

## THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF  
ICEBREAKER WINDPOWER, INC. FOR A  
CERTIFICATE TO CONSTRUCT A WIND-  
POWERED ELECTRIC GENERATION  
FACILITY IN CUYAHOGA COUNTY, OHIO.

CASE NO. 16-1871-EL-BGN

### ENTRY

Entered in the Journal on April 20, 2018

{¶ 1} Icebreaker Windpower, Inc. (Icebreaker or Applicant) is a person as defined in R.C. 4906.01.

{¶ 2} R.C. 4906.04 provides that no person shall construct a major utility facility in the state without obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 3} On September 13, 2016, Applicant filed a pre-application notice with the Board regarding its intent to construct the electric generation facility being proposed in this case. On February 1, 2017, and supplemented on March 13, 2017, and July 24, 2017, Icebreaker filed an application for a certificate to construct its proposed project, which it has described as a 6-turbine demonstration wind-powered electric generation facility located 8-10 miles off the shore of Cleveland, in Cuyahoga County, Ohio. The wind turbines are expected to have a nameplate capacity of 3.45 megawatts (MW) each, with a total capacity of 20.7 MW.

{¶ 4} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days after receipt of an application for a major utility facility, the Chairman of the Board shall notify an applicant of the acceptance or rejection of the application as complete. By letter (compliance letter) filed April 3, 2017, the Chairman of the Board notified Applicant that additional information was needed in order for the application to be considered in compliance with Ohio Adm.Code Chapters 4906-01, et. seq. Thereafter, by filings made on July 20, 2017, and July 24, 2017, Applicant filed a second supplement to its application, along with a response to the Chairman's April 3, 2017 letter. By letter filed on July 31, 2017, the Board notified

Icebreaker that its application was, by then, sufficiently complete to permit Staff to commence its review and investigation of the application. The July 31, 2017 letter directed Icebreaker, pursuant to Ohio Adm.Code 4906-3-07, to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. Further, the letter directed Icebreaker, pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12, to submit the requisite application fee.

{¶ 5} On August 1, 2017, Icebreaker filed its certificate of service of its accepted and complete application, in accordance with the requirements of Ohio Adm.Code 4906-3-07. Icebreaker also submitted the application fee to the Board, pursuant to Ohio Adm.Code 4906-3-12.

{¶ 6} By Entry issued on August 15, 2017, a procedural schedule was established for this matter including an October 23, 2017 date for filing the Staff Report of Investigation (Staff Report), a local public hearing on November 8, 2017, and an adjudicatory hearing on November 17, 2017.

{¶ 7} On October 23, 2017, Staff filed a motion seeking to suspend the procedural schedule, with the exception of the public hearing. By Entry issued on October 23, 2017, the administrative law judge (ALJ) granted Staff's motion. The Entry directed Icebreaker to supplement the record with additional information, including, specifically, the radar report, and whether it can reliably measure the effect of offshore turbines on birds and bats and inform of the risk levels for future development projects in Lake Erie. Further, the Entry provided that a new procedural schedule and the supplemented application's effective date would be set by subsequent Entry after Icebreaker filed the radar report.

{¶ 8} On January 24, 2018, Icebreaker filed supplemental information that included the radar report. Concurrently, Icebreaker also filed a motion to reestablish the procedural schedule, as well as a request for waiver of Ohio Adm.Code 4906-3-09(A)(2). In support of its motion, Icebreaker contends that it has complied with Staff's request and the ALJ's

directive to produce this report and argues that Icebreaker has provided all of the necessary information for Staff to complete its investigation. Further, Icebreaker notes that the second public notice requirement set forth in Ohio Adm.Code 4906-3-09(A)(2) is not mandated by statute and may be waived by the Board, pursuant to Ohio Adm.Code 4906-2-01. Applicant also argues that compliance with this rule as to the supplemented application will only cause unnecessary costs and further delay in this proceeding, adding that Icebreaker will publish and serve notice of the schedule as required by R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09(A)(1).

{¶ 9} Memoranda contra Icebreaker's motion to reestablish the procedural schedule and request for waivers were filed by Cuyahoga County and Bretenahl residents (collectively, Cuyahoga Residents) on February 5, 2018, and by Staff on February 8, 2018. Cuyahoga Residents contend that Icebreaker failed to provide the Board with scientifically-valid data regarding bird and bat use of the proposed project area to enable the Board to perform its proper statutory review of the application. Staff notes that, while it does not object to the ALJ granting Icebreaker's motion to reestablish the procedural schedule and establishing a fair and realistic schedule, it does oppose Icebreaker's request for a waiver of Ohio Adm.Code 4906-3-09(A)(2), adding that this rule provides an important public purpose.

{¶ 10} Additionally, Sierra Club and Ohio Environmental Council filed a memorandum in support of Icebreaker's motion to reestablish the procedural schedule on February 8, 2018.

{¶ 11} Icebreaker filed a reply to the memoranda contra on February 15, 2018.

{¶ 12} Thereafter, Applicant filed a fourth supplement to its application on March 22, 2018, in which Applicant contends the contents include: a summary of avian and bat risk assessment by Western EcoSystems Technology, Inc.; avian and bat and aquatic memorandums of understanding (MOUs) with the Ohio Department of Natural Resources

that set forth Applicant's commitments to perform pre- and post-construction monitoring to assess the project's actual impacts, as well as annual pre-construction baseline monitoring reports; and an update on the baseline radar survey and correspondence from the United States Fish and Wildlife Service. Finally, Icebreaker requests that the Board grant its motion to reestablish the procedural schedule as soon as possible, reiterating its earlier arguments.

{¶ 13} Cuyahoga Residents filed a response to Icebreaker's fourth supplement to its application on April 6, 2018, to which Icebreaker filed a response on April 10, 2018.

{¶ 14} At this time, the ALJ finds Icebreaker's motion to reestablish the procedural schedule should be granted. It appears that Icebreaker has provided the requested information that will enable Staff to continue its investigation. The effective date of the filing of the supplemented application shall be April 20, 2018, in accordance with Ohio Adm.Code 4906-3-08. However, the ALJ does not find that Icebreaker has shown good cause to waive the second public notice requirement set forth in Ohio Adm.Code 4906-3-09(A)(2). We agree with Staff that, given the fact that this application is precedent setting, notice of the public and adjudicatory hearings is of paramount importance to ensure sufficient opportunity for public participation.

{¶ 15} R.C. 4906.07(A) provides that, upon receipt of an application complying with R.C. 4906.06, the Board must promptly fix a date for a public hearing not less than 60 nor more than 90 days after such receipt, and shall conclude the proceeding as expeditiously as practicable.

{¶ 16} Accordingly, the second local public hearing in this case will be held on July 19, 2018, at 6:00 p.m., at Cleveland City Council Chambers, Cleveland City Hall, 601 Lakeside Avenue, 2nd Floor, Cleveland, Ohio 44114. The adjudicatory hearing will commence on August 6, 2018, at 10:00 a.m., 11th Floor, Hearing Room 11-A, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

{¶ 17} Icebreaker should issue public notices of the supplemented application and hearings in accordance with Ohio Adm.Code 4906-3-09. As part of the information to be included in the notices, as required by Ohio Adm.Code 4906-3-09, Icebreaker shall include a statement that the public hearing in this case shall consist of two parts:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person, commencing at 6:00 p.m., on July 19, 2018, at the Cleveland City Council Chambers, Cleveland City Hall, 2nd Floor, 601 Lakeside Avenue, Cleveland, Ohio, 44114.
- (b) An adjudicatory hearing to commence on August 6, 2018, at 10:00 a.m., 11th Floor, Hearing Room 11-A, at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793.

{¶ 18} Ohio Adm.Code 4906-2-09 provides that the ALJ shall regulate the course of the hearing including requiring that expert or factual testimony to be offered in Board proceedings be reduced to writing and filed with the Board, according to a schedule established by the ALJ. Accordingly, the ALJ finds that the following procedural schedule and process should be implemented:

- (a) Pursuant to Ohio Adm.Code 4906-3-06, Staff shall file its Staff Report on or before July 3, 2018.
- (b) On or before July 10, 2018, each party shall file a list of issue(s) citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing.

- (c) All expert and factual testimony to be offered by Icebreaker shall be filed by July 23, 2018.
- (d) All expert and factual testimony to be offered by intervenors and Staff shall be filed by July 27, 2018.
- (e) The parties are strongly encouraged to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJs assigned to this case.

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That Icebreaker's motion to reestablish the procedural schedule be granted, as set forth in this Entry. It is, further,

{¶ 21} ORDERED, That Icebreaker's request for waiver of Ohio Adm.Code 4906-9-09(A)(2) be denied. It is, further,

{¶ 22} ORDERED, That hearings in this matter be scheduled at the times and places designated in Paragraphs 16 and 17. It is, further,

{¶ 23} ORDERED, That the application and hearings be noticed by Icebreaker in accordance with Paragraph 17. It is, further,

{¶ 24} ORDERED, That Staff file its Staff Report pursuant to Paragraph 18. It is, further,

{¶ 25} ORDERED, That the parties file their issue lists and testimony in accordance with Paragraph 18. It is, further,

{¶ 26} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE OHIO POWER SITING BOARD

/s/ Megan Addison

By: Megan Addison  
Administrative Law Judge

sjp/vrm

**This foregoing document was electronically filed with the Public Utilities**

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**in**

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

Summary: Administrative Law Judge Entry setting forth the procedural schedule;  
electronically filed by Vesta R Miller on behalf of Megan Addison, Administrative Law Judge,  
Ohio Power Siting Board