

**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. )

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**ICEBREAKER WINDPOWER INC.'S MEMORANDUM CONTRA OPSB STAFF'S  
MOTION FOR AN EXTENSION OF TIME TO FILE TESTIMONY  
AND FOR AN EXPEDITED RULING**

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**I. INTRODUCTION**

Pursuant to Ohio Administrative Code (“O.A.C.”) Rules 4906-2-07 and 4906-2-27, Icebreaker Windpower, Inc. (“Icebreaker”) respectfully submits this Memorandum Contra to the Ohio Power Siting Board (“OPSB” or “Board”) Staff’s September 11, 2018 Motion for an Extension of Time to File Testimony and for an Expedited Ruling (“Motion”). In short, OPSB Staff has been discussing the proposed stipulation and engaging in negotiations with parties to the case for over a month, has already received an extension of time, and has been specifically aware of the stipulating parties’ final settlement since September 4, 2018. Therefore, in light of the ample time OPSB Staff has already had to prepare and file testimony, Icebreaker opposes OPSB Staff’s Motion for a 5-day extension to September 19, 2018.

**II. BACKGROUND**

On July 23, 2018, Icebreaker circulated to OPSB Staff and all other parties to this case a proposed Joint Stipulation and Recommendation. On August 1, 2018, Administrative Law Judge (“ALJ”) established the procedural schedule for the case, requiring Icebreaker’s testimony to be filed on September 5, 2018, and the testimony of the OPSB Staff and intervenor’s to be filed by

September 13, 2018. Icebreaker notes that the procedural schedule was based on an agreement made by all parties to the case and filed in the docket July 30, 2018, wherein the parties recommended a deadline of September 13, 2018, to file intervenor and OPSB Staff testimony.

In the ensuing weeks, the parties engaged in robust dialogue and negotiation regarding the July 23, 2018 proposal, the OPSB Staff Report, and the diverse array of conditions recommended for the project. On August 31, 2018, at the request of Icebreaker, OPSB Staff, Icebreaker, and the intervenors were granted a one-day extension of time to file their testimony. On September 4, 2018, after significant consideration and discussion by all parties, Icebreaker, the Business Network for Offshore Wind, Inc., the Sierra Club, the Indiana/Kentucky/Ohio Regional Council of Carpenters, and the Ohio Environmental Council (jointly referred to herein as “Stipulating Parties”) executed and filed a finalized Joint Stipulation and Recommendation (“Stipulation”).

On September 11, 2018, after several weeks of negotiations, over a week after OPSB Staff agreed to a one-day extension of time to file testimony, and almost a week after the Stipulating Parties filed the finalized Stipulation, OPSB Staff requested an extension of time to file testimony.

### **III. ARGUMENT**

#### **A. Legal Standard**

Under OAC Rule 4906-2-07(A), extensions of time to file pleadings or other papers may be granted upon a motion of any party only for good cause. Under OAC Rule 4906-2-27(C), any motion may include a specific request for an expedited ruling. However, “if any party objects to the issuance of such a ruling, or if the moving party fails to certify that no party has any

objections, any party may file a memorandum contra within seven days after the service of the motion.” *Id.*

**B. Good Cause Does Not Exist To Grant OPSB Staff’s Motion**

OPSB Staff has possessed Icebreaker’s initial settlement proposal since July 23, 2018. Since that time, OPSB Staff has engaged in numerous, lengthy settlement discussions with all parties to the case. Through these discussions and upon considering the position/perspective of each party, OPSB Staff has undoubtedly gained a strong understanding of all disputed issues and of all possible settlement outcomes. This understanding was reinforced and confirmed on September 4, 2018, when the Stipulating Parties filed the finalized Stipulation. OPSB Staff was aware of the contents of the final Stipulation well before the Stipulation was filed.

In addition, counsel for Icebreaker discussed a short one-day extension of time for the filing of Icebreaker’s testimony with counsel for OPSB Staff and the other parties prior to the filing of the Stipulation, and at no time did OPSB Staff counsel indicate that OPSB Staff would require additional time for the filing of their testimony. Therefore, Icebreaker proceeded with requesting a short one-day extension and, in an act of good faith, likewise requested an extension for the filing of testimony by other parties. If OPSB Staff needed more time to file testimony, they should have mentioned that when Icebreaker initially approached them for the one-day extension; instead they waited until after Icebreaker filed its testimony.

Given these facts and the abundance of time the ALJ has already provided OPSB Staff to prepare and file testimony, good cause does not exist to grant OPSB Staff’s Motion. Allowing the extension could cause further delay in the overall permitting process, which would prejudice Icebreaker and the other Stipulating Parties.

Note, however, that Icebreaker would not oppose a more reasonable extension of OPSB Staff's testimony filing deadline. Accordingly, Icebreaker would agree to a brief extension to September 17, 2018, for OPSB Staff to file its testimony.

In the event the ALJ decides to grant any kind of extension, Icebreaker respectfully requests that the other dates established in the current procedural schedule be maintained, including a hearing date of September 24, 2018, and an intervenor testimony deadline of September 14, 2018.

#### **IV. CONCLUSION**

In sum, OPSB Staff's Motion should be denied for lack of "good cause," based on the previously-agreed upon procedural timeline that already provided OPSB Staff a generous amount of time to prepare and file its testimony. However, Icebreaker would not oppose a more reasonable deadline extension to September 17, 2018. If the ALJ decides to grant an extension, Icebreaker requests that the hearing date of September 24, 2018, and the intervenor testimony deadline of September 14, 2018, be maintained.

Respectfully Submitted,

/s/ Christine M.T. Pirik

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**September 11, 2018**

## 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 11th day of September, 2018.

/s/ Christine M.T. Pirik

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Summary: Memorandum Contra OPSB Staff's Motion for an Extension of Time to File  
Testimony and for an Expedited Ruling electronically filed by Christine M.T. Pirik on behalf of  
Icebreaker Windpower Inc.