

**BEFORE THE
OHIO POWER SITING BOARD**

In the Matter of the Ohio Power Siting Board's)
Review of the Icebreaker Windpower, Inc.)
Application for a certificate to construct a wind-)
Power electric generation facility)

Case No. 16-1871-EL-BGN

**OHIO ENVIRONMENTAL COUNCIL'S PETITION TO INTERVENE AND
MEMORANDUM IN SUPPORT**

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October 13, 2017

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OHIO ENVIRONMENTAL COUNCIL'S PETITION TO INTERVENE

Icebreaker Windpower Inc.'s Application before the Ohio Power Siting Board for a proposed wind-power electric generation facility on Lake Erie ("Icebreaker Windpower Project") represents an important shift in clean energy technology for the State of Ohio. Therefore, the Ohio Environmental Council ("OEC") respectfully moves for leave to intervene in the above-captioned proceeding. Pursuant to OAC §4906-2-12, the Power Siting Board ("Board") should grant OEC's Petition because the organization and its members have a substantial interest in the outcome of this case, they represent interests separate from those of the already existing parties, and their contribution will lead to a just and expeditious resolution of the issues involved in the proceeding without causing undue delay. This Petition is timely, even though OEC files it more than 30 days following publication of the notice required by OAC §4906-3-09; pursuant to ALJ Fullin's Entry in this case ordering that intervention may be accepted up to 30 days following publication of notice, "or by October 16, 2017, whichever is later." *Entry*, Case No. 16-1871-EL-BGN (August 15, 2017).

The OEC is a not-for-profit organization devoted to ensuring Ohioans have access to clean water, clean air, and a healthy environment. The OEC has provided a more detailed

explanation of its standing in this case, its reasons for intervention, and arguments why the Board should grant its Petition in the accompanying Memorandum in Support.

Respectfully Submitted,

/s/Miranda Leppla

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MEMORANDUM IN SUPPORT

I. Ohio law permits intervention of parties in cases before the Ohio Power Siting Board.

The Ohio Revised Code permits parties “who may be adversely affected by a public utilities commission proceeding [to] intervene in such proceeding.” R.C. §4903.221. The Commission has four factors for consideration of such petitions for intervention:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues. R.C. §4903.221(B).¹

Further, O.A.C. §4906-2-12(B) provides additional requirements to be considered when determining whether to grant a petition to intervention, and the Board may grant petitions to intervene “only upon a showing of good cause.” O.A.C. §4906-2-12(B). The Administrative Code mirrors the statutory factors, and requires that the Board consider the following four prong test:

- (1) The nature and extent of the person’s interest.
- (2) The extent to which the person’s interest is represented by existing parties.

¹ Under Ohio law, R.C. 4903.221(B) must be applied to any proceeding or order of the Board. R.C. 4906.12.

- (3) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.
- (4) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party. O.A.C. §4906-2-12(B)(1).

II. The Ohio Power Siting Board should grant the Ohio Environmental Council's Petition to Intervene.

The OEC respectfully requests the Board to grant its Petition to Intervene in the Board's review of Icebreaker Windpower's Application for a Certificate to Construct a Windpowered Electric Generation Facility on Lake Erie for good cause shown. The OEC's interest in this case is fundamental to its mission to protect Ohio's environment and ensure clean energy for all of the State's citizens, and OEC's intervention will assist the Board in its decision regarding the Icebreaker Windpower Project. Further, the Supreme Court of Ohio has emphasized that "intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the [Commission,]" which includes hearings before the Board. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 20.

a. The Ohio Environmental Council has a real and substantial interest in the Icebreaker Windpower Project on Lake Erie.

The OEC is a not-for-profit organization incorporated in Ohio under Section 501(c)(3) of the U.S. Internal Revenue Code, with its main office located at 1145 Chesapeake Avenue, Suite I, Columbus, OH 43212. The OEC's principal purpose is to protect the natural resources and environment of the citizens of the State of Ohio. Lake Erie is a vital resource to all of OEC's members across the state, and most especially, OEC's members that live along the shores of Lake Erie. The OEC has a long history of involvement in similar cases before the Board and the Commission; OEC was actively engaged in AMP Ohio's 2006 application for its Certificate for an Electric Generation Facility for its AMPGS coal plant (16-1358-EL-BGN), the Board's Wind

Siting Rulemaking (16-1109-GE-BRO), and scores of cases over the past decade before the Commission concerning implementation of Ohio's renewable energy and energy efficiency standards, electric security plans, and other cases related to electric generation.

Because the Icebreaker Windpower Project represents a potentially fundamental change in Ohio's access to clean, renewable, energy, OEC and its members should have a seat at a table to represent its interest in Ohio's clean energy portfolio. The proposed wind turbines will be the first of their kind in all of the United States, the first constructed offshore above a fresh water body, and only the second offshore project in all of North America. Furthermore, the Icebreaker Windpower Project has placed itself upon Ohio's most important natural resource: Lake Erie. The OEC has a responsibility to its members and to the State to ensure that the benefit from Icebreaker Windpower Project's enhancement of Ohio's clean energy portfolio is not outweighed by potential detriment to the Lake, its tributaries, and its vast and diverse ecosystems. Wind, as a source of electricity, offers many advantages over its fossil-fuel counterparts, but it still comes with risks in both the operation and construction of the facility, risks that could directly affect a portion of the environment cherished by millions of Ohioans.

As a result, OEC has a real and substantial interest in proper siting, and the ultimate outcome of the Board's consideration of the Icebreaker Windpower Project. The OEC satisfies the first prong of the the Administrative Code's four prong balancing test for permissive intervention before the Board and the Commission.

b. The Ohio Environmental Council has different interests than those of the existing parties.

The OEC's interests differ from either those of Icebreaker Windpower, Inc., or the Board itself. Icebreaker Windpower, Inc., a corporation formed through the efforts of the Lake Erie Energy Development Corporation, has designed the Icebreaker Windpower Project as "a catalyst

to building an industry in Ohio by capturing first-mover advantages associated with job creation and economic development.” *Icebreaker Wind*, LEEDCO, <http://www.leedco.org/icebreaker>. The interests of Icebreaker Windpower, Inc. center on profit, economic development, and job development through the creation of a new energy source within Ohio. The Board’s important purpose is to ensure that the application submitted by Icebreaker Windpower, Inc., satisfies all applicable laws and regulations, especially that applicants satisfy the regulatory requirements found at O.A.C. §4906-5.

While both Icebreaker Windpower and the Board’s interests in the case are important, and may, in some instances align with the interests of OEC, neither of these parties will approach the problem entirely from the perspective of potential environmental impacts, making OEC’s goals for intervention quite distinct from existing parties. The OEC and its members will provide a unique and vital perspective, balancing Ohio’s need for clean energy with concern for the overall environmental impacts to the Lake. The OEC can ensure that just as the Icebreaker Windpower Project provides a new source of economic growth to the Lake Erie region, it also serves as a beacon of environmental integrity and sustainability for Ohio.

c. The Ohio Environmental Council will contribute to a just and expeditious resolution of the issues involved in the proceeding.

The OEC will contribute to a just and expeditious resolution of the issues involved in the proceeding because it can provide expert analyses, ensuring that the Application is given a fair hearing before the Board. As mentioned previously, OEC has a vast array of experience before the Board and the Commission; it intervened in the review of the coal plant siting, rulemaking, and electric utility ratemaking cases contributing expert testimony and in-depth analysis of the legal and policy concerns of each application.

In addition, OEC's perspective and expertise will ensure that the environmental concerns of Ohioans are heard by the Board and adequately protected. This concern drives to the heart of why OEC will contribute to a just resolution of this case: the Board must hear the environmental concerns of Ohioans if the Board is to produce a truly just resolution of this case. The OEC's perspective will echo the thoughts and hopes of millions of Ohioans.

d. The Ohio Environmental Council's intervention will not cause undue delay of the Board's review of the Icebreaker Windpower Project.

If the Board grants OEC's Petition to Intervene in the case regarding the Icebreaker Windpower Project, OEC's involvement will not cause undue delay of the Board's review of the case. The OEC plans to participate in the hearing, ask questions, and potentially provide expert witnesses, but such actions will only serve to contribute to a just and expeditious resolution of the case. Such actions are necessary to serve the interests of OEC, its members, and to serve the interests of Ohio. In fact, OEC wishes to see the process go as smoothly as possible, if in fact the Icebreaker Windpower Project has sufficiently ensured protection of Lake Erie and its natural resources. The OEC desires to see new sources of clean energy in the State of Ohio, and OEC has no intention of causing undue delay in this case.

III. Conclusion

The Board should grant Ohio Environmental Council's Petition to Intervene in the Board's review of Icebreaker Windpower's Application for a Certificate to Construct a Windpowered Electric Generation Facility on Lake Erie. The OEC has a real and substantial interest in the Icebreaker Windpower Project on Lake Erie; OEC has different interests than those of the existing parties, and it will represent those interests more effectively than the existing parties; OEC can contribute to a just and expeditious resolution of the issues involved in the proceeding; and OEC's intervention will not cause undue delay of the Board's review of the

Icebreaker Windpower Project. Therefore, for the reasons stated in this Memorandum in Support, Ohio Environmental Council respectfully requests that the Board grant its Petition to Intervene in Case No. 16-1871-EL-BGN.

Respectfully Submitted,

/s/Miranda Leppla
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served via the Ohio Power Siting Board's e-filing system and via electronic mail on all parties referenced in the service list of the docket.

/s/ Miranda Leppla

Miranda Leppla

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Case No(s). 16-1871-EL-BGN

Summary: Petition Ohio Environmental Council's Petition to Intervene and Memorandum in Support electronically filed by Ms. Miranda R Leppla on behalf of Ohio Environmental Council