to subpoena the witness." *Black Fork* at ¶18. Additionally, all parties were afforded adequate opportunities to

fully brief the merits and to seek rehearing of the Board's decision, of which two parties took advantage. *Champaign Wind* (Entry on Rehearing) (Sept 30, 2003), UNU App. at 115. In short, all had a full and fair opportunity to be heard in the proceedings through the statutory procedures and process provided.

As an organization uniquely concerned with the private property rights of individuals and with good governmental procedures, Farm Bureau members have extensively discussed the desirable qualities of procedures to site utility grade wind projects. Each year, Farm Bureau members starting at the local level, review the OFBF policy, suggest changes, and eventually vote upon them at a meeting with representative delegates from each member county Farm Bureau. See Ohio Farm Bureau Federation, *How is Farm Bureau Policy Developed*, available at <http://ofbf.org/uploads/policydevelopment.pdf> (accessed March 18, 2014). Ohio Farm Bureau policy, proposed and approved by its delegate body, holds:

We support Ohio Power Siting Board Rules and regulations encouraging reasonable, landowner friendly, uniform statewide regulations and guidelines pertaining to the siting, placement, construction and operation of utility-scale wind and solar farms. These rules should include:

1. A pre-application conference with local public officials that addresses the environmental compatibility and public need for a proposed facility;
2. An initial public meeting to advise affected persons of the upcoming project and to gather initial public input and concerns that are used by the applicant to aid in preparation of an application;
3. Continued developer education/outreach activities ensuring dialogue between the company and members of the community;
4. Establishment of an accessible local office by the developer, ensuring community members have access to company representatives to discuss development issues and possible concerns;
5. Creation of an application that evaluates economic, environmental, and aesthetic impacts on the community as defined in the Ohio Revised Code, Chapter 4906, and the Ohio Administrative Code (OAC) Chapter 4906-1. The application

is to be posted as a matter of public record on the OPSB website, with electronic and hard copies available at all public libraries in the county, the office of the county (sic) Commissioners, and through the township trustees in township within the project area;

6. Scheduling of adjudicatory and local public hearings, enabling citizens, interest groups, and governmental entities to present testimony and included in the case as evidence.

Ohio Farm Bureau Federation, *2014 State Policies*, Policy 143: Wind and Solar, at Page 10-11 Lines 1-24.

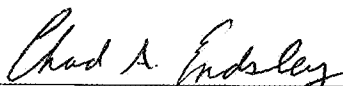
OFBF actively participated through stakeholder input and comment in the process of creating the OPSB rules for siting wind energy projects at their original inception. To a large degree, OPSB rules mirror OFBF policy. Furthermore, many utility companies see OFBF's recommendations as a list of best practices to be used when seeking to construct a new wind utility. Champaign Wind, L.L.C. followed required procedure to hold an open informational meeting for the general public on January 24, 2012. *Champaign Wind* (Opinion, Order and Certificate at 2) (May 28, 2013), UNU App. at 13; Ohio Adm.Code 4906-5-08(B). As required by law and recommended by OFBF policy, a local public hearing was held in the project area giving all interested parties the opportunity to be heard in regards to the grant of the certificate. *Champaign Wind* (Opinion, Order and Certificate at 3) (May 28, 2013), UNU App. at 14. Finally, the adjudicatory hearing began on November 8, 2012 and provided an opportunity for those who had intervened, including appellants, to fully participate in the process of reviewing the application for a certificate. *Id.* After the OPSB had rendered a decision, there was additional opportunity to appeal for rehearing, which appellants took advantage of and were denied by the board after careful consideration of the claims made. *Champaign Wind* (Entry on Rehearing) (Sept 30, 2003), UNU App. at 115.

Ohio Farm Bureau is an organization that has seen the opportunities of wind energy in this state grow from an ideal to reality in furtherance of important state policies. Along the way, OFBF members have kept a watchful eye and weighed in continuously as to what needs to be done prior to the establishment of a wind farm in order to protect farmland and landowner rights, as well as provide new sources of alternative energy to Ohio's power grid. Through the experiences of members and expertise of OFBF staff, OFBF policy has developed to suggest what farmers see as the best possible procedures to establish a wind farm. Farm Bureau members are pleased to find that these procedures largely match what is currently in law, and more importantly, match what has actually transpired as wind farm projects have advanced through the comprehensive OPSB certification procedure. As the standard of review requires, an order of the OPSB should be reviewed only for unlawful or unreasonable decisions. Farm Bureau feels that the OPSB followed their required procedures and acted reasonably in hearing, considering and deciding the issue of granting a certificate to this wind project. Accordingly, we ask that the process of siting wind farms and, specifically, the OPSB order granting a certificate to this project, be upheld.

#### IV. CONCLUSION

Alternative energy presents vast new opportunities for Ohio businesses and citizens. Projects like this one should be allowed to proceed as set forth under the carefully constructed parameters in statute and regulation which carefully guide the OPSB to a reasoned and well-thought decision. Accordingly, the Ohio Farm Bureau Federation and the Champaign County Farm Bureau urge the Ohio Supreme Court to affirm the decision of the Ohio Power Siting Board in this case.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that, on March 24, 2014, a copy of this Brief was served by electronic mail upon the following:

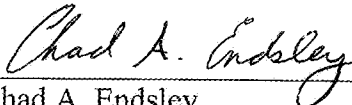
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