

**BEFORE THE
OHIO POWER SITING BOARD**

In the Matter of the Ohio Power Siting Board's)	
Review of the Icebreaker Windpower, Inc.)	Case No. 16-1871-EL-BGN
Application for a Certificate to Construct a Wind-)	
Power Electric Generation Facility)	

**SIERRA CLUB'S PETITION TO INTERVENE
AND MEMORANDUM IN SUPPORT**

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October 16, 2017

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SIERRA CLUB'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 Sierra Club respectfully moves for leave to intervene in the above-captioned proceeding. Pursuant to OAC §4906-2-12, the Power Siting Board ("Board") should grant Sierra Club's Petition because the organization and its 17,000 Ohio 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 Sierra Club 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).

Sierra Club is a not-for-profit organization devoted to promoting clean energy, reducing reliance on coal-burning and natural-gas generation, and encouraging energy efficiency. Below, Sierra Club 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,

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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 Sierra Club's Petition to Intervene.

Sierra Club 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 Sierra Club's interest in this case is fundamental to its mission of promoting clean energy, reducing reliance on coal-burning and natural-gas generation, and encouraging energy efficiency. Sierra Club's intervention will assist the Board in its decision regarding the Icebreaker Windpower Project, as Sierra Club has much expertise, developed in regulatory proceedings around the country, in issues related to wind energy. 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 Sierra Club has a real and substantial interest in the Icebreaker Windpower Project on Lake Erie.

The Sierra Club is a not-for-profit organization with its Ohio office located at 131 N. High Street, Suite 605, Columbus, OH 43215. The Sierra Club's main advocacy goal, in Ohio and nationwide, is to promote clean-energy resources and reduce reliance on coal-burning and natural gas-burning generation. Further, Sierra Club has an interest in the appropriate deployment of clean-energy resources, including energy efficiency, that will create economic, public health, and environmental benefits throughout Ohio, including for Sierra Club's Ohio

members. Sierra Club has a long history of participating in Ohio regulatory proceedings that impact clean energy and the environment, including recent electric security plan cases at the Public Utilities Commission of Ohio.

Because the Icebreaker Windpower Project represents a potentially fundamental change in Ohio's access to clean, renewable, energy, Sierra Club and its members should have a seat at a table to represent their 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 Sierra Club 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, Sierra Club has a real and substantial interest in proper siting, and the ultimate outcome of the Board's consideration of the Icebreaker Windpower Project. The Sierra Club satisfies the first prong of the Administrative Code's four prong balancing test for permissive intervention before the Board and the Commission.

b. The Sierra Club has different interests than those of the existing parties.

The Sierra Club'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 Sierra Club, neither of these parties will approach the problem entirely from the perspective of potential environmental impacts, making Sierra Club’s goals for intervention quite distinct from existing parties.

Sierra Club’s interests are also not identical to those of the Ohio Environmental Council (“OEC”), our close friends and sister organization. Sierra Club and OEC often emphasize different issues related to clean energy and have different organization priorities. Thus, Sierra Club’s presence is necessary to fully ensure the positions and interests of the organization are voiced.

c. The Sierra Club will contribute to a just and expeditious resolution of the issues involved in the proceeding.

The Sierra Club 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 and adequate hearing before the Board. Sierra Club has vast experience in clean energy issues, including related to wind energy, and can bring this expertise to bear in aiding the Board’s consideration of this Application.

In addition, Sierra Club'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 Sierra Club 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 Sierra Club's perspective will echo the thoughts and hopes of millions of Ohioans.

d. The Sierra Club's intervention will not cause undue delay of the Board's review of the Icebreaker Windpower Project.

If the Board grants Sierra Club's Petition to Intervene in the case regarding the Icebreaker Windpower Project, Sierra Club's involvement will not cause undue delay of the Board's review of the case. The Sierra Club, through its counsel, 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 Sierra Club, its members, and to serve the interests of Ohio. In fact, Sierra Club 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 Sierra Club desires to see new sources of clean energy in the State of Ohio, and Sierra Club has no intention of causing undue delay in this case.

III. Conclusion

The Board should grant Sierra Club'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 Sierra Club has a real and substantial interest in the Icebreaker Windpower Project on Lake Erie; Sierra Club has different interests than those of the existing parties; Sierra Club can contribute to a just and expeditious resolution of the issues involved in the proceeding; and Sierra Club'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, Sierra Club respectfully requests that the Board grant its Petition to Intervene in Case No. 16-1871-EL-BGN.

Respectfully Submitted,

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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 Sierra Club's Petition to Intervene and Memorandum in Support electronically filed by Ms. Miranda R Leppla on behalf of Sierra Club