

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 September 3, 2019

{¶ 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). Similarly, R.C. 4906.04 states that a certificate is required to construct certain wind farms. Pursuant to R.C. 4906.20(B)(1), the Board is to adopt rules for certificating wind farms and, specifically, should prescribe a reasonable schedule of application filing fees structured similarly to the filing fees required for major utility facilities. These rules are outlined in Ohio Adm.Code 4906-3-12.

{¶ 3} Consistent with Ohio Adm.Code 4906-3-12, the Board's expenses associated with review, analysis, processing, and monitoring of a certificate application shall be borne by the applicant. After receiving a complete application, the chairman of the Board provides the applicant with an initial filing fee. R.C 4906.06(F) states all fees shall be deposited to the state treasury. Further, if the chairman finds that funds submitted in the initial fee are insufficient to pay the Board's expenses associated with review, the chairman shall seek approval from the controlling board to assess a supplemental application fee upon the applicant.

{¶ 4} On September 13, 2016, Icebreaker 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.

{¶ 5} On July 25, 2017, the chairman of the Board issued a letter indicating that the Board's Staff received sufficient information to begin its review of Icebreaker's application. Additionally, the chairman informed the applicant that an initial filing fee of \$50,000 was required. The chairman also indicated that additional invoicing may be necessary.

{¶ 6} On August 1, 2017, Icebreaker filed notice that the application fee was paid.

{¶ 7} On August 15, 2018, the administrative law judge (ALJ) issued an Entry establishing a procedural schedule, including setting an adjudicatory hearing for November 17, 2017. Thereafter, the ALJ granted a motion to suspend the procedural schedule and, after reestablishing a procedural schedule, granted multiple joint requests to continue the hearing date. Ultimately, a stipulation between Icebreaker and some of the parties was filed on September 4, 2018, and an adjudicatory hearing in this case commenced on September 24, 2018 and concluded on October 2, 2018. At the conclusion of the hearing schedule, the ALJ set forth a briefing schedule. However, the ALJ granted numerous motions to delay the filing of briefs, as parties indicated negotiations were ongoing. A revised stipulation was filed on May 15, 2019, and proceedings were reopened. An additional hearing was then held on August 20, 2019. Currently, initial briefs are due October 11, 2019, and reply briefs are due November 15, 2019.

{¶ 8} On September 3, 2019, the Board's Staff filed a letter indicating there were insufficient funds for the Board to continue its review of Icebreaker's application. The Board's Staff explained that due to the complex and novel issues in this case, as well as the

extended negotiations and contested nature of the proceedings, the initial funds have expired. The Board's Staff stated the controlling board approved the Board's request to issue a supplemental fee upon Icebreaker on July 22, 2019. Afterward, on August 12, 2019, the Board invoiced Icebreaker for the supplemental funds. The invoice stated that Icebreaker's current balance is \$76,840.34 and a total of \$150,000 is due for current and future Board expenses. Further, the invoice stated payment was due by August 26, 2019. The Board's Staff stated that, as of September 3, 2019, the Board had not received payment.

{¶ 9} Until Icebreaker files notice in the docket indicating that it has paid the supplemental fee, the ALJ finds that the procedural schedule should be suspended. If Icebreaker does not intend to pay the full fee, the Applicant should file notice in the docket stating that it intends to withdraw its application. If the Applicant does not pay the full fee by Friday, September 13, 2019, Icebreaker's application will be considered before the Board for potential dismissal of the application. Regardless of if Icebreaker seeks to withdraw its application, the ALJ notes that Icebreaker is still responsible to pay the applicable amount for unpaid services rendered to date, of \$76,840.34. If Icebreaker fails to pay the applicable fee for services rendered by September 13, 2019, pursuant to R.C. 131.02, the Board may forward the amount due to the Ohio Attorney General, Collections Enforcement Section.

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That the procedural schedule be suspended consistent with Paragraph 9. It is, further,

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

THE OHIO POWER SITING BOARD

/s/ Nicholas J. Walstra

By: Nicholas J. Walstra
Administrative Law Judge

JRJ/hac

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Summary: Administrative Law Judge Entry suspending procedural schedule electronically filed by Heather A Chilcote on behalf of Nicholas Walstra, Administrative Law Judge, Ohio Power Siting Board