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In re Application of Buckeye Wind, L.L.C.

Supreme Court of Ohio - September 7, 2016 - N.E.3d - 2016 WL 4699153 - 2016 -Ohio-5664

After obtaining certificate for construction of wind farm, developer filed application to amend certificate. Following hearing on two of proposed changes, the Power Siting Board approved application to amend certificate and then denied request by county and townships for rehearing. County and townships appealed.

The Supreme Court of Ohio held that county and townships forfeited appellate review of claim that hearing was warranted on all proposed changes.

Application for rehearing was not appropriate remedy for county to assert, for first time, challenge to Power Siting Board's decision to limit scope of hearing on developer's application to amend certificate for construction of wind farm to two of six proposed changes, and thus, county and townships forfeited appellate review of claim that hearing was warranted on all proposed changes, where ALJ had ruled prior to hearing that three of six proposed changes did not require hearing, county and townships did not object to ALJ's ruling regarding scope of hearing, request reconsideration, or seek interlocutory review, and when neighbors' requested at hearing that hearing include proposed change to bury all electrical lines, ALJ asked county and townships if they had any comment on neighbors' objection, to which they replied "no."