

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Icebreaker)
Windpower Inc., for a Certificate to Construct a) Case No: 16-1871-EL-BGN
Wind-Powered Electric Generation Facility in)
Cuyahoga County, Ohio.

**ICEBREAKER WINDPOWER INC.'S MEMORANDUM CONTRA TO PETITION TO
INTERVENE BY CUYAHOGA COUNTY RESIDENTS VICCI WEEKS, CARYN GOOD
SEWARD, AND STEVEN SEWARD**

I. INTRODUCTION

Pursuant to Ohio Administrative Code (“OAC”) Rule 4906-2-27(B)(1), Icebreaker Windpower Inc. (“Icebreaker”) submits this memorandum contra to the October 16, 2017 Petition for leave to intervene of Vicci Weeks, Caryn Good Seward, and Steven Seward (“Petitioners”).

Icebreaker strongly believes in public participation, and has gone to great lengths over the past decade to inform the public of the Project and answer all questions about the Project from its very inception. The Lake Erie Energy Development Corporation (“LEEDCo,” Icebreaker’s predecessor), the Great Lakes Energy Development Task Force, (LEEDCo’s predecessor), and Icebreaker have spoken at over 400 meetings. Icebreaker and its predecessors have presented to a diverse cross-section of groups, including: Rotary and Kiwanis clubs, environmental organizations, birding organizations, city councils, green teams, water use groups, lakefront property owners, lakefront communities, churches, student and business groups, schools, fishermen, and boaters. Icebreaker’s outreach over the years has resulted in over 500 comments being filed with the Ohio Power Siting Board (“Board”). In 2013, LEEDCo conducted a

door-to-door POWER Pledge Campaign, where 21,000 households/individuals were contacted. This scientifically designed survey (designed by Akron University's Polling Institute) covered four counties (Lorain, Cuyahoga, Lake, and Ashtabula), as well as numerous other non-lakefront communities, even though not all of the communities will be affected by the Project or even near the Project footprint. In addition, the full Cleveland City Council and its Utilities Committee held multiple public meetings, as did Cuyahoga County Council, where citizens could comment regarding the County's purchase of power from the Project.

However, even given Icebreaker's strong commitment to public outreach and involvement, upon review of the Petitioners' motion, it is not possible for Icebreaker to support intervention in this matter by these individuals. As further set forth herein, Icebreaker opposes the Petition for good reason. Petitioners claim an interest in this case based on the fact that they: a) are residents of Cuyahoga County; b) pay applicable real estate taxes, as well as federal income taxes; c) consume electricity; and d) engage in recreational activities in and around Lake Erie. As stated in the Petition:

The Swards regularly visit and recreate at Lake Erie: they walk and run along the waterfront, bicycle and swim in the lake. Thus, like Ms. Weeks, the Swards have numerous direct, personal interests to be protected in this proceed [*sic*]. (Petition at 2).

Even a liberal interpretation of the standing doctrine should lead to denial of this Petition. If the Petitioners' weak claims for intervention are deemed sufficient, every citizen of Ohio could arguably become an intervenor to this proceeding.

Unlike property owners residing in the footprint of onshore wind projects, who have leased their land to a project or whose neighbors have done the same, and who, therefore, have an interest in how it is sited, these Petitioners do not live, work, or even suggest they ever go anywhere near where this proposed wind farm will be constructed. Petitioners articulate no

particular connection to the Project, instead suggesting that arguments such as, “we occasionally consume electricity” and “we have paid our federal income tax” provide a sufficient nexus to the Project to establish standing. We assert that it does not. If it did, any Ohio resident could be granted intervention in this proceeding. Their relationship to the Project is no different than that of millions of Ohio residents, and it does not show the particularized interest required to support a motion for intervention.

Petitioners also state that their interests in the proceeding relate to “legal deficiencies” in Icebreaker’s application, namely that it fails to establish the “nature of the probable environmental impact” of the Project (Petition at 4). In support of this proposition, Petitioners reference alleged flaws in Icebreaker’s bird and bat risk studies, failing to mention that the Board is charged with investigating the Project and issuing ecological and environmental assessments, with considerable review and input from the Ohio Department of Natural Resources (“ODNR”), Division of Wildlife (a member of the Board), in consultation with the U.S. Fish and Wildlife Service. The Applicant has engaged in extensive discussions with both of these agencies and has reached a Memorandum of Understanding on the bat and avian monitoring with ODNR. Not only do the Petitioners’ claimed interests not warrant intervention on substantive grounds, but insofar as Petitioners are concerned with potential impacts to the environment and to wildlife, those interests are already adequately represented by others in the proceeding, namely the Ohio Environmental Council (“OEC”) and the Sierra Club, both of whom have an established track record of wildlife advocacy.

Regardless of how Petitioners frame their arguments, their stated “interests” do not rise to a level that warrants intervention in this proceeding, given their lack of relationship to the

Project, the statutory obligations of the Board, and the participation of the other parties. As such, the Petition should be denied for lack of good cause.¹

II. BACKGROUND

On February 1, 2017, as subsequently supplemented, Icebreaker filed an application for a certificate of environmental compatibility and public need for the Icebreaker Wind Project in Cuyahoga County (the “Application”). Icebreaker proposes to construct North America’s first freshwater offshore wind farm—it will consist of six wind turbines installed some 8-10 miles off the Cleveland coastline in Lake Erie, along with submerged electric cables to connect with a substation in Cleveland. The purpose of the facility is to produce wind-powered electricity that will maximize energy production from wind resources in order to deliver clean, renewable electricity to the Ohio bulk power transmission system, serving the needs of electric utilities and their customers. The intent is for the facility to be a demonstration-scale Project.

On August 15, 2017, the Board issued an entry establishing the procedural schedule. On October 16, 2017, Vicci Weeks and the Swards filed their Petition to intervene.

III. ARGUMENT

A. Legal Standard

Under both Section 4906.08(A)(3) of the Ohio Revised Code (“RC”), and OAC Rule 4906-2-12(B), the Board or Administrative Law Judge (“ALJ”) assigned to the case may grant

¹ Icebreaker also notes that, on March 16, 2017, counsel for Petitioners also filed a request on behalf of the Campaign for American Affordable and Reliable Energy (“CAARE”) to be added to the service list in this docket. CAARE, a coal industry interest group, has made previous unsuccessful attempts to intervene in proceedings before this Board in order to “preserve and protect the coal industry..., to challenge renewable portfolio standards and financial and tax incentives for alternative energy sources on both a state and federal level.” *In re Application of Paulding Wind Farm*, Case No. 15-2030-EL-BGA et al., Entry (Apr. 6, 2016) at 5. The Board properly denied CAARE’s motion to intervene because it failed to show that it had an interest in the applications, and because the issues CAARE raised concerning facilities or wildlife were adequately addressed by the Ohio Farm Bureau Federation, an entity with local interests. *Id.* at 7. The current Petition is analogous.

petitions to intervene only upon a showing of “good cause.” In determining “good cause” and whether to allow intervention, the Board / ALJ may consider the following factors:

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

The Ohio Supreme Court has held that “intervention ought to be liberally allowed so that positions of all persons with a real and substantial interest in the proceedings can be considered.” *Ohio Consumers’ Counsel v. Pub. Util. Comm. of Ohio*, 111 Ohio St.3d 384, 2006-Ohio-5853 (*emphasis added*). However, merely filing a petition to intervene in an administrative proceeding does not guarantee intervention. See e.g. *Senior Citizens Coalition v. Pub. Util. Comm. of Ohio*, 69 Ohio St.2d 625, 627 (1982) (upholding Public Utilities Commission of Ohio’s decision to limit a party’s intervention).

B. Intervention is Not Warranted

Petitioners lack the “good cause” required to intervene. Not only are their stated interests indirect, impersonal, generic, and outside the scope of the Application, but they are already adequately protected by existing parties to the case with greater expertise in the issues these intervenors intend to raise. Allowing intervention would unjustly complicate and delay the proceeding. As such, the Petition should be denied.

1. The nature and extent of Petitioners’ interests are neither real nor substantial.

Three residents of Cuyahoga County filed this Petition to intervene—Vicci Weeks and the Swards. The Petition begins by explaining the “numerous, direct, personal” interests at stake, based on the following rationale:

Ms. Weeks:

- Is a lifelong County resident
- Owns a home in Parma upon which she pays real estate taxes
- Consumes electricity
- Pays federal tax
- During lifetime, has swum, waterskied, fished, and boated in Lake Erie

Mr. and Mrs. Seward:

- Are longtime County residents
- Live “10 minutes away” from lake
- Drive along lake to work
- Own home in Cleveland upon which they pay real estate taxes
- Consume electricity
- Walk, run, and bike along the lake

None of the “interests” described above are of a “real and substantial” nature to warrant intervention. Indeed, none of Petitioners’ activities would be impacted in the least by Icebreaker’s wind turbines, which will be located 8-10 miles offshore. Petitioners’ properties are not adjacent to the Project and by our calculations sit 9 to 17 miles away from the nearest wind turbine. Ms. Weeks’ Parma residence in particular is 9 miles from the shoreline, and 17 miles from the Project. See map, Attachment 1. Given this distance, Petitioners will never be affected by wind turbine shadow flicker or sound, the gathering of transformer lines or cables, or any other wind farm externality.

Their ability to drive to work along the shore, continue to swim, fish, and waterski in the lake, as well as walk, run, and cycle along the shoreline is utterly unaffected by the presence of turbines 8 to 10 miles away. Indeed, as experts have explained in the Application, on the vast majority of days with typical visibility, Cuyahoga County residents will never even be able to see the wind turbines. Moreover, on clear days, the turbines will be a mere series of specks on the horizon. See photo simulation, Attachment 2. Indeed, in addition to the excellent wind resource

over the water, one of the major benefits of offshore wind is its minimal impact to neighbors or communities, visually or otherwise.

Petitioners correctly state that “the Board has granted numerous petitions to intervene filed by property owners whose property would be affected by a proposed project.” (Petition at 13) (*emphasis added*). Yet each of the cases Petitioners cite to support their intervention involves owners of property near or adjacent to an actual wind farm. See, e.g., *In re Application of American Transm. Systems, Inc.*, Case No. 12-1636-EL-BTX, Entry (May 21, 2014) at 1-2 (granting intervention to an owner of property along the possible alternate route of a proposed transmission line); *In re Application of Champaign Wind, LLC*, Case No. 12-160-EL-BGN, Entry (Aug. 2, 2012) at 3-6 (granting intervention to “property owners who own real estate and reside within the footprint of” a wind farm); *In re Application of Buckeye Wind LLC*, Case No. 13-360-EL-BGA, Entry (Nov. 21, 2013) at 5-6 (granting motion of proposed intervenors who claimed the wind project would have an impact on “their residences, lands, roads, and community”).

The Icebreaker Wind Project will be the first of its kind in Ohio, as well as in all of North America. Unlike previous wind farm proceedings before this Board, Icebreaker proposes to locate its wind turbines 8-10 miles away from Cleveland, landowners, residences, and the general public. Practically speaking, issues related to landowner property rights and other public safety concerns – which the Petitioners cite as justification for their intervention – simply do not exist with six wind turbines sited in a large body of water many miles away from the nearest city coastline. Similarly, Petitioners’ reference to the “interference with recreation and enjoyment” of Lake Erie rings hollow given the location of the Project and its distance from any persons or structures. (Petition at 14). Further, as the Board has previously explained, “it is not enough for

a person seeking to intervene in a proceeding . . . to merely state that he or she resides in a county wherein the project under consideration is proposed to be sited.” *See In re Application of Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010) (*emphasis added*).

Relatedly, the fact that Petitioners are Ohio energy consumers who also pay state/federal income and real estate tax does not confer a right to intervene. Petitioners supposed concerns regarding “irregular intermittency,” “subsidies to out-of-state producers,” and “increased cost of electricity,” are irrelevant and have “no true nexus” with the Board’s review of the Application. *See In re Application of Col. S. Power Co., et al.*, Case No. 06-309-EL-BTX, Entry (Nov. 20, 2006) (denying petition to intervene due to alleged rate and reliability issues).² Under Petitioners’ erroneous legal argument, anyone in Ohio (and even beyond, given their federal tax argument) could intervene in Board proceedings.

Ms. Weeks and the Swards also allege in their Petition that Icebreaker’s Application “completely fails to establish ‘the nature of the probable environmental impact’ of the [project], much less that the [project] ‘represents the minimum adverse environmental impact.’” (Petition at 4). Petitioners then attempt to tie this allegation to their own “important interests” of preventing: a) the killing of birds and bats; b) general environmental degradation; and c) negative impacts to the habitat of freshwater species. (Petition at 13-15). But as the Board is well aware, one of the purposes of this proceeding is to ensure that any potential adverse environmental impacts resulting from the proposed Project are minimized. However, it is evident that Petitioners’ environmental interests are indirect and tangential to their Petition and should not be viewed as valid particularized environmental “interests.”

² In addition, the appropriate place to raise these concerns would have been at the City and County Councils’ public meetings related to the purchase of the energy output from the Project.

To be clear, the Ohio General Assembly tasked the Board with adopting “rules establishing criteria for evaluating the effects on environmental values of proposed and alternative sites, and projected needs for electric power.” RC Section 4906.03(C). Icebreaker may commence construction only upon the Board’s issuance of a “certificate of environmental compatibility and public need.” RC Section 4906.01(D). The Board itself is comprised of directors from a variety of state agencies established to protect the public, the environment, and wildlife, including the Department of Environmental Protection, the Department of Health, and the Department of Natural Resources. RC Section 4906.02(A). These agencies and the Board retain environmental experts who are tasked with the statutory duty to investigate electric generation projects and issue reports addressing environmental and wildlife concerns. That Petitioners might someday disagree with the expert opinion of these agencies is not in and of itself a valid justification to intervene.

As an example of its rigorous investigatory process, on April 3, 2017, the Board requested additional information from Icebreaker, including a Memorandum of Understanding (“MOU”) on “pre-, during, and post-construction monitoring studies and analyses for project impacts on birds and bats.” *See* Board Letter (Apr. 3, 2017) at 1. The Board did not issue a compliance letter or begin the formal proceeding until it received this information. *Id.* As such, the topics referenced by Ms. Weeks and the Swards are appropriately being investigated and reviewed by the agency tasked with that responsibility. The requested information has since been filed with the Board. *See* Response to Board Letter, Avian and Bat MOU and Monitoring Plan (July 20, 2017). Hence, the environmental/wildlife concerns mentioned by Petitioners do not in any way support their request to intervene. Any such concerns will undoubtedly be addressed by the Board in accordance with its mandate from the General Assembly.

In sum, Petitioners' stated interests in the proceeding as "taxpayers" and "residents of Cuyahoga County" who cherish Lake Erie and question the value of renewable energy generally do not warrant intervention in this case, as the proposed Project will be located 8-10 miles away from any person or structure, and 9-17 miles away from the Petitioners. Moreover, the recreational activities enjoyed by Petitioners will continue unabated and do not reflect in any way a direct, substantial, or relevant personal interest warranting intervention. Therefore, Petitioners have failed to show that they have an interest that relates to or will be impacted by the specific issues at stake in the Application proceeding.

2. Relevant Interests will be Adequately Represented and Investigated

Petitioners have no real, substantial, direct, or relevant interest in this proceeding, so their Petition should be denied outright. *See In re Application of Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (March 2, 2010) at ¶ 13 (denying intervention for lack of individual interests). But insofar as Petitioners claim an interest in the degradation of the environment and its wildlife, both the Sierra Club and the Ohio Environmental Council will adequately represent such interests. The Sierra Club specifically states in its intervention petition that it "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." *See* Sierra Club Petition to Intervene (Oct. 16, 2017) at 6. Sierra Club also "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." *Id.* at 7.

Similarly, OEC states in its intervention petition that its principal purpose is to “protect the natural resources and environment of the citizens of the State of Ohio.” *See* OEC Petition to Intervene (Oct. 13, 2017) at 5. OEC further explains that Lake Erie is a vital resource to all OEC members across the state, including many that live along the shores of Lake Erie. *Id.* Finally, as previously explained, the Board’s staff will adequately address and investigate Petitioners’ concerns regarding the environment and wildlife, including the viability and precise design of pre-construction radar used to evaluate impacts to migrating birds and bats. *See e.g. Fairview General Hosp. v. Fletcher*, 69 Ohio App. 3d 827, 835 (10th Dist. App. 1990) (denying intervention because state agencies already adequately represented intervenor’s economic and health care interests).

3. Petitioners will not Contribute to a Just and Expeditious Resolution of the Proceeding

Petitioners’ involvement in this proceeding is unnecessary and will not contribute to a just and expeditious resolution of the issues. As previously explained, Petitioners have raised issues already addressed by the Board, and have claimed interests already represented by existing parties to the case. Allowing Petitioners to intervene simply because they are taxpaying residents of Cuyahoga County who enjoy Lake Erie would be neither just nor expedient, and is wholly unsupported by precedent. If these were valid interests, then every one of the millions of taxpaying Ohioans could intervene in this proceeding, which would clearly be an impractical and nonsensical result.

4. Granting Petitioners’ Intervention will Unduly Delay the Proceedings and Cause Unjust Prejudice to Icebreaker

Petitioners’ participation in this proceeding will cause unnecessary delay and prejudice to Icebreaker. In the intervention Petition, Ms. Weeks and the Swards reveal their overwhelming

negative personal views on the Icebreaker Wind Project, none of which deal with their stated interests of protecting the environment and surrounding community. Petitioners claim that the Project “makes absolutely no economic sense” and that Icebreaker is employing a nonsensical “ruse” to convince the Board to grant certification. It is evident that the driving force behind Petitioners’ attempted intervention is their ideological opposition to wind energy generally—and not some pretend impact to their commute to work or their ability to go swimming in the summertime. Petitioners’ claims are not specifically addressed to this Project, but rather to renewable wind-powered projects in general. Thus, this proceeding is not the appropriate forum for the Petitioners’ arguments and to allow them to intervene would unjustly prejudice Icebreaker.

Petitioners acknowledged bias against wind power is not something that can be adjudicated by the Board. For example, the complaint that wind is a variable resource (“intermittent”) or that the Project earned a federal grant cannot be redressed in this case. By raising these immaterial political arguments, Petitioners make clear their motion really serves to stall, delay, and/or simply kill the Project on grounds unrelated to those under which they claim to have an interest. The granting of this attempted intervention based merely on political hostility would undoubtedly result in unjust delay and prejudice to Icebreaker through unnecessary litigation, including discovery and any appeals from the Board’s ruling.

These facts do not support intervention.

IV. CONCLUSION

In sum, Ms. Weeks and the Swards' Petition to intervene in this proceeding should be denied for a lack of "good cause," based on the following:

1. **No real or substantial interest: Petitioners live 9-17 miles away from the Project** and, therefore, have no substantial, direct, or personal interest in the proceeding.
2. **Interests represented by other parties:** Insofar as Petitioners claim an interest in environmental/wildlife issues, those interests are adequately represented by the Board, OEC, and Sierra Club.
3. **No contribution to just and expeditious resolution:** Petitioners will not contribute to a just and expeditious resolution of the issues—the Board could not expeditiously resolve any issues if it permitted every single taxpaying, Lake Erie frequenting resident of Cuyahoga County with a political ax to grind to intervene in this proceeding.
4. **Will unduly delay and unjustly prejudice:** Given Petitioners' political agenda to oppose renewable energy generally, their participation in the proceeding will merely cause undue delay to the proceeding and unjust prejudice to Icebreaker.

Respectfully Submitted,

/s/ Christine M.T. Pirik

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October 31, 2017

CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 31st day of October, 2017.

/s/ Christine M.T. Pirik

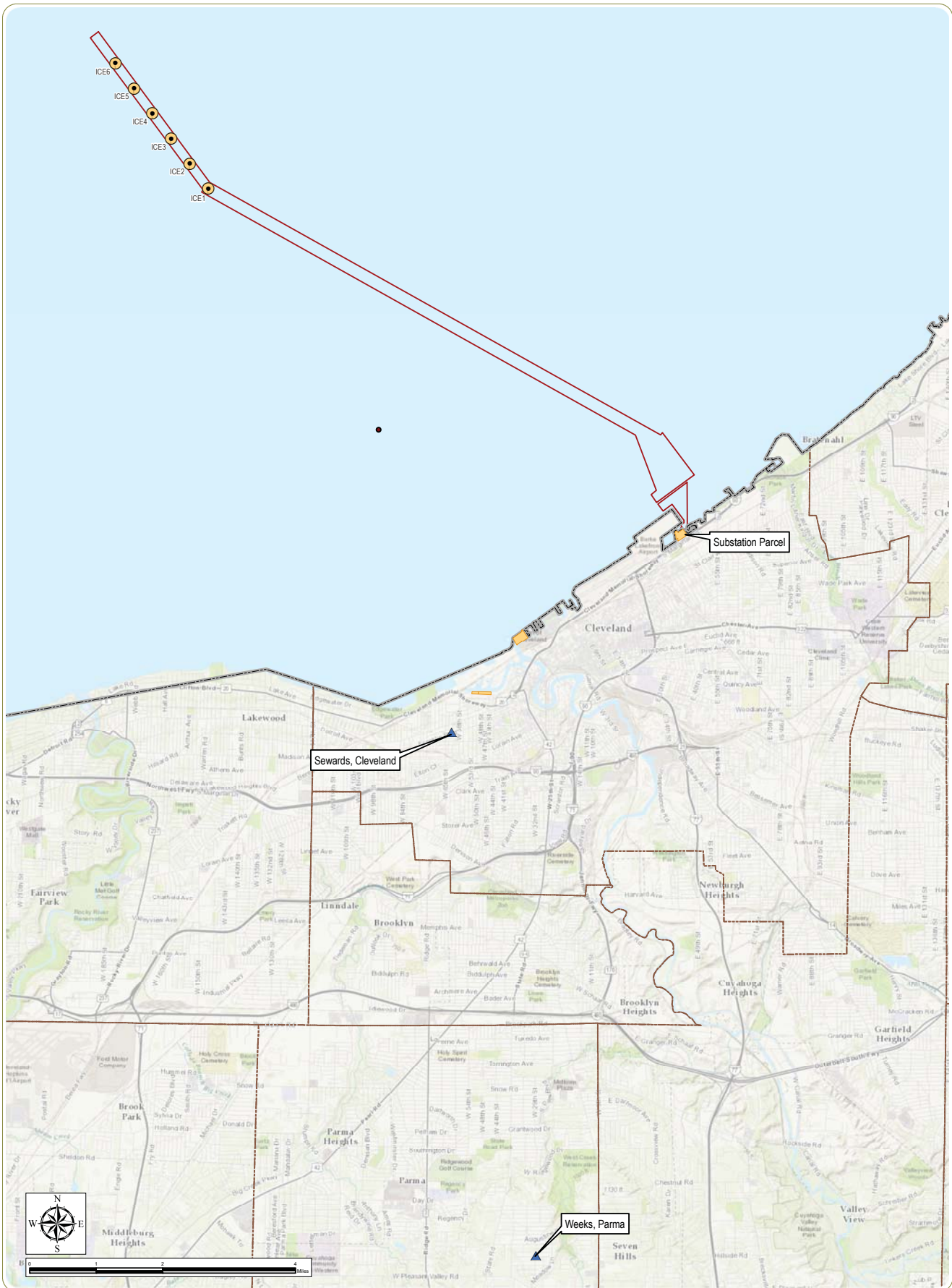
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Icebreaker Wind

Lake Erie, City of Cleveland, Cuyahoga County, Ohio

Project Layout

Notes: 1. Basemap: ESRI ArcGIS Online "World Topographic Map" map service.
2. This map was generated in ArcMap on October 31, 2017.
3. This is a color graphic. Reproduction in grayscale may misrepresent the data.

- ▲ Addresses
- Meteorological Tower
- Proposed Wind Turbine
- Alternate Wind Turbine
- Ancillary Facility
- ▭ Electric Collection Line Envelope
- ▭ Municipal Boundary
- ▭ County Boundary



SIMULATION



VISIBILITY SUBJECT TO CHANGE BASED ON FINAL TURBINE LOCATIONS AND SPECIFICATIONS.

Project Icebreaker

Visual Simulation of Proposed Turbines From
Lakewood Park, Lakewood
Cuyahoga County, Ohio

September 2016

Viewpoint and Wind Farm Technical Data

Camera Type	Nikon D810
Field of View	39.5°
Viewer Location	Lat/Long: 41°29'49.60" N, 81°47'32.50" W
Photograph View Direction	North
Distance to Nearest Visible Turbine72 Miles
Time of Photograph	15:58
Date Photograph Taken	August 3, 2016
Turbine Type	Vestas 126
Maximum Blade Tip Height from Ground	479 Feet (146 Meters)
Turbine Hub Height	272.3 Feet (83 Meters)
Turbine Rotor Diameter	413.3 Feet (126 Meters)
Number of Turbines	6 Total

Viewpoint Location and View Direction



Original Photograph



Prepared For:

Prepared By:



SIMULATION



VISIBILITY SUBJECT TO CHANGE BASED ON FINAL TURBINE LOCATIONS AND SPECIFICATIONS.

Project Icebreaker

Visual Simulation of Proposed Turbines From
Cleveland Mall, Cleveland
Cuyahoga County, Ohio

September 2016

Viewpoint and Wind Farm Technical Data

Camera Type	Nikon D810
Field of View	39.5°
Viewer Location	Lat/Long: 41° 30' 18.03" N, 81° 41' 43.64" W
Photograph View Direction	North Northwest
Distance to Nearest Visible Turbine	8.6 Miles
Time of Photograph	18:43
Date Photograph Taken	August 3, 2016
Turbine Type	Vestas 125
Maximum Blade Tip Height from Ground	479 Feet (146 Meters)
Turbine Hub Height	272.3 Feet (83 Meters)
Turbine Rotor Diameter	413.3 Feet (126 Meters)
Number of Turbines	6 Total

Viewpoint Location and View Direction



Original Photograph



Prepared For:

Prepared By:



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Summary: Memorandum Contra to Petition to Intervene by Vicci Weeks, Caryn Good Seward, and Steven Seward electronically filed by Christine M.T. Pirik on behalf of Icebreaker Windpower Inc.