

**BEFORE  
THE OHIO POWER SITING BOARD**

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

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**MOTION TO SUSPEND THE PROCEDURAL SCHEDULE,  
WITH THE EXCEPTION OF THE PUBLIC HEARING,  
AND  
REQUEST FOR EXPEDITED RULING  
PURSUANT TO  
OHIO ADMINISTRATIVE CODE RULE 4906-2-27  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE OHIO POWER SITING BOARD**

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Ohio Attorney General

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**Counsel for the Ohio Power Siting Board**

October 23, 2017

**BEFORE  
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The Staff of the Ohio Power Siting Board (“Staff”) respectfully moves the Ohio Power Siting Board (“Board”) or its Administrative Law Judge (“ALJ”) to suspend the procedural schedule, with the exception of the public hearing scheduled for November 8, 2017, pursuant to Ohio Administrative Code (“O.A.C.”) Rule 4906-2-27. Staff submits that good cause exists for its motion request as detailed in the Memorandum in Support below, and thus Staff requests that the Board grant its motion on an expedited basis.

Respectfully submitted,

**Michael DeWine**  
Ohio Attorney General

**William L. Wright**  
Section Chief

*/s/ John H. Jones*

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## MEMORANDUM IN SUPPORT

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On February 1, 2017, as supplemented on March 13, 2017, Applicant filed an application for a certificate to construct its proposed project, which it described as a six turbine demonstration wind-powered electric generation facility to be located in Lake Erie about 8-10 miles off the coast of Cleveland, Ohio. On April 3, 2017, the Chairman of the Board notified Applicant by letter that additional information was needed in order for the application to be considered in compliance with O.A.C. Chapters 4906-01, *et seq.* Subsequently, Applicant supplemented its application on July 20, 2017 and July 24, 2017, along with a response to the Chairman's April 3, 2017 letter. By letter filed on July 31, 2017, the Board notified Applicant that its application was sufficiently complete to permit Staff to commence its review and investigation of the application. Applicant completed its service and publication requirements and was then notified that August 14, 2017 was the effective date of its application. Staff began its investigation. On August 15, 2017, the ALJ issued a procedural schedule for this case including an October 23, 2017 date for filing the Staff Report of Investigation, a local public hearing on November 8, 2017, and an adjudicatory hearing on November 17, 2017.

Upon Staff's investigation of Applicant's application and supplemental information filed July 20, 2017 and July 24, 2017, Staff believes it is necessary that Applicant provide it with additional supplemental information on the viability and design of the pre- and post- construction radar monitoring protocol that Applicant intends to utilize at the

project site for determining project impacts. The supplemental information Applicant submitted in July, 2017 makes reference to this additional information being provided to Staff in the fall of 2017.<sup>1</sup> This information is necessary to measure the effect of off-shore turbines on birds and bats as discussed further below. Staff needs this information to conclude its investigation and make its recommended findings in this case with regard to R.C. 4906.10(A). Staff anticipates that the radar report will be made available to the Staff within a month, after which the Staff should be able to file the Staff Report shortly thereafter. Assuming the report is received by Staff when anticipated, Staff would anticipate that a new procedural schedule would be quickly issued and include new dates in January 2018 for scheduling a second public hearing and scheduling the evidentiary hearing.

Construction and operation of off-shore wind turbines presents a very different set of challenges than land-based turbines in terms of wildlife impact measurement. The Great Lakes has unique ecological properties compared to land installations. Due to the fact that this project is precedent-setting, since it is the first proposed off-shore wind facility in Lake Erie, Staff requires more information on the radar technology monitoring protocol it selected for this small demonstration project and whether it can reliably measure the effect of off-shore turbines on birds and bats and inform of the risk levels for future development projects in Lake Erie. The pre-construction radar monitoring pro-

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<sup>1</sup> Response to the Chairman's April 3, 2017 Letter and Second Supplement to the Application filed on February 1, 2017, Case No. 16-1871-EL-BGN (July 20, 2017) (Icebreaker Wind Avian and Bat Monitoring Plan Lake Erie, Ohio), Icebreaker and ODNR Avian and Bat MOU – Exhibit A at 11.

tocol is important to Staff's investigation because it establishes baseline conditions using methodologies that will be duplicated during the project's operational phase to provide robust pre- vs. post-construction comparisons for impact assessment.

Accordingly, Staff makes this motion requesting a suspension of the procedural schedule, with the exception of the public hearing scheduled for November 8, 2017, so that Staff can obtain additional supplemental information from the Applicant concerning the reliability of the radar technology monitoring protocol it has selected for this project. Staff proposes that the date the Applicant submits this supplemental information to Staff to serve as the Applicant's new effective date for its application, so that a new procedural schedule, including the scheduling of a second public hearing, can be established in this case. Furthermore, Staff requests an expedited ruling on its motion pursuant to Rule 4906-2-27(C). No party will be prejudiced by granting this motion and request for expedited ruling. Staff is unable to certify whether any intervenors object to Staff's motion and request for expedited ruling on its motion. Under the circumstances presented, Staff submits it is reasonable and just for the Board or its ALJ to grant this motion and request for an expedited ruling.

WHEREFORE, Staff requests the Board or its ALJ grant a suspension of the procedural schedule, with the exception of the public hearing scheduled for November 8, 2017, and grant Staff's request for an expedited ruling on its motion.

Respectfully submitted,

**Michael DeWine**  
Ohio Attorney General

**William L. Wright**  
Section Chief

*/s/ John H. Jones*

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**Counsel for the Ohio Power Siting Board**

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for a Suspension of the Procedural Schedule, with the Exception of the Public Hearing, and Request for Expedited Ruling was served upon the following parties of record via electronic mail this 23rd day of October 2017.

/s/ John H. Jones

**John H. Jones**

Assistant Attorney General

### **Parties of Record:**

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

Summary: Motion to Suspend the Procedural Schedule, with the Exception of the Public Hearing, and Request for Expedited Ruling Pursuant to Ohio Administrative Code Rule 4906-2-27 submitted by Assistant Attorney General John Jones on behalf of the Staff of the Ohio Power Siting Board. electronically filed by Kimberly L Keeton on behalf of Ohio Power Siting Board