

## 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 January 30, 2018

{¶ 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).

{¶ 3} 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.

{¶ 4} By Entry issued on August 15, 2017, a procedural schedule was established for this matter 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.

{¶ 5} On October 23, 2017, Staff filed a motion seeking to suspend the procedural schedule, with the exception of the public hearing. In its motion, Staff indicated that in Applicant's supplemental filings docketed in July 2017, Applicant stated it intended to

provide Staff with information in the fall of 2017 regarding the pre- and post-construction radar technology monitoring protocol it selected for use at the project site for determining project impacts (radar report). Staff submitted that construction and operation of offshore wind turbines presents a new and unique set of challenges compared to land-based turbines in terms of wildlife impact mitigation. Because the project is the first proposed offshore wind facility in Lake Erie, Staff maintained that the information in the radar report was necessary in order to conclude its investigation and make its recommended findings in this case with regard to R.C. 4906.10(A). As Staff had not yet received the information, it requested the continuance.

{¶ 6} By Entry on October 23, 2017, the administrative law judge (ALJ) granted Staff's motion. The Entry directed Icebreaker to supplement the record with additional information, including, specifically, the radar report, and whether it can reliably measure the effect of offshore turbines on birds and bats and inform of the risk levels for future development projects in Lake Erie. Further, the Entry provided that a new procedural schedule and the supplemented application's effective date would be set by subsequent Entry after Icebreaker filed the radar report.

{¶ 7} On January 24, 2018, Icebreaker filed supplemental information that included the radar report. Concurrently, Icebreaker also filed a motion to reestablish the procedural schedule, a request for waiver of Ohio Adm.Code 4906-3-09(A)(2), and a request for expedited treatment. According to Icebreaker, the radar report contained in its filing was completed in December 2017, and provided to Applicant, Ohio Department of Natural Resources, and United States Fish and Wildlife Services on December 22, 2017. Icebreaker maintains that the information satisfies Staff's request and complies with the October 23, 2017 Entry. Thus, Icebreaker asserts Staff now has sufficient information to complete its investigation and report. Accordingly, Icebreaker requests that a procedural schedule be reestablished promptly and provides a proposed schedule. In doing so, the Applicant additionally asks for an expedited ruling pursuant to Ohio Adm.Code 4906-2-27(C).

Icebreaker submits that no party would be prejudiced by an expedited ruling and instead maintains that the Icebreaker project would be adversely affected by any continued delay. According to the Applicant, all parties have had sufficient time to review the project application and the proposed schedule provides enough time to review the radar report. Icebreaker asserts that the Ohio Environmental Council, the Sierra Club, the Indiana/Kentucky/Ohio Regional Council of Carpenters, and the Business Network for Offshore Wind, Inc. do not object to an expedited ruling, while the Applicant was unable to certify the position of the Staff or other intervenors.

{¶ 8} Pursuant to Ohio Adm.Code 4906-2-27(C), any motion may include a request for an expedited ruling. 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, or such other period as the board or the administrative law judge requires.

{¶ 9} Upon review, Icebreaker's request for expedited treatment of its motions is denied. While the Staff noted in its October 23, 2017 motion that it anticipated a new procedural schedule would be quickly issued when additional requested information was received, Staff also acknowledged that this project was precedent-setting, as it is the first proposed off-shore wind facility in Lake Erie. In balancing the desire of the Applicant to move forward expeditiously with setting a procedural schedule and the need to provide due process to all parties, it is appropriate for parties to have the standard amount of review time before responding to Applicant's motion to reestablish a procedural schedule. Thus, pursuant to Ohio Adm.Code 4906-2-27(B), parties have until February 8, 2018, to file memorandum contra the motion to reestablish a procedural schedule.

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That Icebreaker's motion for an expedited ruling be denied. It is, further,

{¶ 12} ORDERED, That, pursuant to Ohio Adm.Code 4906-2-27(B), parties have until February 8, 2018, to file memorandum contra Icebreaker's motion for waivers and to reestablish the procedural schedule. It is, further,

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

THE OHIO POWER SITING BOARD

/s/Nicholas Walstra

By: Nicholas J. Walstra  
Administrative Law Judge

jrj/vrm

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

Summary: Administrative Law Judge Entry denying the motion for an expedited ruling and reestablishing the procedural schedule; electronically filed by Vesta R Miller on behalf of Nicholas Walstra, Administrative Law Judge, Ohio Power Siting Board