

**BEFORE
THE OHIO POWER SITING BOARD**

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

**BRATENAHL RESIDENTS’ MEMORANDUM CONTRA APPLICATIONS FOR
REHEARING FILED BY (1) APPLICANT, (2) OHIO ENVIRONMENTAL COUNCIL
AND SIEERA CLUB, (3) INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL OF
CARPENTERS, AND (4) BUSINESS NETWORK FOR OFFSHORE WIND, INC.**

I. INTRODUCTION

The Board granted a Certificate to Applicant Icebreaker Windpower, Inc. (“Icebreaker”) to construct and operate its six-turbine wind-powered electric generation facility located on approximately 4.2 acres of submerged, leased, State of Ohio land in Lake Erie on May 31, 2020. On June 19, 2020, Intervenor W. Susan Dempsey and Robert M. Maloney (“Bratenahl Residents”) filed an application for rehearing asserting that the Board should not have issued the Certificate even with the additional conditions imposed by the Board that were not set forth in Icebreaker’s and other signatory parties’ Revised Stipulation. Icebreaker simply has not met its burden to show the probable environmental impact of its Project (R.C. 4906.10(A)(2)) or that the Project represents the minimum adverse environmental impact (R.C. 4906.10(A)(3)).

Now, Icebreaker and some of those Signatory Parties—the Ohio Environmental Council, the Sierra Club, the Indiana/Kentucky/Ohio Regional Council of Carpenters, and the Business Network for Offshore Wind, Inc. (collectively, with Icebreaker, the “Signatory Parties”)—have also applied for rehearing. In so applying, the Signatory Parties assert that the Board lacked authority to, or simply should not have, imposed the condition (the “Feathering Condition”) in the Certificate that Project turbines be completely feathered from dusk to dawn from March 1

through November 1. The Signatory Parties also assert that the Board was without authority to include in the Certificate a condition (the “Board Review Condition”) requiring Icebreaker to obtain Board approval, on the public record, before the Feathering Condition may be altered or removed from the Certificate. These assertions are without merit and should be rejected by the Board.

The July 3, 2018 Board Staff Report (“Staff Report”) and sworn testimony of ONDR’s Wind Energy Administrator, Erin Hazelton, establish that the Feathering Condition is crucial to ensuring that the Project represents the minimum adverse environmental impact. Critically important is the fact that Icebreaker has not submitted to the Board any new data regarding the enormous risk of the Project to kill birds since the Staff Report concluded, and Ms. Hazelton twice testified under oath, that the Feathering Condition is required for the Project to comply with R.C. 4906.10(A)(3).

The Board Review Condition is equally crucial as Ms. Hazelton acknowledges that OPSB Staff does not possess the expertise itself to determine, at some point in the future, whether the as-yet-unidentified technologies proposed by Icebreaker will accurately measure what they purport to measure. ODNR and Staff do not employ any avian radar experts. Thus, it is essential that Icebreaker’s future technology proposals be placed on the public record in this case so that expert’s other than those on Icebreaker’s payroll may provide input to the Board as to whether the technologies do, in fact, “work.” Lake Erie is a unique, irreplaceable natural resource held for the benefit of all Ohio citizens. The Board cannot permit such incredibly important public policy issues regarding the environmental future of the Lake to be determined in private, “back room” negotiations sheltered from the searching light of public scrutiny.

II. ARGUMENT

A. THE BOARD APPROPRIATELY DETERMINED THAT THE FEATHERING CONDITION IS NECESSARY TO ENSURE THAT THE PROJECT REPRESENTS THE MINIMUM ADVERSE ENVIRONMENTAL IMPACT.

1. The Staff Report and Ms. Hazelton's Testimony—As Valid Today As When Entered On the Record In This Case—Fully Support the Board's Determination That the Feathering Condition Is Required to Ensure that the Project Represents the Minimum Adverse Environmental Impact.

The Signatory Parties assert that the Board's Feathering Condition is not supported by evidence of record. This assertion is simply incorrect and ignores the state of the record reflecting that much more data and information is required to be submitted by Icebreaker before the Board can validly and finally determine that the Project represents the minimum adverse environmental impact. Indeed, the Staff Report and Ms. Hazelton's testimony establish that the Board cannot determine that the Project represents the minimum environmental impact without the Feathering Condition.

Staff Report Condition 19 requires that turbines in the Project be feathered at night during the full bird and bat migration seasons (March 1 through January 1) until Icebreaker has demonstrated that its yet-unidentified post-construction avian and bat collision monitoring technologies actually identify bird and bat collisions with its turbines:

- (19) Turbines shall be feathered completely from dusk to dawn from March 1 through January 1 until the Applicant has demonstrated that the post-construction avian and bat collision monitoring plan is sufficient, as determined by the ODNR in consultation with Staff. The ODNR may approve modifications to turbine operation for testing purposes.

Staff Ex. 1 (Staff Report) at 47-48.

Staff concluded that its feathering condition was necessary to ensure that the Project represents the minimum adverse environmental impact to birds and bats:

Post-construction monitoring protocols would be approved by the ODNR prior to construction. *Staff recognizes that having an approved post-construction monitoring protocol in place prior to construction is a critical component of assuring the project does not result in significant impacts to avian and bat species.* Once the project is constructed, *Staff recommends that turbines be feathered completely from dusk to dawn from March 1 through January 1, when bats and migratory species would be most vulnerable to collision,* with limited allowances for testing purposes assigned by the ODNR. *These feathering requirements would be in place until the post-construction monitoring plan is proven effective as determined by the ODNR and Staff.*

Staff Ex. 1 (Staff Report) at 24-25 (emphasis added).

In her September 18, 2018 Pre-Filed Testimony (Staff Ex. 7), ONDR Wind Energy Administrator Hazelton testified that Staff's feathering condition was necessary to ensure that the Project represents the minimum adverse environmental impact unless and until Icebreaker demonstrates that its avian and bat collision monitory plan will produce scientifically-valid data. Icebreaker had not yet identified its proposed monitoring technology, much less demonstrated that the technology would work, requiring the feathering condition to protect birds and bats:

Q. Briefly describe the Staff Report's findings and recommendations with regards to R.C. 4906.10(A)(3).

A. Regarding R.C. 4906.10(A)(3), the recommended Conditions 15-26 in the Staff Report ensure the facility represents minimum adverse environmental impacts regarding wildlife. * * *

* * *

Q. *How will Staff Report Condition 19 help ensure that the project will represent the minimum adverse environmental impact?*

A. *Condition 19 mandates turbines be fully feathered from dusk to dawn March 1-January 1, which represents the time waterfowl, passerines and bats are present due to migration and summer residency.* Radio telemetry tracking and radar surveys suggest hundreds of thousands to millions of birds migrate over Lake Erie[,] making it an important global migration pathway. Based on mortality results from the terrestrial wind energy projects in Ohio and various wildlife surveys conducted by ODNR, the Division of Wildlife anticipate the most significant risk to birds and bats is at nighttime during spring and fall migrations, as well as during

their summer residency. The Applicant has documented birds and bats at the project site 8-10 miles offshore during bat acoustic surveys and aerial waterfowl surveys. Robust pre-construction and post-construction protocols are warranted to quantify bird and bat activity at the project to inform the mitigation plan. ***Condition 19 ensures collision risk will be minimal until the Applicant has demonstrated the protocols included in the avian and bat collision monitoring plan are sufficient and acceptable to ODNR and OPSB Staff.***

On land, wind facilities monitor bird and bat mortality by conducting standardized carcass searches in established plots under the turbines. ***It is unlikely many carcasses can be recovered from Lake Erie and even less likely, given the state of technology at this time, recovered carcasses could be definitively attributed to operation of turbines. At this time, Icebreaker has not submitted an acceptable collision monitoring plan demonstrating the technology and methodology that will be used to document collisions between birds and bats and wind turbines will meet the objectives in the MOU.***

Staff Ex. 7 (9/19/18 Hazelton Pre-Filed Testimony) at 6, 8-10 (emphasis added).

In addition, Staff specifically rejected Condition 19 of Icebreaker's September 4, 2018 Stipulation, which would not have permitted Staff to require Icebreaker to feather its turbines at night unless and until Staff determined that Icebreaker's post-construction bird and bat collision monitoring plan was not sufficient—something Staff may never know (as the above-quoted Hazelton Pre-Filed testimony attests, Staff has no idea as to how it would know that a bird or bat/turbine collision occurred, at night and over water, if the collision simply were not detected by Icebreaker's technology):

- Q. Would Condition 19 as presented in [Icebreaker's 9/4/18] Stipulation in conjunction with the testimony presented by the Signatory Parties, benefit the public interest and represent the minimum adverse environmental impact?
- A. Stipulation Condition 19 is not in the public interest regarding protection of wildlife and does not satisfy R.C. 4906.10(A)(3), which requires the project to represent the minimum adverse environmental impact. ***At this time, the Applicant has not identified a suitable technology*** but has agreed to further explore the options that can meet the objectives set out in the MOU. The Stipulation envisions approval of the collision monitoring

plan under R.C. 4906.10(A)(3) being predicated on the “state of available technology” at the time of submission, not on whether this technology can accomplish the objectives set out in the MOU. Additionally, although the Applicant volunteers a different curtailment regime if the proposed plan is not sufficient, this modified regime is limited to non-specific “peak spring and fall migrations periods when cloud ceilings are low.” Thus, the Stipulation’s proposed curtailment regime is not protective of wild birds during 1) full migratory seasons, 2) summer residency periods, or 3) the vast majority of the nocturnal hours when birds and bats typically migrate and is not in the public interest[,] nor does it ensure the project represents the minimum adverse environmental impact.

Staff Ex. 7 (9/19/18 Hazelton Pre-Filed Testimony) at 10 (emphasis added).

Furthermore, Ms. Hazelton reiterated under cross-examination by Icebreaker’s counsel at the original hearing in this case (September 24 - October 2, 2018), that a primary reason that the Staff Report required turbine feathering at night during migration seasons is that Icebreaker had neither identified the post-construction collision technology it would use or provided pre-construction radar data sufficient for Staff to assess the risks to birds and bats (despite ODNR and FWS having requested such data from Icebreaker since 2008¹):

Q. [Icebreaker Counsel] Ms. Hazelton, do you have [Icebreaker’s 9/4/18] Joint Stipulation, which is Joint Exhibit 1, in front of you? It looks like this.

A. Yes.

Q. Do you also have the Staff Report?

A. I do.

Q. Will you please start by referring to page 47, I believe it is in the Staff Report. Thank you.

A. Okay.

Q. I am looking specifically at Condition 18 [in the Staff Report].

¹“FWS and ODNR have been requesting this information [avian radar data from the Project site] since 2008.” Bratenahl Residents’ Ex. 7 at 2. See also Tr. at 324-25, 582.

A. Yes.

Q. It states “At least 60 days prior to commencement of construction, the Applicant shall submit an avian and bat impact mitigation plan which incorporates the most current survey results and post-construction avian and bat monitoring plan to the ODNR and Staff for review and acceptance that implementation of the plans would be effective in avoiding significant impacts to avian an bat species.” Do you see that as requiring submission of a post-construction monitoring plan prior to commencement of construction?

A. The post-collision monitoring plan is part of this. However, I believe in my testimony, and later in Condition 19, it’s clarified to indicate that *the collision monitoring technology we recognize is still under review and has not been established yet. It hasn’t been decided upon by the Applicant which technology they would like to pursue. So, again, we would like to use Condition 19 as a placeholder for that until that’s determined.*

And Condition 18 would include the collision monitoring plan as part of the post-construction survey, again as a placeholder, it would be part of it.

Q. And the reference, in [Condition] 18, to “significant impacts to avian and bat species,” is there a definition associated with “significant impacts”?

A. No, not at this time. The reason we haven’t defined it is twofold. The first reason is that significant impact could be different depending on which species you are referring to. * * *

And the other reason is that, again, *not understanding how collision monitoring or a lot of post-construction methods will be performed and what information will be provided, we don’t really know how to make that determination because we don’t know what data we will have in hand to review to make that determination;* so again, it hasn’t been defined for those reason.

* * *

Q. Okay. Why in Staff [Report] Condition 19, is the curtailment required for March 1 through January 1?

A. We feel that there is a risk to wildlife that would be using the project site, and wildlife would be using the project site from those time periods for various reasons. Again, we can’t -- we understand that the nature of the risk is to likely birds and bats. *However, we don’t have the data yet to quantify that risk and that’s what we are looking for with the pre-*

*construction surveys, as well as the post-construction surveys, so we can verify if that prediction is correct.*²

Tr. at 1639-4; 1648-49 (emphasis added).

In its Staff Report and testimony at the original hearing, Staff determined that Icebreaker's Project would not represent the minimum adverse environmental impact without turbine feathering because Icebreaker had failed to provide it with sufficient pre-construction avian radar data and a specific proposed post-construction collision technology so that Staff could assess the risk of the Project to birds and bats. And to date, Icebreaker has not supplied to ODNR, Staff, or the Board such necessary information to justify the deletion of a feathering requirement in any certificate that the Board awards for the Project. Wind Energy Administrator Hazelton confirmed Icebreaker's continuing failure to provide such required scientific in response to cross-examination by the Bratenahl Residents' counsel at the August 20, 2019 resumed hearing on the Revised Stipulation:

Q. All right. What is not fulfilled?

A. The amount of data in the specific—the specific type of data that we are looking for. Again, the radar surveys, or I should say a method to document nighttime activity at the site, migration activities at the site by birds and bats.

²Significantly, Staff concluded that this information was necessary to determine the Project's probable environmental impact and whether the Project represented the minimum adverse environmental impact. Motion to Suspend the Procedural Schedule at 1-2 (emphasis added). The Board agreed with Staff's assessment. *In re Application of Icebreaker Windpower, Inc.*, No. 16-1871-EL-BGN, slip op at 2, ¶7 (Oct. 23, 2017). Although Icebreaker submitted the "Diehl Report," Applicant's Exhibit 37, in response to Staff's request for more information, that report was nothing more than an evaluation of several vendor proposals, all of which admittedly contained numerous deficiencies. See Applicant's Ex. 37 at 1. Even the "best" proposal—which called for radar mounted on a floating barge—was "not without concern, particularly over the ability to track targets in an offshore setting where sea clutter will likely pose a persistent problem that is magnified by a rolling and pitching barge." *Id.* Indeed, in its Decision, the Board noted that "no decision has been made as to whether the chosen avian radar technology will be deployed on a floating platform or a stationary platform. . . ." Decision at 74, ¶154.

Q. So is there—have there—has there been any avian radar study done at the project site?

A. The radar studies that have been done to date to the best of my knowledge encompass near the project site but not specifically in the rotor-swept zone.

Q. Has any radar device been placed on a floating platform at the project site?

A. No.

Q. All right. Has any radar device mounted by any nature been put at the project site?

A. There has not been a radar system deployed at the project site that I am aware of.

Q. Okay. Has Icebreaker submitted to ODNR for review a proposed avian radar technology or system as of today's date to provide avian radar data for the rotor-swept zone of the project site?

A. No. I believe the Applicant is still reviewing that technology.

Q. Okay. Has Icebreaker submitted to ODNR for review a proposed collision monitoring technology or plan for use at the project site to date?

A. No.

Tr. at 1768-69.

Thus, the determinations made by Staff in its Staff Report and its sworn testimony at the original hearing, that Icebreaker's Project must be subject to a feathering condition to ensure it represents the minimum adverse environmental impact, are as valid today as they were when originally made. *A fortiori*, the Board is fully justified in its determination that the Feathering Condition must be included in the Certificated awarded to Icebreaker to ensure that the Project represents the minimum adverse environmental impact.³

³As set forth in the Bratenahl Residents' Application for Rehearing, in light of Icebreaker's failure to submit the necessary scientific data (Icebreaker's burden), the Board should have declined to issue any Certificate to it.

2. The Board Properly Considered the “State of Available Technology” by Imposing the Feathering Condition.

Icebreaker also asserts that the Board failed to consider the “state of available technology,” see R.C. 4906.10(A)(3), by imposing the Feathering Condition in its Certificate. See Icebreaker Application for Rehearing at 18. Icebreaker asserts that the Board exceeded its authority in imposing the condition because it requires the Project to have “zero evening impact.” These assertions ignore the very reason the Board properly imposed the Feathering Condition—Icebreaker’s own utter failure to collect the data necessary for Staff and the Board to assess any impact the Project may have on birds and bats.

As noted above, Icebreaker could have developed this evidence by placing radar at the Project site to determine the number, density, and altitude of birds and bats migrating through the Project’s rotor-swept zone. Indeed, it had been requested to provide such information since at least 2008, but for whatever reason, declined to do so. Essentially, given this lack of critical evidence, the Board was unable to determine whether the Project represented the minimum adverse environmental impact. Thus, it should not have issued the Certificate for the Project in the first instance. While the Feathering Condition does not alleviate that error, it is nonetheless required by the Board’s and Staff’s own determinations.

B. THE BOARD APPROPRIATELY ADDED THE BOARD REVIEW CONDITION TO THE CERTIFICATE.

The Signatory Parties also assert that the Board, in its Decision, improperly added the Board Review Condition to the Certificate, requiring Icebreaker to obtain Board approval of Icebreaker’s preconstruction radar data and bird and bat impact mitigation plan once the such technology is finally selected and operational. In its Decision, the Board stated:

Further, we note that as proposed in Conditions 18, 21, and 22, the Applicant is required to provide Staff and ODNR with the bird and bat impact mitigation plan (including the collision monitoring plan) and demonstrate proof of compliance with requirements of preconstruction radar, both of which must be finalized and accepted by ODNR. However, rather than provide this information only to Staff and ODNR for acceptance, ***we direct the Applicant to file the preconstruction radar compliance information and bird and bat impact mitigation plan in the record before the Board for review and approval.*** Once actual monitoring information is collected and such information demonstrates that less restrictive operating limits on the turbines can be introduced while ensuring that the project continues to represent the minimum adverse environmental impact, the Applicant may subsequently request less restrictive operating limits (Icebreaker Ex. 57). ***Filing the required information associated with Conditions 18, 21, and 22 in the docket not only permits additional Board review, but also provides Staff, ODNR, and other interested parties an opportunity to provide recommendations or comment on any request to reduce the feathering requirements.***

Decision at 78-79, ¶161 (emphasis added). By appropriately imposing the Board Review Condition, the Board avoided an unlawful delegation of its authority to ODNR and Board Staff to make the final findings and determinations as to whether post-Certificate data and proposed technologies submitted by Icebreaker cause the Project to represent the minimum adverse environmental impact, a duty imposed by statute upon the Board, and the Board alone. R.C. 4906.10(A)(3).

As contemplated by the Revised Stipulation, the Board was to issue a Certificate to Icebreaker now—before the Board could itself make any valid findings or determinations as to the Project’s probable environmental impact or that the Project represents the minimum environmental impact—and delegate to ODNR and/or Board Staff the authority to make the final determinations, at some future date, as to the Project’s probable impact and minimum adverse. That future determination would be made after Icebreaker submits to ODNR Project site avian radar data and a proposed collision monitoring technology, and possibly, engages in

unsupervised negotiations with ODNR to obtain approval of the submissions.⁴ These after-Certificate-issuance ODNR determinations would not have been subject to Board Review in a public hearing.

As noted, under the proposed Revised Stipulation, Icebreaker and Staff proposed that future determinations as to radar testing, collision monitoring technology, and feathering would be made by Staff, without Board oversight and review in a public hearing, and without the opportunity for interested parties to be heard as to the viability and scientific validity of the yet-to-be-selected technology. In its Decision, the Board appropriately recognized that resolution of these issues are central to the findings and determinations regarding probable environmental impact and that the Project represents the minimum adverse environmental impact that the Board is required to make prior to issuance of a Certificate. See R.C. 4906.10(A). See also *In re*

⁴Significantly, the Revised Stipulation purports to reserve to Board Staff and ODNR the authority, post-Certificate issuance, to “retain jurisdiction,” if you will, to determine (without Board review) whether the preconstruction radar and the bird and bat impact mitigation plans submitted by Icebreaker will render the Project statutorily compliant. For example, Revised Stipulation Condition 15 provided that “the monitoring plans attached to the MOUs must be finalized and accepted through written communications **from the ODNR . . .**” 7/26/19 Karpinski Pre-Filed Test. at 3, ¶6 (emphasis added). The “revision [to Condition 17] increases the time period the Applicant must submit the fisheries and aquatic resources monitoring plan to the ODNR and Staff for review from at least 60 days prior to construction to 120 days; and clarifies that prior to commencement of construction the monitoring plan must be finalized and accepted through written communications **from the ODNR.**” *Id.* (emphasis added). With regard to Condition 18, the Revised Stipulation “clarifies that prior to commencement of construction the avian and bat impact mitigation plan must be finalized and accepted through written communications **from the ODNR**; [and] . . . that any modification to the impact mitigation plan must be finalized and accepted through written communications **from the ODNR.** . . .” *Id.* at 4, ¶6 (emphasis added). See also *Id.*, Condition 19 (same, with regard to the “fisheries and aquatic resources impact mitigation plan”). Inconsistently, Icebreaker asserts that the Board itself does not have the authority to make such post-Certificate determinations on the public record pursuant to the Board Review Condition. Icebreaker has the law inverted. Board Staff and ODNR are instrumentalities of the Board in this case, who act with authority delegated by the Board to them. It is the Board that is endowed with the statutory authority to determine whether Icebreaker’s data submissions render the Project compliant with R.C. 4906.10(A)(2) and (3), not Staff and ODNR. As noted, those determinations must be made, by the Board on the public record, before Certificate issuance.

Application of American Transmission Sys., Inc., 125 Ohio St.3d 333, 336-37, 2010-Ohio-1841 at ¶¶20-21 (Board may delegate many of its responsibility to subordinates, but “[o]ne responsibility . . . cannot be delegated: ‘the board’s authority to grant certificates under section 4906.10 of the Revised Code shall not be exercised by any officer, employee, or body other than the board itself.’”) (quoting R.C. 4906.02(C)). These proposed after-the-fact, “behind closed doors” determinations by Staff would not only have completely subverted the statutory requirement that the Board itself make these determinations, but also would have violated the requirements of R.C. Chapter 4906 that the determination be the subject of an adversarial process in a public Board hearing (the adjudicatory hearing) at which Project opponents (such as the Bratenahl Residents) may present (expert) testimony and evidence to controvert any proposed Staff approval of Icebreaker’s proposed technologies/methodologies as scientifically-valid. See R.C. 4903.02-.09 (made applicable through R.C. 4906.12).

The Ohio Supreme Court has held the Board does not improperly delegate its authority where it “allows a certificate to be issued ***upon such conditions as the Board considers appropriate.***” *In re Application of Buckeye Wind, L.L.C.*, 131 Ohio St.3d 449, 452, 2012-Ohio-878 at ¶16 (citing R.C. 4906.10(A)) (emphasis in original). “Simply because certain matters are left ***for further review and possible public comment*** does not mean that they have been improperly delegated to staff.” *Id.*, 131 Ohio St.3d at 452, 2012-Ohio-878 at ¶17 (emphasis added). The key to allowing such decisions regarding Certificate conditions is that the Board must have the opportunity for further review. *In re Ohio Power Co.*, 155 Ohio St.3d 320, 323-24, 2018-Ohio-4697 at ¶¶10-12 (PUCO did not commit error by including a placeholder rider because any rate for the rider could only be imposed after additional commission proceedings).

The Revised Stipulation did not provide for further Board review of ODNR's future determinations. The Decision and Certificate issued by the Board does. The Board's Decision is an acknowledgement that, with no avian radar for the Project rotor swept zone submitted and no validated collision monitoring technology even identified, the Board simply was unable, at this point, to make valid findings or determinations as to the Project's probable environmental impact or whether the Project represents the minimum adverse environmental impact.

The Revised Stipulation would have unlawfully delegated the authority to make these findings and determinations to ODNR in its sole discretion, at some future date. 8/20/19 Hazelton Test. at 1779. The Board's Decision to make these determinations itself after Icebreaker has identified and implemented scientifically valid technology corrects the Revised Stipulation's flaw in that regard. See *In re Application of Buckeye Wind, L.L.C.*, 131 Ohio St.3d 449, 462, 2012-Ohio-878 at ¶53 (Lundberg Stratton, J., dissenting) ("Issues are not to be settled *after* construction is approved, much less by unaccountable staff members without public scrutiny or judicial review.") (emphasis in original). The ability of interested parties to be heard on the public record regarding Icebreaker's future submissions of data necessary for statutory compliance is even more critical given ODNR's admission that neither it nor the Board employs an expert in avian radar or collision technology competent to evaluate Icebreaker's evidence and to make these determinations. The Board must, therefore, deny the Signatory Parties' Applications for Rehearing.

III. CONCLUSION

For the foregoing reasons, the Bratenahl Residents respectfully urge the Board to deny the Applications for Rehearing filed by the Signatory Parties.

Respectfully submitted,

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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 on the service list of the docket card who have electronically subscribed to this case. In, addition, the undersigned certifies that a courtesy copy of the foregoing document was served upon the following persons via email on July 1, 2020:

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Summary: Memorandum Memorandum Contra: Breatenahl Residents' Memorandum Contra Applications for Rehearing Filed by (1) Applicant, (2) Ohio Environmental Council and Sierra Club, (3) Indiana/Kentucky/Ohio Regional Council of Carpenters, and (4) Business Network for Offshore Wind, Inc. electronically filed by John F Stock on behalf of Dempsey, W. Susan and Maloney, Robert M.