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The Ohio Power Siting Board  
180 East Broad Street  
Columbus, Ohio 43215

PUCO

Dear OPSB,

RE: Icebreaker offshore wind project in Lake Erie, the Public Trust Doctrine and the Ohio Dept. of Natural Resources

I'm contacting you regarding the Icebreaker offshore wind project.

This project should have been subjected to an Environmental Impact Statement (EIS) and how this might have been omitted is a mystery to me in view of the compelling consequences involved.

Why didn't the Ohio Department of Natural Resources (ODNR) require an EIS for the Icebreaker as the past ODNR director could have done? It is not too late to do this! The ODNR has failed to give due diligence to demonstrate to Ohio citizens that the ODNR has taken the prudent and appropriate course of action to protect Lake Erie for Ohio's citizens in this matter by not requiring an EIS.

From the Ohio Coastal Management Program, Policy 16 – Public Trust Lands (in part):

IT IS THE POLICY OF THE STATE OF OHIO TO PROTECT THE PUBLIC TRUST HELD WATERS AND LANDS UNDERLYING THE WATERS OF LAKE ERIE, PROTECT PUBLIC USES OF LAKE ERIE AND MINIMIZE THE OCCUPATION OF PUBLIC TRUST LANDS FOR PRIVATE BENEFIT... and referencing Ohio Revised Code and/or Ohio Administrative Code O.R.C. 1506.10 and 1506.11 and O.A.C. 1501-6-01 through 1501-6-06; O.R.C. 1506.32 and O.R.C. 1506.31

*The waters of Lake Erie and lands underlying them belong to the state as proprietor in trust for the people of the state for the public uses to which they may be adapted, subject to the powers of the United States government, to the public rights of navigation, water commerce and fishery, and to the property rights of littoral owners, including the right to make reasonable use of the waters in front of*

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*or flowing past their lands (O.R.C. 1506.10). Ohio's "public trust doctrine" was originally established in 1803 when Section 14, Article III, of the "Northwest Ordinance" gave the new state authority to regulate activities occurring in navigable waters within state boundaries.*

and please consider this:

<https://coastal.ohiodnr.gov/portals/coastal/pdfs/about/OCMP/Policies/Policy16-Public-Trust-Lands.pdf>

Ohio Coastal Management Program & Final EIS Part II 5 - 70 April 2007 OHIO COASTAL MANAGEMENT PROGRAM POLICY 16 –PUBLIC TRUST LANDS (very good article worth reading on public trust) (note item #2 that says: 2. Protection of Environmental Quality –The Director of ODNR may require an Environmental Impact Assessment to determine probable impacts of the activity upon the natural and human environment.

The state of Ohio, particularly the Ohio Dept. of Natural Resources, has abdicated its Public Trust Doctrine (PTD) responsibilities, by leasing sections of the Lake Erie bottomlands for the Icebreaker offshore wind demonstration project. But not only are the bottomlands leased - therefore so is the lake itself and the sky above it because it will be occupied and industrialized by private, foreign owned, wind turbines that are not needed - impacting marine, avian, human life and activities - for private benefit. I also feel the ODNR has abdicated its PTD responsibilities by not requiring an Environmental Impact Assessment (EIS) for the Icebreaker, which ODNR director has the authority to do (may require) per the Ohio Coastal Management Program as noted above. I feel the Ohio Power Siting Board would also be abdicating its PTD responsibilities by issuing a ***certificate of environmental compatibility and public need*** which gives the Icebreaker offshore wind project state permission to proceed developing this project. These ODNR and OPSB actions are contrary to the principles of the PTD. (fishing, swimming, boating, commercial shipping, aesthetics forever ruined by numerous massive industrial machines and their rotating rotor blades, desired darkness over the lake at night diminished by flashing turbine strobe lights, turbine fog horns disturbing the lake quiet plus numerous other unacceptable problems.) Contamination of Lake Erie's drinking water is another dreadful possibility related to this project and the citizens of Ohio have no idea this project is coming.

The idea to industrialize Lake Erie with offshore wind turbines was begun by the Lake Erie Energy Development Corp. (LEEDCO) in about 2009. In 2016 LEEDCO, in serious financial trouble, sold the Icebreaker assets to Fred Olsen Renewables and a new company was formed called Icebreaker Windpower Inc. and Icebreaker's 501(c)(3) not-for-profit status changed to a private for-profit status and obviously providing new and much needed financial support to continue the project.

Offshore wind turbines are not needed. Ohio has a Public Trust Doctrine statue (as do most Great Lakes states) and it's our belief that the Icebreaker project or any Great Lakes offshore wind project is contrary and illegal according to the Public Trust Doctrine and this policy will likely be court tested in the future and ultimately defeat the Icebreaker environmental treachery. Keep in mind the Icebreaker project has morphed into a venture now owned by a foreign company, Fred Olsen Renewables (Norwegians) and the goal is to eventually locate hundreds of turbines in Lake Erie and be developed and controlled privately for profit. Ohio cannot allow a business to tamper with the public's right to use Lake Erie for recreational boating, swimming, fishing, commercial fishing, commercial shipping or interfere with aesthetics that have existed since day one. It is very likely the Public Trust Doctrine will be the cause for major litigation to halt the Icebreaker project from being developed. To allow this project will certainly open the door to hundreds, maybe thousands, of additional offshore turbines not only in Lake Erie but in all the Great Lakes. What a disgusting thought.

Please consider the following:

**Ohio Administrative Code**

**Chapter 1501-6 Lease of Lake Erie Submerged Lands**

**1501-6-03 Director's recommendations.**

***(1) WATER DEPENDENCY***

*Generally, an application for a lease to place fill and/or to construct facilities in the territory for a non-water dependent development or activity (i.e. an improvement which by its nature does not depend on being located in or upon the water) will not be approved. An exception to this water dependency criterion would be an improvement in the territory which is beneficial and important to the general public's health, safety or welfare as determined by the director. Under this exception, there shall be no practicable alternative to the improvement including an alternative upland site, and all reasonable measures shall be undertaken by the applicant to*

*minimize any adverse impacts upon the waters and underlying lands of lake Erie and the beneficial functions these resources perform.*

This section of the Ohio Administrative Code clearly is in conflict with the Icebreaker project as the erecting of wind turbines does NOT depend on being located in or upon the water and should not be approved and therefore comply with this section of the administrative code.  
There is no need for siting wind turbines in Lake Erie waters.

### **Section 10 of the Rivers and Harbors Act (RHA) of 1899**

The Icebreaker project fails the requirements of River and Harbors Act of 1899 which states:

*That the creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or enclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same.*

For the Ohio DNR and OPSB to ignore numerous potential problems associated with this project and damage to Lake Erie - ***is an abdication and betrayal of public trust.*** What would Ohio's ODNR or OPSB do if a private company wanted to develop an offshore watersports theme park in Lake Erie off Cleveland? What would Ohio do if a private company wanted to create a system to draw water from Lake Erie and sell it for profit some place? Now tell me - how is the Icebreaker any different?

- I urge the OPSB to request that the ODNR director request that an EIS be conducted for the Icebreaker project prior to any final approval by the OPSB.

- Review and invalidate the ODNR bottomlands lease for this project as the lessee is no longer an Ohio not-for-profit 501(c)(3) organization but instead a foreign owned, for-profit, private company that plans to industrialize Lake Erie beginning with Icebreaker's 6 turbines.
- The Icebreaker project is in direct conflict with the Ohio Public Trust Doctrine and should be rejected for that reason alone.
- It is illegal for the ODNR and OPSB to ignore the OHIO COASTAL MANAGEMENT PROGRAM POLICY 16 – PUBLIC TRUST LANDS and approve this project.
- It is illegal for the ODNR and OPSB to ignore **Section 10 of the Rivers and Harbors Act (RHA) of 1899** and approve this project.
- This offshore wind project is not needed. The OPSB should be aware of ITC Lake Erie Connector project in the works to bring 1000mw of electric power from Ontario, Canada to the Erie, Pa. area via a cable under Lake Erie.

I would appreciate a response from you in this matter.

Thank you.

Sincerely,



Alan Isselhard  
Great Lakes Wind Truth  
8135 North Huron Rd.  
Wolcott, New York 14590  
315-594-2742  
[speedway2742@gmail.com](mailto:speedway2742@gmail.com)