

August 2, 2018

Ms. Barcy F. McNeal, Secretary  
Ohio Power Siting Board  
Docketing Division  
180 East Broad Street, 11th Floor  
Columbus, Ohio 43215-3793

**Re: Case No. 16-1871-EL-BGN, 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.  
Deposition of W. Susan Dempsey**

Dear Ms. McNeal:

Ohio Administrative Code Rule 4906-2-18(M) provides that any depositions to be used as evidence must be filed with the Ohio Power Siting Board prior to commencement of the hearing. In accordance with this rule, Icebreaker Windpower Inc. is hereby filing the deposition of W. Susan Dempsey, which was taken on July 26, 2018.

Respectfully submitted,

/s/ Christine M.T. Pirik

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Enclosure

Cc: Counsel for Parties of Record

COLUMBUS 63172-6 94550v1

*IN RE: APPLICATION OF ICEBREAKER WINDPOWER*

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Deposition of  
**W. Susan Dempsey**  
July 26, 2018

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*prompt. precise. professional.*

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1 BEFORE THE OHIO POWER SITING BOARD

2

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4 IN THE MATTER OF THE )  
APPLICATION OF ICEBREAKER )  
5 WINDPOWER, INC., FOR A )  
CERTIFICATE TO CONSTRUCT A ) Case No.  
6 WIND-POWERED ELECTRIC ) 16-1871-EL-BGN  
GENERATION FACILITY IN )  
7 CUYAHOGA COUNTY, OHIO )

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14 DEPOSITION OF

15 W. SUSAN DEMPSEY

16

17 Taken at the offices of  
BENESCH LAW  
18 41 South High Street, Suite 2600  
Columbus, Ohio 43215

19

20 on July 26, 2018, at 10:03 a.m.

21 Reported by: Rhonda Lawrence

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1     ALSO PRESENT:

2           Beth Nagusky, LEEDCo  
3           David Karpinski, LEEDCo  
4           Stuart Siefried (BY PHONE)  
5           Robert Maloney

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STI PULATI ONS

It is stipulated by and among counsel  
for the respective parties that the deposition  
of W. SUSAN DEMPSEY, an Intervenor herein,  
called by Icebreaker Windpower under the  
applicable Rules of Civil Procedure may be taken  
at this time by the notary pursuant to notice  
and by agreement; that said deposition may be  
reduced to writing in stenotypy by the notary,  
whose notes thereafter may be transcribed out of  
the presence of the witness, and that the proof  
of the official character and qualification of  
the notary is waived.

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1 W. SUSAN DEMPSEY

2 being first duly sworn, as hereinafter  
3 certified, deposes and says as follows:

4 CROSS- EXAMI NATI ON

5 BY MS. JODKA:

6 Q. Can you state your name for the record,  
7 please.

8 A. Winifred Susan Dempsey, but I go by  
9 Susan.

10 Q. Do you care if I call you Susan today --

11 A. No.

12 Q. -- or would you prefer Ms. Dempsey?

13 A. Susan is fine.

14 Q. My name is Sara Jodka. I'm an attorney,  
15 and I represent LEEDCo/Icebreaker in this case.  
16 I'm probably going to refer to it as Icebreaker,  
17 the Icebreaker project. Do you understand what  
18 I'm talking about when I say Icebreaker project?

19 A. Yes.

20 Q. Okay. Great.

21 Can you tell me what your address is,  
22 please?

23 A. 1 Bratenahl Place, Suite 910, Bratenahl,  
24 Ohio 44108.

1 Q. And that is on the 9th floor of the  
2 building?

3 A. Yes.

4 Q. What kind of building is that?

5 A. It's a high-rise condominium.

6 Q. How many floors?

7 A. 15. Actually 16 because the first floor  
8 is not counted. It's ground.

9 Q. Are you planning to move in the next six  
10 months?

11 A. No.

12 Q. Okay. Have you ever had your deposition  
13 taken before?

14 A. Yes.

15 Q. In what kind of proceeding?

16 A. It was a lawsuit with the corporation  
17 that I worked with.

18 Q. Okay. Were you testifying on behalf of  
19 the company or against the company?

20 A. For the company.

21 Q. For the company. Okay.

22 I won't tell you much about the rules,  
23 then. Maybe if Bob hasn't had his -- or Mr. --  
24 if Mr. Maloney hasn't had his deposition since

1 he's next, I'll kind of go through the rules,  
2 even though you probably know them.

3 I'm just going to ask some questions,  
4 and you're just going to answer questions. If  
5 you need a break, I'm going to ask you that we  
6 at least finish all pending questions that are  
7 on the table before we take a break.

8 MR. STOCK: Unless it involves a  
9 question of privilege with respect to which she  
10 needs to consult with me, but I don't foresee  
11 problems.

12 MS. JODKA: Okay.

13 BY MS. JODKA:

14 Q. Let's try not to talk over each other.  
15 You've had your deposition taken before, so you  
16 understand that this comes out as a deposition  
17 transcript which you probably had to read and  
18 sign and review before, so it's kind of like a  
19 book where we have to make sure that each thing  
20 is very clear from one participant, one speaker  
21 from the next.

22 Other than conversations and  
23 preparations that you've had with your attorney,  
24 what did you do to prepare for your deposition

1 today?

2 A. I reread some of the documents that were  
3 filed.

4 Q. Do you remember what documents you  
5 reviewed?

6 A. I think the responses to the  
7 interrogatories and the petition to intervene.

8 Q. Okay. When you say you read the  
9 request -- the responses, were those your  
10 responses to interrogatories?

11 A. Yes.

12 Q. Did you review Icebreaker's responses to  
13 their interrogatories?

14 A. I think I reviewed one set of them.

15 Q. Okay. Great.

16 I want to learn a little bit about your  
17 background. Where were you born?

18 A. In Cleveland.

19 Q. Okay. Have you lived in the Cleveland  
20 area/northeast Ohio all your life?

21 A. Yes.

22 Q. Okay. When were you born?

23 A. 1947.

24 Q. '47. How old are you?

1 A. 71.

2 Q. Wow. Okay. You look great.

3 Did you ever move out of Cleveland, Ohio  
4 for any period of time for schooling or  
5 anything?

6 A. No.

7 Q. Did you have any type of, like,  
8 schooling that's, like, post high school?

9 A. Yes.

10 Q. What was that?

11 A. I went to Ursuline College for my  
12 undergraduate and Case Western Reserve for my  
13 MBA.

14 Q. Where is Ursuline?

15 A. Pepper Pike, just outside of Cleveland.

16 Q. Okay. Gotcha.

17 What did you do for your undergraduate  
18 studies?

19 A. I majored in biology.

20 Q. Do you have a BS?

21 A. Yes.

22 Q. Do you have any other type of  
23 certification associated with that?

24 A. I actually got a med tech degree working

1 at the hospital.

2 Q. From working at a hospital?

3 A. Uh-huh. Actually, Ursuline was a  
4 liberal arts school. I don't think it gave me a  
5 BS. I think it may have been a BA. It was an  
6 undergraduate degree.

7 Q. Okay. You did four years of study  
8 there?

9 A. Yes.

10 Q. And Case Western, what was that study?

11 A. It was MBA.

12 Q. When did you graduate with your MBA?

13 A. I think 1983.

14 Q. Okay. And you graduated from Ursuline?

15 A. 1969.

16 Q. What did you do between '69 and the time  
17 that you entered school at Case?

18 A. I worked at the Cleveland Clinic and  
19 then at University Hospitals in their labs.

20 Q. What did you do in their labs?

21 A. At the Cleveland Clinic, I was the lab  
22 technician for the allergy department.

23 Q. For the allergy?

24 A. Uh-huh.

1 Q. Okay.

2 A. And at University Hospitals, that's  
3 where I got my med tech certification, and I  
4 worked in their clinical chemistry lab.

5 Q. Okay. So were you in charge of actually  
6 running lab tests?

7 A. Yes.

8 Q. What kind of lab tests?

9 A. They were clinical chemistry lab tests  
10 at University Hospital. We didn't do lab tests  
11 for the allergy department. I made the serums  
12 and potions. So grasses and ragweed, things  
13 like that.

14 At University Hospitals, I worked in the  
15 clinical chemistry lab. We tested blood and  
16 other body fluids or chemistries for patients.

17 Q. So you have all this experience, like,  
18 in the clinical labs. Why did you get your MBA?

19 A. Because I wanted to do something  
20 different.

21 Q. What was the something different?

22 A. I went into consulting. I actually used  
23 my healthcare background, worked at Deloitte  
24 Haskins & Sells. I don't think it's called that

1 anymore. And then at Ernst & Young. It was  
2 Ernst & Whinney at the time.

3 Q. What were you doing for them on a  
4 consulting basis?

5 A. Healthcare consulting.

6 Q. And healthcare consulting can be kind of  
7 broad. Can you narrow it for me?

8 A. I did some information systems, review  
9 for hospitals, and then I did physician payment  
10 reform for Ernst & Young. I worked in their  
11 national offices.

12 Q. And those were all in Cleveland?

13 A. Yes.

14 Q. Okay. Are you married?

15 A. No.

16 Q. Do you have any children?

17 A. No.

18 Q. So let me make sure I have a clear  
19 chronological time frame of, like, when you were  
20 working. So you started working in Cleveland  
21 Clinic and then you went to University Hospital?

22 A. (Nods.)

23 Q. When was University Hospital?

24 A. I worked at the clinic starting in '69.

1 I think I went to University Hospitals in '72.

2 Q. Okay.

3 A. '73. Around there.

4 Q. And then from '72 to '80 --

5 A. Like '81, I think. '81, '82.

6 Q. All right.

7 A. And then I think I went to Deloitte  
8 until '86.

9 Q. Okay.

10 A. And then I went to E & Y until '90. And  
11 then I took a position with a physician group  
12 practice.

13 Q. Doing what?

14 A. I was their VP of marketing and sales.  
15 And then I took over operations as well. I was  
16 there from '90 to '99, I believe.

17 Q. What did you do after that?

18 A. Then I worked for CSA International,  
19 which is a safety testing and certification  
20 laboratory. I worked there from 2000 to 2012,  
21 when I retired.

22 Q. Tell me a little bit more about your  
23 work for CSA. What were you -- were you doing  
24 the testing again?

1 A. No.

2 Q. Were you back in the lab?

3 A. No. I was in administration.

4 Q. Okay.

5 A. I started out in the sales and  
6 marketing.

7 Q. Okay.

8 A. And then I became the VP and general  
9 manager for one of their divisions, the consumer  
10 product testing division.

11 Q. What division? Is it a different --  
12 like, is it a different entity? Does it have a  
13 different name?

14 A. It had at the time, but it doesn't  
15 anymore.

16 Q. Okay.

17 A. It's now just the consumer product  
18 testing division.

19 Q. And what kind of projects or clients  
20 does CSA have?

21 A. Manufacturing clients and then retail  
22 clients.

23 Q. Do they do any type of work with  
24 renewable energy?

1           A.   I think they write some standards for  
2   that, but I was not in the standards writing  
3   division.

4           Q.   Okay.

5           A.   And they may do testing for products.  
6   Again, that was in my division.

7           Q.   Do you know if they do any type of,  
8   like, writing standards or testing for wind  
9   siting, wind power?

10          A.   I really don't know.

11          Q.   So you said you retired there in 2012?

12          A.   Yes.

13          Q.   Have you been employed since that period  
14   of time?

15          A.   No.

16          Q.   Have you worked on any, like, boards or  
17   pro bono organizations?

18          A.   (Nods.)

19          Q.   Can you tell me a little bit about that?

20          A.   I'm on the board of our homeowners  
21   association at Bratenahl Place.

22          Q.   Is that just called the Bratenahl Place?

23          A.   1 Bratenahl Place Condominium  
24   Association.

1 Q. Okay. Do you hold a position, or are  
2 you just a member?

3 A. I'm the president.

4 Q. How many people are on that board?

5 A. Seven.

6 Q. How long have you been on that HOA?

7 A. Since 2012.

8 Q. Have you served in the president  
9 position ever since?

10 A. No.

11 Q. When did you become president?

12 A. 2015.

13 Q. Okay. Are you on any other type of pro  
14 bono boards?

15 A. Yes.

16 Q. What else?

17 A. Stella Maris.

18 MR. STOCK: Could you spell that for the  
19 court reporter.

20 A. S-T-E-L-L-A, M-I-R-A-S. Star of the  
21 Sea. It's an addiction recovery program.

22 BY MS. JODKA:

23 Q. Is that like -- are we talking about,  
24 like, a drug addiction, heroin, or any other

1 type of addiction?

2 A. (Nods.)

3 Alcohol, drugs.

4 Q. Substance abuse?

5 A. Substance abuse.

6 Q. How long have you been with Stella

7 Maris?

8 A. I'm trying to think. I think probably

9 since 2012. I think when I retired.

10 Q. Any other types of boards or

11 organizations that you're a part of or

12 participate in?

13 A. No.

14 Q. What can you tell me about your

15 knowledge of Murray Energy?

16 A. Nothing.

17 Q. Have you ever heard of Murray Energy in

18 any context? News?

19 A. No.

20 Q. Have you watched John Oliver?

21 A. No.

22 Q. Do you know who John Oliver is?

23 A. No.

24 Q. Do you know what the American Affordable

1 and Reliable Energy -- the campaign for that is?

2 A. No.

3 Q. Are you familiar with the acronym CAARE?

4 A. No.

5 Q. Okay. When you worked with CSA, do you  
6 know if they were clients -- did you ever see  
7 those names pop up as clients for that entity?

8 A. No. I don't know anything about it.

9 Q. Not familiar at all?

10 A. No.

11 Q. Okay. Do you know whether Benesch  
12 represents CAARE as well?

13 A. No.

14 Q. Or Murray Energy?

15 A. No.

16 Q. Do you know if Benesch represents Lake  
17 County or Cuyahoga County?

18 A. No.

19 Q. There's press interest in fossil fuel  
20 money being used to fund bird groups that are  
21 opposing wind projects. Have you been contacted  
22 by the press about your involvement with this  
23 issue?

24 MR. STOCK: Objection.

1           Go ahead and answer.

2           A.    No.

3           Q.    So you said that 1 Bratenahl Place is a  
4   condo association?

5           A.    Yes.

6           Q.    Does that mean you have -- you don't  
7   rent it, you own it?

8           A.    Yes.

9           Q.    When did you purchase your condo?

10          A.    1997.

11          Q.    Where did you live before that?

12          A.    Cleveland Heights.

13          Q.    Okay. Did you have a house in Cleveland  
14   Heights?

15          A.    Yes.

16          Q.    What part of Cleveland Heights? I lived  
17   there for a little while.

18          A.    Euclid Heights Boulevard.

19          Q.    All right. Do you live with anyone?

20          A.    No.

21          Q.    Do you live with any pets?

22          A.    I have a pet.

23          Q.    What do you have?

24          A.    A dog.

1 Q. A little dog or big dog, little dog?

2 A. Little dog.

3 Q. What kind of dog do you have?

4 MR. STOCK: How many pounds does your  
5 dog weigh?

6 Q. What kind of dog do you have?

7 A. He's a beagle basset terrier. Came from  
8 a shelter.

9 Q. Okay. How many bedrooms is your condo?

10 A. Three.

11 Q. Okay. What's the view from your condo?  
12 What do you see when you look out your windows?

13 A. Facing west, I see Cleveland. Facing  
14 north and northwest, I see the lake.

15 Q. Is that a full lake view?

16 A. Well, there's trees.

17 Q. Are they in your way, though? They're  
18 not that high?

19 A. Well, some of them are. I'm on the 9th  
20 floor.

21 Q. But you have a pretty decent view of the  
22 lake?

23 A. Yes.

24 Q. Okay.

1           A.   And facing east, I would also see the  
2   lake plus the city.

3           Q.   About how far, if you can estimate in  
4   feet or -- it's probably not miles from where  
5   you are, but can you estimate how far your condo  
6   is from the shore?

7           A.   Probably 100 -- I don't think it's as  
8   long as a football field. Maybe 100 yards. I  
9   actually don't know.

10          Q.   You can walk, though --

11          A.   Oh, yes.

12          Q.   -- from your condo to the shore?

13          A.   Our property goes to the shoreline.

14          Q.   Do you have access from your property?

15          A.   We have a cliff. So we don't have --  
16   you know, you can't get down to the beach.  
17   There's no beach.

18          Q.   So there's like a cliff area?

19          A.   Yes.

20          Q.   You would have to further go down?

21          A.   (Nods. )

22          Q.   Okay. Do you own any other properties?

23          A.   I have a second home in New York.

24          Q.   Okay. What part of New York?

1 A. Chautauqua.

2 Q. Are you right on the lake?

3 A. No.

4 Q. Okay. Do you own any -- do you have any  
5 type of business interest in any other  
6 organizations or interest?

7 A. No.

8 Q. What --

9 A. Oh, wait. I'm sorry. No, I don't.

10 Q. What's Stoneman Properties?

11 A. Stoneman Properties was an LLC that I  
12 set up when I bought one of the condos in the  
13 building.

14 Q. Do you own more condos in your building  
15 other than your unit?

16 A. I do.

17 Q. Okay.

18 A. But the Stoneman Property one, there's  
19 nothing in it. It's really a retired LLC.

20 Q. Okay. But you do own other units --

21 A. Yes.

22 Q. -- in the same building?

23 Where do you also own units?

24 A. 908.

1 Q. So you own another one on the 9th floor?

2 A. It's actually in my IRA, yes.

3 Q. What do you mean?

4 A. It's a self-directed IRA, so you can buy  
5 properties, investment properties bought through  
6 the IRA.

7 Q. Is anyone currently living in that?

8 A. Yes.

9 Q. Do you rent it out?

10 A. Yes.

11 Q. Can you tell me what your understanding  
12 of Lake Erie Energy Development -- so LEEDCo,  
13 what it is?

14 A. I understand it's a nonprofit  
15 corporation that's involved with Icebreaker to  
16 develop wind turbines in Lake Erie.

17 Q. When do you recall first learning about  
18 the wind turbine project in Lake Erie? We'll  
19 just kind of refer to it as "the project" for  
20 simplicity sake.

21 A. I can't -- I don't remember. Could be a  
22 couple years ago.

23 Q. Do you remember how you first found out  
24 about the project?

1 A. Probably in articles in The Plain

2 Dealer.

3 Q. What was your understanding of the

4 project?

5 A. That they were going to put six wind

6 turbines in Lake Erie as a demonstration

7 project.

8 Q. Has your -- since that was your first

9 kind of information about the project -- and

10 you've been involved now for a couple of

11 years --

12 MR. STOCK: Objection. Been involved?

13 MS. JODKA: Well, she's known about the

14 project. She's had information about the

15 project, to the extent she's had information.

16 BY MS. JODKA:

17 Q. Has your knowledge of the scope of the

18 project changed since your first initial

19 introduction into the project?

20 A. Yes.

21 Q. How so?

22 A. An article I read last year identified

23 that it was going to eventually become somewhere

24 between 1,400 and 1,600 wind turbines in the

1 lake; that this was just an initial project to  
2 break the ice to then further build more and  
3 more and more on the lake.

4 MS. LEPPLA: I'm sorry to interrupt.  
5 When did you say you learned about that?

6 THE WITNESS: Probably last November.

7 MS. JODKA: That was actually my next  
8 question, because she hadn't said that.

9 BY MS. JODKA:

10 Q. So you found out about it last November,  
11 2017, that you thought that this project would  
12 be a larger scale project than the initial six  
13 turbines; is that your testimony?

14 A. Yes.

15 Q. Where did you get that information?

16 A. Again, I think it came from The Plain  
17 Dealer.

18 Q. You have -- you are an intervenor in  
19 this lawsuit, or in this application process.  
20 Do you understand what that means? Or can you  
21 explain for me what you believe your involvement  
22 as an intervenor means in this process?

23 A. I'm an intervenor because I'm opposed to  
24 putting turbines in Lake Erie. And so I'm here

1 to try to protect the greatest asset that Ohio  
2 has, Lake Erie, and want to voice the opinions  
3 of many who aren't capable of doing that.

4 Q. When you say that you're voicing the  
5 opinions of many, who are you talking about?

6 A. Friends, relatives.

7 Q. You're the president of your condo  
8 association. Has that been an issue for your  
9 condo association?

10 A. Not at all. I do not represent the  
11 condo association as an intervenor.

12 Q. So what specifically about the project  
13 do you dislike?

14 A. That they want to put wind turbines in  
15 the lake. I don't think that's a -- it's  
16 freshwater. It's there for other reasons. It's  
17 protected by the state. I worry about the  
18 environmental impact for birds and bats. I'm  
19 not sure it makes any economic sense.

20 Q. Okay. You say that this is a freshwater  
21 lake and an asset. How do you actually use the  
22 lake?

23 A. I've grown up around the lake. I was  
24 born in Euclid. We had a cottage in East Lake.

1 For most of the summer we spent in the lake, on  
2 the lake, boating or fishing or enjoying the  
3 sunsets. My home in Euclid, it dead-ended into  
4 the lake. We had a little beach club and we  
5 watched sunsets every night. We watched storms  
6 come in from the lake. When I was older, we  
7 also had a cottage out in East Lake. We spent  
8 most of our summers on the beaches there. As I  
9 got older, I started sailing. When I lived in  
10 Cleveland Heights, I was crewing on several  
11 different boats and I spent a lot of summers on  
12 the lake, sometimes without wind, but sailing  
13 and enjoying the lake. Now, I can sit on my  
14 balcony and watch sunsets, watch the birds that  
15 come across the lake. It's my backyard.

16 Q. Can you tell me what your knowledge is  
17 about where this project will actually be  
18 located in Lake Erie?

19 A. I understand it will be about eight  
20 miles off of the lakeshore.

21 Q. In terms of the scope of it, do you know  
22 how far these six turbines are projected to  
23 extend?

24 A. No.

1 Q. Have you seen any visuals of what you  
2 believe that this is going to -- the project is  
3 going to look like from the shorelines?

4 A. I have.

5 Q. Where have you seen those?

6 A. Last week at the open meeting in  
7 Cleveland.

8 Q. Do you know who presented those visuals?

9 A. I think LEEDCo had those out there in  
10 the hallways.

11 Q. I'm going to show you -- I'm going to  
12 see if this is what you had seen or if it was  
13 something different. Let's mark this as  
14 Exhibit --

15 MS. JODKA: Do you have a preference?

16 MR. STOCK: I think we were using name  
17 deposition exhibit, so instead of running them  
18 serially.

19 MS. JODKA: So this will be Dempsey --

20 MR. STOCK: Yeah. Exhibit 1 will be  
21 fine.

22 MS. JODKA: This will be Dempsey Exhibit  
23 1.

24 --0--

1 (Deposition Exhibit 1 marked.)

2 --0--

3 Q. I've just handed you what's been marked  
4 as Dempsey Exhibit 1. Have you seen any of  
5 these pictures before?

6 A. They don't look familiar to me.

7 Q. Can you describe for me the difference  
8 between, like, the pictures that you saw last  
9 week at the open meeting and these pictures?

10 A. I think you could see more of the wind  
11 turbine. I don't know whether they were taken  
12 from a different height or whatever, but these  
13 don't look the same to me.

14 Q. Do you know what these -- have you  
15 reviewed the visual impact assessment before?

16 A. No.

17 Q. If you look at the first page, this  
18 is -- for the record, so that we're clear, this  
19 is a six-page exhibit. It is not marked by page  
20 numbers. It's a much longer assessment. I only  
21 pulled out a few studies. So we'll just refer  
22 to this as pages 1 through 6 to get through this  
23 a little bit quicker. Okay?

24 A. Sure.

1           Q.   If you look at page 2 of this, can you  
2   identify for me where in this partial radial  
3   outline, where your residence would be in  
4   relation to -- in relation to that radial  
5   outline?

6           A.   Bratenahl is at the far right. We'd be  
7   out there.

8           Q.   So as you're looking at the proposed  
9   project, can you tell me what you understand  
10   would be your eye line of the wind turbines, as  
11   you're looking from your balcony?

12          A.   It would be from number 55 over.

13               MR. STOCK: Want her to put a circle on  
14   the exhibit as to where she believes her  
15   location is? There you go.

16               (Witness complies.)

17   BY MS. JODKA:

18          Q.   I think the exhibit also does say  
19   Bratenahl, and you're very close to that?

20          A.   Yeah.

21          Q.   Okay. Do you have any reason to believe  
22   that this is not how the scope of the project  
23   would actually be put in place?

24          A.   Well, this is the scope of just the six.

1 This doesn't include what might happen with the  
2 other thousands that they're planning.

3 Q. How do you know that they're planning  
4 thousands?

5 A. That was what was in the newspaper,  
6 because Icebreaker is the lead-in. It's a  
7 demonstration project for the future  
8 development.

9 Q. You do understand for this project it's  
10 only six?

11 A. Right.

12 Q. You understand we can only deal with  
13 six?

14 MR. STOCK: Objection.

15 Q. Correct?

16 MR. STOCK: You're asking for her legal  
17 opinion on that?

18 MS. JODKA: I'll strike that.

19 BY MS. JODKA:

20 Q. For purposes of your intervention, do  
21 you believe that your intervention would be  
22 challenging any more than six wind turbines in  
23 Lake Erie at this time?

24 A. I don't think anybody should put a

1 turbine in Lake Erie.

2 Q. Why's that?

3 A. Because it's the greatest natural  
4 resource we have in Ohio, and I just don't think  
5 it should be there. That's my opinion. I don't  
6 think we should have wind turbines.

7 Q. And that's what we're here for today.  
8 That is what we're here to get, your opinion.  
9 That's exactly what I'm interested in. I want  
10 you to be very open with it. Because I want to  
11 know the reasons that you are opposed to this  
12 project. So that is exactly why we're here. So  
13 I want you to be very open with me in your  
14 opposition. Be very candid, and let me have it,  
15 essentially, of why you're against this project,  
16 because I'm looking at it from your point of  
17 view of why someone who's sitting in Bratenahl  
18 looking at it as you're looking at it has an  
19 issue with it.

20 Are you concerned about other people's  
21 use of the lake?

22 MR. STOCK: Objection. We don't need  
23 the colloquy. You're not looking at it from her  
24 point of view. You're paid by Icebreaker.

1 Let's just ask questions and she can answer  
2 them. Okay?

3 MS. JODKA: I don't think you can tell  
4 me how I'm viewing something in order to  
5 determine how to question a witness.

6 MR. STOCK: And I'll state what I want  
7 to state. And I just stated it.

8 MS. JODKA: Okay.

9 MR. STOCK: I think it's misleading to  
10 the witness to say that you're viewing it from  
11 her point of view.

12 MS. JODKA: I am trying to view it from  
13 her point of view.

14 MR. STOCK: That's something different.  
15 You said you were viewing it from her point of  
16 view. You're not representing an opposer. So  
17 just ask the question.

18 MS. JODKA: I did ask the question.

19 Can you read the question that was on  
20 the table, please?

21 (Record read as requested.)

22 A. I'm concerned about everyone's use of  
23 the lake, but I'm -- I just don't think that  
24 this is an appropriate thing to put into Lake

1 Erie, into my drinking water, into the area  
2 that's outside my window.

3 Q. In your petition you didn't mention an  
4 issue with drinking water. What's your issue  
5 with the drinking water?

6 A. Lake Erie is freshwater, and quite  
7 honestly, there isn't that much freshwater in  
8 the world, that we should protect it. I want to  
9 protect Lake Erie. I want to protect it for the  
10 boaters, for the fish, for the birds.

11 Q. Holding on just to the drinking water.  
12 What have you reviewed in regards to the type of  
13 pollution that this project will put into the  
14 water for purposes of affecting drinking water?

15 A. Nothing, actually, but I know that it's  
16 just upstream from our water intake. And if  
17 there were anything to happen to it -- I mean,  
18 I've watched that lake get polluted and get  
19 cleaned. I've lived there when there were no  
20 miggies and no mayflies because of the pollution  
21 in the lake. They're finally coming back. I'd  
22 like to maintain that. I don't think we should  
23 do things that have a risk of doing anything to  
24 the lake.

1 Q. Have you reviewed anything from the FWS  
2 or the DOE and other agencies that have found  
3 that this project will cause minimal or limited  
4 risk?

5 A. No.

6 Q. Are you familiar with any risks that  
7 they have found with the project?

8 A. No.

9 Q. What is your understanding of LEEDCo's  
10 purpose or Icebreaker's purpose with the  
11 project?

12 A. It's a demonstration project.

13 Q. Do you know what they're seeking to gain  
14 in terms of value from the project?

15 MR. STOCK: Objection. Vague.

16 Go ahead and answer if you can.

17 A. I'm assuming that they're doing the  
18 demonstration project so they can determine  
19 whether it's feasible to do more.

20 Q. Do you think that information that is  
21 gathered from a demonstration project about the  
22 ecological effects of wind turbine projects in  
23 Lake Erie and information about the financial  
24 viability of such projects would assist

1 regulatory agencies in forming sound policies  
2 for similar offshore wind farm projects?

3 MR. STOCK: Objection.

4 Answer if you can.

5 A. I'm not sure I can answer that. I'm not  
6 an engineer or -- or an Audubon person. I'm  
7 trying to protect Lake Erie. I just don't think  
8 this should be in Lake Erie.

9 Q. Are you opposed to wind projects in  
10 general?

11 A. No.

12 Q. Your opposition comes with it being a  
13 wind project in the lake?

14 A. Yes.

15 Q. What's your opinion on wind projects  
16 that are in other bodies of water?

17 MR. STOCK: Objection.

18 A. I don't have an --

19 MR. STOCK: Go ahead.

20 You can answer.

21 Q. You can answer.

22 A. You're not drinking the ocean water.  
23 That's all I know. This is freshwater.

24 Q. If this were on a different lake, so

1 Lake Huron, would you have intervened in that  
2 type of wind project?

3 MR. STOCK: Objection.

4 Answer if you can.

5 A. I don't know.

6 Q. Is your issue because this one -- would  
7 you say that your -- one of the issues you have  
8 is this is in your backyard?

9 A. It's in Lake Erie, which is in my  
10 backyard.

11 Q. It's not an issue with studying wind  
12 energy?

13 A. It's not an issue with studying wind  
14 energy, but I don't think it should ever be in  
15 freshwater, personally. That's my opinion. I  
16 don't think it should be in any freshwater.

17 Q. That's fine.

18 So how did you get to the point of  
19 taking a stand to assert your opposition?

20 A. I think when I -- when I heard that they  
21 were planning thousands of these in Lake Erie.

22 Q. What did you do? What steps did you  
23 take to oppose, to formally oppose the process?

24 A. I met with some friends. We tried to

1 figure out if there was some way we could raise  
2 an objection.

3 Q. Who did you meet with?

4 A. Bob.

5 Q. How do you know Bob?

6 A. He lives in the building in the complex  
7 that I live in. He's in the other building.  
8 There's two buildings.

9 Q. Did you meet with anyone else?

10 A. Some friends.

11 Q. Are they intervenors as well?

12 A. No, not right now. There were some that  
13 were, but they dropped out.

14 Q. How did you know about the intervening  
15 process?

16 A. I read the documents online, saw that  
17 there was -- on the docket it lists intervenors.

18 Q. What other intervenors did you see that  
19 sparked your interest of you becoming one?

20 A. The only one that I saw that was really  
21 in opposition was another Cuyahoga County group  
22 of residents.

23 Q. And you're aware they're no longer in  
24 this lawsuit?

1 A. Yes.

2 Q. What was your next steps in becoming an  
3 intervenor?

4 A. I contacted Benesch Friedlander, John,  
5 and asked him if there was some way we could  
6 help or participate.

7 Q. How did you --

8 MR. STOCK: Don't discuss the substance  
9 of our conversations.

10 Q. I'm not concerned about any substance.  
11 And he will object as we get into that just to  
12 make sure that you're reminded of that. I'm not  
13 interested in anything that you talk about with  
14 John, with your attorney, whether it's John or  
15 another attorney from the firm. I don't want to  
16 know any documents he's had you review or  
17 anything like that. That is not what I'm  
18 looking for.

19 MR. STOCK: We're fine. I just wanted  
20 her to understand.

21 MS. JODKA: Good.

22 BY MS. JODKA:

23 Q. How did you know -- so how did you get  
24 John's information?

1 A. Out of the dockets.

2 Q. Now, do you have a client representation  
3 or engagement letter with the Benesch law firm?

4 A. Yes.

5 Q. Do you know what the scope of that  
6 engagement is, like the terms of the  
7 representation, like what the scope of it is?

8 A. I can't tell you.

9 Q. Do you know when, approximately, that  
10 was?

11 A. Earlier this year, probably. January.

12 Q. You intervened with a couple of other  
13 folks?

14 A. Yes.

15 Q. How do you know those folks?

16 A. We all live in the same Bratenahl area.

17 Q. The -- in the same condo, 1 or 2  
18 Bratenahl Place?

19 A. Yes.

20 Q. Or do the other two live different --

21 A. Two of them -- actually, Lee Blazey is  
22 not. He lives in a private home in Bratenahl.

23 Q. How do you know him?

24 A. Just neighborhood.

1 Q. Do you remember answering -- you  
2 remember answering your interrogatory responses,  
3 and you testified earlier that you had reviewed  
4 those interrogatory responses, correct?

5 A. Yes.

6 Q. Did you also review any additional  
7 documents regarding any additional supplementary  
8 information to those interrogatory responses?

9 A. Just the second request. I think there  
10 was a second request for interrogatories.

11 Q. Do you know if that second request has  
12 been fully responded to as of this time?

13 A. It was about electrical?

14 Q. Is that what you recall?

15 A. I think.

16 Q. Do you know if you've provided that  
17 information, or is it still outstanding?

18 A. Provided what information we could.

19 Q. Okay. In your supplemental  
20 interrogatory responses, specifically  
21 interrogatory number 5, you indicated that you  
22 are not paying your own legal fees personally.  
23 Can you tell me who is?

24 A. No.

1 Q. Why's that?

2 A. I never asked. We asked if we could  
3 provide support. It was covered.

4 Q. You have no information, as you sit here  
5 today, as to the entity that is paying your  
6 legal fees?

7 A. Correct.

8 Q. You had to drive down from Cleveland to  
9 here?

10 A. Yes.

11 Q. Did you stay overnight, or did you drive  
12 down this morning?

13 A. Stayed overnight.

14 Q. Are you going to be reimbursed for your  
15 hotel expenses, or are you personally paying for  
16 your hotel expenses and your gas?

17 A. I put it on my credit card.

18 Q. Do you expect to be reimbursed?

19 A. I haven't asked.

20 MR. STOCK: Don't.

21 A. I don't expect.

22 MR. STOCK: I'm teasing.

23 Q. Are you receiving anything of value for  
24 your participation?

1           A.   Only that I hope that the lake will be  
2   protected.

3           Q.   Why haven't you inquired as to who's  
4   paying for your attorney to sit here today?

5           MR. STOCK:  Objection.

6           Go ahead and answer if you can.

7           A.   I really didn't care.  I just wanted to  
8   be able to stand up and voice my opinion that I  
9   don't think this is the right thing to do in  
10  Lake Erie.

11          Q.   Would there be any type of organizations  
12  or businesses that you would not want to be  
13  associated with?

14          MR. STOCK:  Objection.

15          Answer if you can.

16          Q.   As paying your fees?

17          A.   I wanted to be able to stand up and  
18  protect the lake.  We offered to help.  We  
19  actually offered to help.  Fees were being paid.  
20  I haven't gotten any invoices.  I don't care.  I  
21  don't know.  I wanted to be able to do this.  I  
22  wanted to be able to voice my opinion that I  
23  think it's the wrong thing to do for Lake Erie.

24          Q.   Before you took formal action, or after

1     you took formal action, did you ever reach out  
2     to Icebreaker --

3             A.    No.

4             Q.    -- about your opposition?

5             A.    No.

6             Q.    What is your experience with any  
7     currently existing wind farms, whether they are  
8     land-based or whether they are water-based?

9             A.    Just that I see them.

10            Q.    Like you drive by them?

11            A.    (Nods. )

12            Q.    Have you ever seen one in water?

13            A.    No.

14            Q.    Have you ever intervened in anything  
15   before?

16            A.    No.

17            Q.    Have you ever protested anything before?

18            A.    No.

19            Q.    You've never challenged a wind farm  
20   before?

21            A.    No.

22            Q.    Have you ever challenged any type of  
23   fuel source?

24            A.    No.

1 Q. Coal ?

2 A. No.

3 Q. Fossil fuels?

4 A. No.

5 Q. You were one of four intervenors,  
6 correct?

7 A. Yes.

8 Q. In your particular petition, correct?

9 A. Yes.

10 Q. Two of those intervenors have decided  
11 not to continue with their intervention,  
12 correct?

13 A. Correct.

14 Q. Do you know why they've decided not to  
15 continue with their intervention process?

16 A. I haven't --

17 MR. STOCK: Objection.

18 MS. JODKA: If she knows.

19 MR. STOCK: Go ahead and answer.

20 A. I haven't asked them exactly why. You'd  
21 have to ask them why they wanted to be out.

22 Q. You testified earlier that you -- you're  
23 involved in an organization that helps people  
24 who are struggling with drugs and other types of

1     addiction.    Would you have -- would you continue  
2     with your opposition if you knew that -- if you  
3     thought or had knowledge that, say, your legal  
4     fees were being paid by someone who supplies  
5     drugs to the Cleveland area?

6                 MR. STOCK:  Objection.

7                 Don't answer that.

8                 MS. JODKA:  She can answer that.

9                 MR. STOCK:  No.

10                MS. JODKA:  That's an opinion question.  
11     She can answer that.

12     BY MS. JODKA:

13                Q.    Would you continue with your  
14     intervention if that was who was paying your  
15     legal fees?

16                MR. STOCK:  Objection.

17                Don't answer that.

18                MS. JODKA:  I'm not saying they are.  
19     It's a hypothetical.

20                MR. STOCK:  Right.  And I've instructed  
21     her not to answer.  She's not going to answer.

22                MS. JODKA:  There's only two reasons why  
23     people can't answer, and that is because there's  
24     a protective order in place -- or there's

1 three -- if there's confidential, trade secret,  
2 or proprietary interest information that's at  
3 issue, which it isn't. Or there's privilege.  
4 That doesn't apply here. None of those do.

5 MR. STOCK: You have to have a  
6 good-faith basis for any question you ask on  
7 cross-examination. What information do you have  
8 that any organization that supplies drugs in  
9 Ohio is paying legal fees in this case? If you  
10 give me that good-faith basis, I'll let her  
11 answer the question. You know it's absurd.  
12 Move on.

13 MS. JODKA: It's not absurd. I didn't  
14 want to ask directly if it was -- if you knew --  
15 if you thought or knew that legal fees were  
16 being paid by a coal company, would you continue  
17 with your intervention?

18 MR. STOCK: That question she can  
19 answer.

20 A. I really want to be able to protect Lake  
21 Erie. So I'm not -- quite honestly, I'm happy  
22 that somebody is willing to step up to help  
23 people be able to voice their opinions on that.

24 Q. Even if that's coming from the coal

1 industry, the fuel fossil fuel industry?

2 A. I don't have any bad feelings about the  
3 coal industry or the nuclear energy or gas-fired  
4 energy. So...

5 Q. Okay. You said you looked over your  
6 petition before -- in prepping for your  
7 deposition, correct?

8 A. Yes.

9 Q. I want to go through a few of the  
10 reasons that you indicated in your petition of  
11 why you're opposing this, and one of those was  
12 blot on the aesthetic of Cleveland. What did  
13 you mean by that in your petition?

14 A. That currently I have an unobstructed  
15 view of sunsets and birds and storms and things  
16 happening in the lake.

17 Q. Except for the trees, correct?

18 A. Except for the trees that are near the  
19 shore.

20 Q. Have you attempted to remove the trees  
21 so that you could have a full view?

22 A. Some people have.

23 Q. Were they successful in any way of  
24 removing trees?

1           A.   (Shakes head.)

2           Q.   Did you participate in the tree removal  
3 process?

4           A.   No.   In our building, we've had -- just  
5 because they're dead.   But no.

6           Q.   In terms of your view, what do you think  
7 your view is going to look like after -- if the  
8 project is greenlit and these wind turbines go  
9 up in the lake?

10          A.   I think it will not be unobstructed.  
11 And if they have lights on them, that will  
12 change the sunsets.   That will change my  
13 sunsets.

14          Q.   Do you have information that there are  
15 going to be lights on these?

16          A.   I'm assuming that you've got to have  
17 lights on things where you've got planes and --

18          Q.   If you look at the Dempsey Exhibit 1  
19 that we've already put into evidence, and you  
20 look at -- let's look at page 6.   I guess the  
21 last one.   Can you point out to me in this page  
22 6 of Dempsey Exhibit 1 the obstruction?

23          A.   I'm not sure what you're asking.

24          Q.   You don't see any wind turbines,

1 correct?

2 A. Very faintly over here.

3 MR. STOCK: Put a circle where you see  
4 them.

5 (Witness complies.)

6 BY MS. JODKA:

7 Q. You said they were very faint, correct?

8 A. Yes.

9 Q. Do you have any reason to believe that  
10 this image is not what it would look like if the  
11 project is actually put into the water?

12 A. I have no idea.

13 Q. Do you know how many 100 percent clear  
14 days there are in Cleveland and how many there  
15 aren't?

16 A. I have no idea.

17 Q. But this is a view that you take  
18 particular offense to?

19 MR. STOCK: Objection. It's not a view.  
20 It's a simulation.

21 A. And this is from the ground. It's not  
22 from my 9th floor. I mean, this is a simulation  
23 of what happens at the ground level.

24 Q. Okay. So how do you know your view

1 would be different?

2 A. I think they'd be more in your view.

3 Q. How so?

4 A. Because you can see more from above.

5 Q. You also talked about, in addition to  
6 the blot, the aesthetic, you also talked about  
7 enjoying birding, you know, the birds -- a few  
8 particular birds in particular. You talked  
9 about the geese, the bald eagles, the  
10 blue-breasted -- the great blue heron. Can you  
11 tell me your particular concerns for the birds?

12 A. I think that wind turbines will kill  
13 them as they migrate across the lake.

14 Q. What are your understandings of the  
15 migratory bird patterns of the particular birds  
16 you were --

17 A. I haven't looked at the migratory bird  
18 patterns for the birds.

19 Q. Do you know how many birds migrate  
20 across Lake Erie?

21 A. I don't.

22 Q. Have you done any research to determine  
23 anything about the birds or the bats?

24 A. No.

1 Q. Do you know what altitude any of the  
2 birds fly?

3 A. No.

4 Q. Do you know how high the turbines are  
5 projected to be, how tall they're projected to  
6 be?

7 A. I understand 500 feet.

8 Q. Okay.

9 A. With a span -- or somewhere around that.

10 Q. Do you regularly participate in bird  
11 watching?

12 A. Formally, no.

13 Q. Okay. You said formally. So you do it  
14 in some capacity?

15 A. Out my window. I'm not in a bird  
16 watching group.

17 Q. So do you have any specific concerns  
18 about any particular birds that are relevant to  
19 Lake Erie that might be injured in this project  
20 or killed in this project?

21 MR. STOCK: You mean species?

22 MS. JODKA: Sure.

23 MR. STOCK: Is that what you're asking?

24 MS. JODKA: That's a better word.

1           A.    No.

2           Q.    Do you have any particular concerns for  
3   the red-breasted merganser -- merganser?

4           MR. STOCK:   Merganser.

5           Q.    Merganser.  I do not know anything about  
6   birds; I can tell you that.  Any particular  
7   concerns about that bird?

8           A.    I'm not sure I know that bird.  I think  
9   it's probably a duck version of that merganser,  
10   but I can't tell you which one it was.

11          Q.    Snail kite?

12          A.    I don't know the names of the birds.

13          Q.    Do you know that the National Audubon  
14   Society has supported the staff report and the  
15   project?

16          MR. STOCK:   Objection.

17                Go ahead and answer if you can.

18          A.    I'm not sure I know anybody who's  
19   supported this.  I haven't read any of those  
20   documents to say who has.

21          Q.    So you've read opposition information.  
22   You haven't taken -- you haven't reviewed any  
23   supporting materials?

24          A.    I haven't read much of it.  You know,

1 the truth is, there's so much out there on  
2 the -- within the -- on the dockets for the  
3 siting board, I haven't read most of it.

4 Q. Okay. Have you taken any particular  
5 time or used any type of resources to be  
6 informed for the proposition side for the  
7 project rather than the opposition side?

8 A. What's been in the newspapers. I've  
9 been at the public meetings, also.

10 Q. Yes. That's what my colleague was just  
11 saying. Because I was not a part of the  
12 meetings, I wasn't there. But you did say you  
13 were at that meeting. And it's my understanding  
14 that there was sufficient support of the project  
15 at that meeting. Is that different than what  
16 your thoughts were with respect to the support  
17 or opposition for the project?

18 MR. STOCK: Objection. What do you mean  
19 by "sufficient support"? Sufficient for what?

20 MS. JODKA: That's a bad way of putting  
21 it.

22 BY MS. JODKA:

23 Q. Were you surprised that there was so  
24 much support for the project?

1 MR. STOCK: Objection.

2 If you know what "so much support for  
3 the project" means, just answer if you can.

4 A. I'm not sure -- I'm not sure what you  
5 mean by "sufficient support."

6 Q. Whenever you're -- with respect to the  
7 people who showed up at the hearing, can you  
8 identify for me the percentage of that  
9 population that was for the project versus  
10 against the project?

11 A. Not the percentages. I know that there  
12 were people there on both sides.

13 Q. Do you think one side outweighed the  
14 other?

15 A. One was louder.

16 Q. Which side was that?

17 A. The for, the people who were for the  
18 project.

19 Q. Who were in support of the project?

20 A. (Nods.)

21 Q. Do you recall the National Audubon  
22 Society being at that hearing and making any  
23 type of --

24 A. I don't remember.

1 Q. -- talking points?

2 A. I don't remember.

3 MR. STOCK: Just wait until she  
4 finishes. You're doing fine.

5 THE WITNESS: Sorry.

6 MR. STOCK: That's all right. The court  
7 reporter can't keep up.

8 THE WITNESS: Sorry.

9 BY MS. JODKA:

10 Q. Are you aware that the Sierra Club and  
11 the Environmental Council are part of this  
12 project for the purpose of ensuring the  
13 protection of the birds?

14 MR. STOCK: Objection.

15 MS. JODKA: She can answer if she knows.

16 MR. STOCK: What does "part of this  
17 project" mean?

18 MS. JODKA: The protection of the birds  
19 of this project, that they're involved in this  
20 project to ensure the protection of the birds.  
21 Is she aware of their participation in this  
22 project for that purpose?

23 MR. STOCK: Are you talking about with  
24 respect to the opposition and hearing process?

1 Are you talking about whether or not they have  
2 some business affiliation with Icebreaker or  
3 LEEDCo to support the project?

4 MS. JODKA: I'm talking about any --

5 MS. LEPPLA: I would just object to  
6 characterizing as a business relationship. We  
7 are intervening in this project to ensure that  
8 it is done in an environmentally sound manner.

9 MR. STOCK: I wasn't assuming there was  
10 a business relationship. But when you say  
11 "involved with the project," I don't know what  
12 that means.

13 MS. JODKA: Well, I'm trying to make it  
14 vague because I'm not going to make any  
15 assumptions. I want to know if she's -- if  
16 she -- I'm trying to gather the scope of her  
17 knowledge, whether she knows if they are  
18 involved, and if she does know they're involved,  
19 we'll move to different questions.

20 BY MS. JODKA:

21 Q. Are you aware of their involvement,  
22 either the Sierra Club or the Environmental  
23 Council, as it pertains to assuring the  
24 protection of the birds with respect to this

1 project?

2 MR. STOCK: Objection to the use of the  
3 word "involvement."

4 Answer if you can.

5 A. I know that I've seen their name as an  
6 intervenor.

7 Q. Do you understand that it's for the  
8 protection of the birds? Do you understand that  
9 it's for the protection of water or some other  
10 interest?

11 A. I'm not sure the scope of what their  
12 involvement is.

13 Q. Thank you.

14 What do you believe are the leading  
15 causes of deaths for birds and bats?

16 A. You mean in the world?

17 Q. Yeah. What do you think? Besides old  
18 age.

19 A. Running into buildings, I suppose.

20 Q. As opposed to wind turbines?

21 A. I think wind turbines do cause deaths  
22 for birds and bats. Are you asking me if it's  
23 one or the other?

24 Q. No. I'm asking you what you think the

1 leading causes are.

2 A. I don't know what the ranking of them  
3 is.

4 Q. And you live in a high-rise building?

5 A. Yes.

6 Q. Have you taken issue with how tall your  
7 building is because of what it can do to the  
8 birds running into it?

9 A. No.

10 Q. Have you ever heard of the Lights Out  
11 Cleveland Society?

12 A. No.

13 Q. So you've never participated in the  
14 Lights Out Cleveland Society?

15 A. No.

16 Q. Have you ever participated in any  
17 project that goes out early mornings and picks  
18 up birds that have died that have hit windows in  
19 buildings?

20 A. No.

21 Q. That tries to revive or save birds that  
22 have been injured by ramming into buildings?

23 A. No.

24 Q. Do you know if your homeowners

1 association has a way of dealing with that type  
2 of issue itself, birds running into buildings  
3 and either dying on impact or being injured?

4 A. No.

5 Q. In your petition you indicated that you  
6 did not have a problem with this project when it  
7 was six turbines, correct?

8 MR. STOCK: Objection.

9 Go ahead and answer.

10 A. I had a problem with turbines being put  
11 into the lake, but I was not as upset until I  
12 found out how many they were going to be putting  
13 in the lake.

14 Q. What would that -- what's the difference  
15 between a six wind turbine project for purposes  
16 of opposition versus a thousand?

17 A. Because it's called the Icebreaker  
18 because it's just the beginning. And that  
19 wasn't -- I don't think anything should be put  
20 in a lake. I just don't think anything should  
21 go into Lake Erie, period. I was opposed to it  
22 when there was six. I was more opposed to it  
23 when there were a thousand to 1,600.

24 Q. You didn't seek to get involved,

1     however, when the project was six?

2           A.   No.  We had talked about whether or not  
3     there was anything we could do when it was just  
4     going to be six.

5           Q.   And as we've testified -- you testified  
6     earlier, you do understand that this scope is  
7     limited to just six?

8           A.   It's not called Icebreaker because it's  
9     just going to be six.

10          Q.   Do you understand that in this  
11     particular proceeding, in this particular  
12     application, there's only six?

13               MR. STOCK:  Objection.  Asked and  
14     answered.

15               If you can add to your --

16          A.   I think this is a demonstration project  
17     for future development.  So I'm not convinced  
18     it's just six, even though it says just six.  
19     But it says it's a demonstration project for  
20     future development.

21          Q.   You have no reason to believe, however,  
22     that the Power Siting Board is looking at a  
23     project that seeks to put a thousand wind  
24     turbines or more than six wind turbines in Lake

1 Erie, correct?

2 A. I think they should be, but if this --  
3 Fred Olsen has stated that he wants to put more  
4 in Lake Erie. I'm not sure what the Ohio Power  
5 Siting Board is looking at, but I don't think  
6 you can look at this just as a project without  
7 recognizing the impact on the future.

8 Q. When you say "the impact on the future,"  
9 what are you referring?

10 A. To a thousand or 1,600 wind turbines in  
11 Lake Erie.

12 Q. What is your objection to that many wind  
13 turbines being in Lake Erie for the future  
14 generations?

15 A. I think Lake Erie's our greatest natural  
16 resource for Ohio. I live on it. I think that  
17 people enjoy it for vacations, for boating, for  
18 fishing, for birding, for all sorts of reasons.  
19 I don't think that putting 1,600 wind turbines  
20 in it is a good use of a natural resource like  
21 Lake Erie.

22 Q. What's your concern for future  
23 generations with only six wind turbines being in  
24 Lake Erie?

1           A.   The same thing.  I don't think that we  
2   should be putting -- I think Lake Erie should be  
3   protected.  Personally, I think it ought to be a  
4   national resource, it ought to be a national  
5   park.  It should not be someplace where we can  
6   put -- private industry can benefit from putting  
7   wind turbines or anything else in the lake like  
8   that.

9           Q.   You understand that private industry  
10   uses Lake Erie for commercial gain every day,  
11   correct?  As an example, you understand that  
12   private ships use Lake Erie to bring goods in,  
13   to do tours to make money, that people use the  
14   lake all the time for commercial ventures,  
15   correct?

16          A.   Yes.

17          Q.   And you understand that this project is  
18   designed to determine if wind energy can be  
19   manufactured and used, correct?

20               MR. STOCK:  Objection.

21               Go ahead and answer.

22          A.   Wind energy can be -- has already been  
23   shown to do that.  It doesn't have to be on the  
24   lake.  It doesn't have to be in the lake.

1 Q. You understand that resources are  
2 limited, however, correct?

3 MR. STOCK: Objection.

4 Q. Our natural resources are limited?

5 A. What natural resources?

6 Q. Our fossil fuels, our gas, our natural  
7 gas?

8 A. I don't know if it's limited or not. I  
9 have no idea.

10 Q. What other types of objections do you  
11 have to the project? Have we went through all  
12 of your objections? We talked about the blot on  
13 the aesthetic of Cleveland. We've talked about  
14 it affecting your sunrises and your sunsets.  
15 We've talked about the implications to boaters  
16 and fishers and swimmers. Are there any others?

17 MR. STOCK: Did you mention birds or  
18 bats in that, or not?

19 MS. JODKA: No, I didn't.

20 Q. But we did talk about birds and bats,  
21 correct?

22 A. Uh-huh.

23 Q. Were there others?

24 MR. STOCK: Did you mention drinking

1 water in that, or not?

2 MS. JODKA: No, I didn't.

3 Q. Any others that I forgot? Are there any  
4 others that we haven't already talked about that  
5 you want to talk about?

6 A. I think that covers --

7 Q. That covers what your objections are?

8 A. I think, other than the -- I just don't  
9 see the economics of this.

10 Q. Talk to me about those concerns. What  
11 are your concerns regarding economics with this  
12 project?

13 A. Lake Erie is not always -- there's not  
14 always wind. I know that from my days of  
15 sailing when we sat out there in the doldrums.  
16 So there isn't always wind, which makes this  
17 intermittent and always needs to have support  
18 for it. Being in the middle of the lake in the  
19 middle of January when it's frozen, if something  
20 goes wrong, it will be very difficult to get to.  
21 Maintaining and repairing wind turbines in the  
22 lake has got to be more expensive than putting  
23 it on land.

24 Q. Anything else?

1           A.   And I don't know what that does for the  
2   cost of the energy that's provided.

3           Q.   What's your concern with the cost?

4           A.   I mean, it affects everybody. This is  
5   supported by federal government grants and  
6   credits, tax credits, and I pay federal tax  
7   dollars, and I'm not sure that that's a good use  
8   of our federal money.

9           Q.   Do you understand how your federal tax  
10   dollars are directly impacted by this?

11          A.   No.

12          Q.   Have you looked at any documents or  
13   reviewed any resources regarding what it would  
14   take to maintain these turbines in the winter or  
15   during -- when the lake is iced over?

16          A.   No. That's my assumption based on, you  
17   know, the fact that it's almost impossible to  
18   get to these places.

19          Q.   Can you tell me about your understanding  
20   about how federal grant money works?

21          A.   I don't understand it.

22          Q.   You do understand that the grant money,  
23   if it's not spent, it's not like refunded to the  
24   taxpayers in any way, correct?

1           A.   I don't know.

2           Q.   Have you ever opposed any other type of  
3   spending of federal grant money?

4           A.   No.

5           Q.   Personally, do you have any personal  
6   opposition to any type of expense of federal  
7   grant money?

8           A.   No.

9           Q.   Are there any other economic concerns  
10   that we haven't already discussed that form your  
11   opposition?

12          A.   Other than the money's going out of the  
13   country.

14          Q.   Can you explain what you mean --

15          A.   Fred Olsen is a Norwegian company.

16          Q.   You keep saying Fred Olsen.  What's his  
17   association with this project?

18          A.   I think he's the Icebreaker.  Icebreaker  
19   and LEEDCo and Fred Olsen are the names that  
20   I've read in the newspaper that are all involved  
21   in this.

22          Q.   As president, owner, CEO?

23          A.   I don't exactly know what his  
24   relationship is in this.

1 Q. When you say it's a Norwegian, do you  
2 mean he's a Norwegian -- he lives in Norway?

3 A. Yes, I think that's where he's from.

4 Q. Does he live there now? Do you know?

5 A. I know he doesn't live on Lake Erie.

6 Q. When you say that there's money going  
7 out of the company and it's going to Norway,  
8 what's that based off of?

9 A. The information in The Plain Dealer, in  
10 the newspapers. Public information.

11 Q. What's your opposition with money going  
12 to different countries? I'm not saying that  
13 that's true. Just what's your concern with  
14 that?

15 A. It's our federal tax dollars being spent  
16 for this.

17 Q. Do you know that the project is slated  
18 to contribute additional money back, tax money  
19 back to Cuyahoga County itself?

20 MR. STOCK: Objection.

21 MS. JODKA: I'm asking if she knows.

22 A. I don't.

23 Q. Okay. Have you had a chance to review  
24 the staff report? You didn't say that you had,

1 but I wanted to check and see, have you had a  
2 chance to review the recent staff report that  
3 was issued in the case?

4 A. No.

5 Q. Okay. I'm going to ask you to take a  
6 look at it.

7 - =0=-

8 (Deposition Exhibit 2 marked.)

9 - =0=-

10 BY MS. JODKA:

11 Q. The court reporter just handed you what  
12 has been marked Dempsey Exhibit 2. This is the  
13 staff report that was issued recently in this  
14 case. You testified you have not had a chance  
15 to take a look at this before; is that correct?

16 A. That's correct.

17 Q. Okay. I have shortened this -- this is  
18 a very long document, so I'm going to represent  
19 for the record that all of this report that is  
20 presented are the last few pages of the report.  
21 So it's the title page and pages 1 through 52.

22 A. 45.

23 Q. What did I say? I mean 45 through 52  
24 are the pages.

1 Do you understand what the purpose of  
2 the staff report is?

3 A. Recommendation to the board.

4 Q. Of what?

5 A. Recommendations for conditions of  
6 certificate.

7 Q. If you look at page 46 and 47 and 49,  
8 there are different headings, Socioeconomic  
9 Conditions, Ecological Conditions, Public  
10 Services, Facilities and Safety Conditions, and  
11 the last one is Air, Water, Solid Waste, and  
12 Aviation Conditions.

13 Will you take a look at those  
14 conditions -- it's going to take you a little  
15 bit, but can you take a look at the conditions  
16 that have been put out by the staff report and  
17 let me know which of those conditions you have  
18 an issue with.

19 MR. STOCK: No. We're not going to do  
20 that.

21 MS. JODKA: What's the basis of your  
22 objection?

23 MR. STOCK: She's not seen this document  
24 before. She's not going to spend time going

1 through what may be a multi-hour process to try  
2 and discern what they say and what it means.  
3 It's inherently unfair.

4 MS. JODKA: Why?

5 MR. STOCK: Why? For the reason I just  
6 explained on the record. It's a document that  
7 she would need hours to go through.

8 MS. JODKA: It's only a few pages.

9 MR. STOCK: It's only a few pages. How  
10 many paragraphs are you talking about?

11 MS. JODKA: Well, her issues have been  
12 limited to a few issues that we've talked about.  
13 We talked about the economics. We've talked  
14 about some of the ecological conditions. She  
15 can easily peruse those, see which ones affect  
16 her.

17 MR. STOCK: We're not giving answers  
18 under oath on easily perusing. We're just not  
19 doing it.

20 MS. JODKA: She can take her time.

21 MR. STOCK: All right. Let's adjourn  
22 this deposition and we'll let you know when  
23 we're done perusing. It's not a reasonable  
24 question or request from this lay intervenor.

1 MS. JODKA: I don't understand why.

2 This is the scope of the project. This is part  
3 of the application process. These are the  
4 conditions that have been put on the project by  
5 the board, by staff --

6 MR. STOCK: Yes, it has.

7 MS. JODKA: -- as to if they comply with  
8 these that they have no issue with the project.  
9 So I'm trying to see what her issues would be  
10 with these conditions with respect to the  
11 objections that she has.

12 MR. STOCK: I understand what you're  
13 asking. It is a single-spaced document of one,  
14 two, three, four, five, six, seven pages that  
15 she has never reviewed before, as a layperson  
16 with no expertise as to either what the role of  
17 the staff is or what the technical issues are.  
18 And she's not going to sit here -- this is like  
19 in law school if you were -- if a professor  
20 stood you up and had you take a case that you  
21 had never read before and paragraph-by-paragraph  
22 had you read it and then cross-examined you on  
23 it.

24 MS. JODKA: I wouldn't show up for

1 something if I didn't know what I was talking  
2 about.

3 MR. STOCK: That's right. Because they  
4 would give it to you beforehand.

5 MS. JODKA: She's an intervenor in this  
6 case and it's been available. Correct? Is that  
7 correct?

8 THE WITNESS: I don't know.

9 MS. JODKA: That's fine.

10 MR. STOCK: Find out what her interest  
11 is.

12 MS. JODKA: That's fine. It's not a big  
13 deal to me. I mean, we have to come back anyway  
14 for additional depositions. So it's not a big  
15 deal. She can take all the time she needs and  
16 we will reopen this issue when we take the rest  
17 of her deposition.

18 BY MS. JODKA:

19 Q. So in your interrogatories that you  
20 indicated that you reviewed prior to the  
21 deposition today, you also had identified a few  
22 expert witnesses. I want to talk to you about  
23 your knowledge of your expert witnesses in the  
24 case.

1           Who did you identify as your expert  
2   witnesses?

3           A.   There were two people, Drs. Streby and  
4   Brown.

5           Q.   And what -- have you ever met  
6   Mr. Streby?

7           A.   No.

8           Q.   Mr. Brown?

9           A.   No.

10          Q.   How did you come to find them for your  
11   expert needs?

12          A.   Our attorneys identified them.

13          Q.   Okay. Have you ever talked to them --  
14   have you ever talked to Mr. Streby?

15          A.   No.

16          Q.   I don't know if they're doctors. I  
17   assume they probably are.

18               Have you ever talked to Dr. Brown?

19          A.   No.

20          Q.   Did you review either one of their  
21   reports?

22          A.   Have not.

23               MS. JODKA: Okay. I'm almost done. Do  
24   you care if we take just a few minutes to make

1     sure I've gotten everything?

2                 MR. STOCK: Of course.

3                 (Recess.)

4     BY MS. JODKA:

5                 Q. Remember you are still sworn in.

6                 MR. STOCK: Sara, I will let you know  
7     that during the break, Sue has had a chance to  
8     take a look at your Dempsey Deposition Exhibit  
9     2. And if you want to ask about it, go ahead.

10                MS. JODKA: That's all right. We can  
11     table it. I want to make sure she has  
12     sufficient time. It seemed like it was going to  
13     take hours and forever, so we can discuss that  
14     at a different time.

15                MR. STOCK: No, no. We're offering it  
16     now. If you want to ask her about it, ask her  
17     about it.

18     BY MS. JODKA:

19                Q. What's your opinion on the conditions?

20                MR. STOCK: Objection.

21                Go ahead. I didn't say I wasn't going  
22     to object. Opinions? She's a lay witness.

23                MS. JODKA: I didn't know where you were  
24     going, John.

1           A. Well, I'm not an expert, but whatever  
2     the conditions are, my objection is to having  
3     these things in Lake Erie. And I'm not an  
4     expert on any of these pieces, so I can't  
5     testify to whether they're good, bad, or  
6     indifferent. My objection is that I don't think  
7     that Lake Erie is the appropriate place for wind  
8     turbines, regardless of this document. And it's  
9     missing the first 51 pages. I have no idea  
10    what's in that, nor how they've drawn their  
11    conclusions, nor can I validate any of the  
12    conclusions that they've drawn.

13          Q. And your attorney hadn't provided you a  
14    copy of this staff report when it came in?

15          A. No. Again, I'm not an expert in any of  
16    these areas, so I'm not sure I would have been  
17    able to determine their validity to begin with.

18          Q. But you are an educated person, you have  
19    an MBA, you have a significant background in  
20    doing lab tests, working in University Hospital  
21    settings, doing marketing and advertising for  
22    different types of industries, correct?

23          A. Correct.

24          Q. And you've been in a lot of different

1 fields, from marketing to being in the medical  
2 industry for working for hospitals. So it seems  
3 like you catch on to things pretty quickly,  
4 correct?

5 MR. STOCK: Objection.

6 Q. Would you disagree --

7 A. I'm smart.

8 Q. -- that you catch on pretty quick?

9 A. I would say I'm smart.

10 Q. Okay. We talked a little bit about the  
11 water quality. When you talk -- strike that.  
12 That's an odd preface.

13 We talked about your major concerns. Is  
14 water quality, with respect to what this project  
15 could do to the water, one of your big concerns?

16 A. Long-term, I have no idea what this  
17 could do to the water quality of Lake Erie. As  
18 I said, I grew up on the shores of Lake Erie  
19 when the lake died, for all intents and  
20 purposes, and I've seen over the last 20 years  
21 bringing it back. It took years to bring it  
22 back. I'm concerned for the future.

23 Q. And what -- I don't know how the lake  
24 died. How did the lake die? What were the

1 reasons that the lake --

2 A. Being polluted.

3 Q. -- has died or been polluted?

4 THE WITNESS: Saying polluted?

5 MR. STOCK: You're fine. Just let her  
6 finish her question.

7 THE WITNESS: I'm sorry.

8 BY MS. JODKA:

9 Q. What type of pollution?

10 A. From the factories, from the steel  
11 mills, into the Cuyahoga River and into the  
12 lake.

13 Q. So there's been an issue with pollution  
14 based on fuel-based energy; is that correct?

15 MR. STOCK: Objection. That's not what  
16 she testified to.

17 Go ahead.

18 Q. Tell me a little bit more about the  
19 specific pollution to the lake and the sources  
20 of that pollution.

21 A. We've had heavy metal industries, steel  
22 mills, dumping pollution into the river. The  
23 river caught on fire at one point. And the lake  
24 has had sediment settling from all of these

1 heavy metals for years.

2 Q. What type of heavy metals are you  
3 talking about?

4 A. I don't know the names of all of them.

5 Q. What information do you have about coal  
6 pollution in Lake Erie?

7 A. None.

8 Q. You're not aware of any type of  
9 implications on Lake Erie based on any type of  
10 coal production or use?

11 A. Specifically, no.

12 Q. Nonspecifically?

13 A. Nonspecifically -- no, I don't.

14 Q. What about -- do you have any  
15 information or knowledge about mercury levels in  
16 fish being caused by coal?

17 A. Being caused by coal, no. I have no  
18 idea how that plays.

19 Q. Are your concerns based on speculation  
20 as to what the potential implications of this  
21 project are rather than what you know the  
22 implications of the project are?

23 MR. STOCK: Objection.

24 A. I think both. I think the future is

1 unknown and the immediate is still worrisome to  
2 me because they're still putting it in Lake  
3 Erie.

4 Q. What do you think the pollution  
5 implications look like?

6 A. I actually don't know. I don't know  
7 what happens in the future. I don't know how  
8 anybody can project that, other than, you know,  
9 to look at what has happened in the past, and  
10 Lake Erie has been -- has had a history of  
11 pollution. I don't want to see it happen again.

12 Q. And you said that in the last years that  
13 there have been a lot of steps to remediate the  
14 pollution. Do you know what those steps are?

15 A. We don't have as much -- we don't allow  
16 things to go into the river that eventually go  
17 into the lake.

18 Q. Have you read Icebreaker's application?  
19 Do you recall reading that?

20 A. No.

21 Q. We provided earlier this week redline  
22 stipulations with respect to these conditions.  
23 Have you reviewed that? Has that been shared  
24 with you by counsel?

1 A. No.

2 Q. Is it something you expect to read?

3 MR. STOCK: Objection.

4 Answer if you can.

5 A. I don't know.

6 Q. But it hasn't been shared with you yet?

7 A. No.

8 MS. JODKA: Does anyone else either in  
9 the room or on the phone have any questions for  
10 this witness?

11 MS. LEPPLA: I have some questions.

12 EXAMINATION

13 BY MS. LEPPLA:

14 Q. My name is Miranda Leppla. I'm with the  
15 Ohio Environmental Council. I also represent  
16 Sierra Club. Can you guys hear me okay?

17 All right. I just have some questions.  
18 I'm going to try not to repeat anything she  
19 said. Obviously, I don't want to duplicate or  
20 keep us here longer than we need to. If you  
21 don't understand my question, feel free to ask  
22 me to clarify.

23 I know we talked a little bit earlier  
24 today about your involvement with wind farms.

1 Have you ever spoken at a wind farm hearing in  
2 public?

3 A. No.

4 Q. Have you submitted written comments  
5 about a wind farm on a public docket?

6 A. I may have very early on in the case.

7 Q. In this case or a different case?

8 A. It was not -- it was in this case.

9 Q. In the Icebreaker case?

10 A. Yes.

11 Q. Okay.

12 A. And I looked for it. I cannot find it.  
13 It was a long time ago.

14 Q. There were a lot of comments on there.

15 Have you ever signed an anti-wind  
16 petition?

17 A. No.

18 Q. Have you ever attended a meeting for  
19 anti-wind advocates?

20 A. No.

21 Q. Have you ever heard of the Seneca County  
22 Anti-Wind Unit?

23 A. No.

24 Q. So are you a member of any organizations

1 that focus on wind projects generally?

2 A. No.

3 Q. We did talk a little bit about your  
4 thoughts just about wind energy generally. And  
5 you said you are in favor of wind energy  
6 generally?

7 A. I said I wasn't opposed to it.

8 Q. Okay. Fair. Fair correction. So do  
9 you think it's okay to site a wind facility  
10 anywhere in Ohio?

11 A. I'm sorry?

12 Q. Do you think it's okay to site a wind  
13 facility anywhere in the State of Ohio?

14 MR. STOCK: Are you talking about with  
15 the exception of this site?

16 MS. LEPPLA: Yes. I'm quite aware she's  
17 opposed to this one. Thank you.

18 A. I don't have any opposition to it.

19 Q. So you're not opposed to wind facilities  
20 on land generally?

21 A. Yes, that's correct.

22 Q. Okay. You're not. Okay.

23 And are you a member of any birding  
24 organizations?

1           A.   No, I'm not.

2           Q.   You were asked previously if you were  
3   aware that Audubon supported this project  
4   subject to the staff report conditions, and you  
5   said no, correct?

6           A.   Correct.

7           Q.   Okay.  And so you did not hear Gary  
8   George testify on behalf of the National Audubon  
9   Society when you were at the public hearing on  
10   July 19th?

11          A.   He may have, but there were a lot of  
12   people that testified, and I didn't copy  
13   anyone's names or where they were from.

14          Q.   Do you have any concerns about bats?  
15   Again, if she's already asked this question, I  
16   apologize.

17               MS. LEPPLA:  And John, feel free to  
18   correct me.

19          A.   My concern about bats is that they're  
20   dying off and we need them.

21          Q.   Okay.  And do you have any concern about  
22   noise with this project?

23          A.   I understand that it creates noise, but  
24   I haven't -- I don't know enough about it.

1 Q. I think we covered the view piece of  
2 this already, so I won't ask you about your  
3 view.

4 Have you ever visited a coal plant?

5 A. No.

6 Q. And are you aware that carbon dioxide is  
7 released from coal plants?

8 A. I don't know the -- I don't know the  
9 science behind coal.

10 Q. And are you familiar with climate  
11 change?

12 A. Yes, I've heard it.

13 Q. And are you aware that it's caused in  
14 part by carbon dioxide emissions?

15 A. Yes.

16 Q. And were you aware that 314 out of 580  
17 species of North American birds are listed as  
18 climate endangered or threatened by the National  
19 Audubon Society?

20 A. I don't know that specifically, no.

21 Q. And did you know that wind energy  
22 produces zero emissions of carbon dioxide?

23 A. Yes.

24 Q. And did you know that Ohio is ranked 7th

1 in the United States for carbon di oxide  
2 emissions according to the U.S. Energy  
3 Information Administration?

4 A. I am not aware of those.

5 Q. And were you aware that air pollution  
6 from coal plants have been linked to over  
7 200,000 premature deaths per year in the United  
8 States?

9 A. I'm here to tell you that I don't want  
10 wind turbines in Lake Erie.

11 Q. I know. If you don't know an answer --

12 A. I don't know the answer.

13 Q. If you don't know the answer, that's  
14 fine. You can just answer no. I appreciate  
15 that. I know I'm asking you things you may not  
16 know.

17 Were you aware that coal plants also  
18 release arsenic?

19 A. No.

20 Q. And were you aware that arsenic in  
21 drinking water causes cancer in 1 in 100 people?

22 A. No.

23 Q. Would you agree that it's good for Ohio  
24 to reduce carbon di oxide emissions?

1 MR. STOCK: Objection.

2 Go ahead and answer.

3 A. I'm assuming it's probably good.

4 Q. I just wanted to ask you a couple  
5 questions about how you know the other  
6 intervenors. You said you did know some of them  
7 prior to this case. I'm going to ask you about  
8 a few specifically. You said you did know  
9 Mr. Maloney?

10 A. Yes.

11 Q. You knew him because he lived in your  
12 building, correct?

13 A. He lives on the complex. There's two  
14 separate buildings.

15 Q. Did you know him prior to this case?

16 A. Yes.

17 Q. And Mr. Binford, who is one of the other  
18 intervenors in this case, did you know him prior  
19 to this case?

20 A. Yes.

21 Q. And how did you know him?

22 A. He lives in the other building.

23 Q. And Mr. Blazey, same questions for him,  
24 how did you know him prior to this case?

1           A.   He lives in the village.

2           Q.   And then I'll also ask you the same  
3   for -- you said you were aware that there were  
4   the Cuyahoga County residents who previously  
5   intervened in this case. Do you know Vicci  
6   Weeks?

7           A.   No.

8           Q.   You've never met her?

9           A.   No.

10          Q.   Never spoken with her?

11          A.   No.

12          Q.   Do you know Caryn Good-Seward?

13          A.   No.

14          Q.   And you've never met her before?

15          A.   No.

16          Q.   Steven Seward, do you know him?

17          A.   No.

18          Q.   You've never met him before?

19          A.   No.

20          Q.   You've never had any conversations with  
21   any of the three of those?

22          A.   No.

23          Q.   And we previously touched on this, but  
24   you said earlier that you do not know who's

1 paying your legal fees in this matter, correct?

2 A. Correct.

3 Q. I'm going to hand out -- I apologize, I  
4 did not bring my exhibit stickers with me. This  
5 is Dempsey Exhibit 3, I think we're on.

6 --0--

7 (Deposition Exhibit 3 marked.)

8 --0--

9 BY MS. LEPPLA:

10 Q. Ms. Dempsey, have you seen this document  
11 before that I just handed you?

12 A. No.

13 Q. This was produced by your counsel as  
14 part of your discovery request, and also, for  
15 the record, this is a copy of a retention  
16 agreement from John Stock -- I'm sorry, to John  
17 Stock from Dr. Richard Brown. And in this  
18 letter it indicates that Murray Energy is paying  
19 for Mr. Brown's expert legal fees. Were you  
20 aware of that?

21 A. No.

22 Q. So you first became aware of who was  
23 paying for at least a portion of your legal fees  
24 today?

1 MR. STOCK: No. Objection. This  
2 doesn't establish who's paying for her legal  
3 fees.

4 MS. LEPPLA: All right. So we disagree  
5 on expert legal fees being part of legal fees.  
6 Is that your objection?

7 MR. STOCK: You said part of her legal  
8 fees.

9 MS. LEPPLA: Is she an expert witness  
10 on -- Dr. Brown is an expert witness testifying  
11 on behalf of them as intervenors, correct?

12 MR. STOCK: Right.

13 MS. LEPPLA: That would be part of her  
14 legal fees, then, wouldn't it? I don't mean to  
15 cross-examine you.

16 MR. STOCK: How do you know that? Yeah.  
17 How do you know that?

18 MS. LEPPLA: Okay.

19 BY MS. LEPPLA:

20 Q. Ms. Dempsey, is Dr. Brown testifying on  
21 your behalf in this case?

22 A. He was hired by our lawyers to provide  
23 expert testimony.

24 Q. To support your case, right?

1 A. Yes.

2 Q. Just a couple more questions. You  
3 talked about your condo in Bratenahl. Am I  
4 saying that correct?

5 A. Yeah.

6 Q. Do you live there year round?

7 A. Yes.

8 Q. So the house you own in Chautauqua is  
9 just a vacation home?

10 A. Yes.

11 Q. You also mentioned that you own Unit  
12 908?

13 A. Yes.

14 Q. Who lives there currently?

15 A. A renter.

16 Q. Do you have the name for the renter?

17 A. Dr. Costa.

18 Q. Costa?

19 A. (Nods. )

20 Q. C-O-S-T-A?

21 A. C-O-S-T-A.

22 MS. LEPPLA: No further questions.

23 Thank you.

24 MS. JODKA: Does anyone on the phone

1 have any questions?

2 MR. JONES: No questions.

3 MR. STOCK: You are done. We'll waive.

4 (Signature waived.)

5 - =0=-

6 Thereupon, the testimony of July 26,  
7 2018, was concluded at 11:55 a.m.

8 - =0=-

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CERTIFICATE

STATE OF OHIO :  
SS:  
COUNTY OF FRANKLIN :

I, Rhonda Lawrence, a Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named W. SUSAN DEMPSEY was first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given was reduced to stenotypy in the presence of said witness, afterwards transcribed; that the foregoing is a true and correct transcript of the testimony; that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee or attorney of any of the parties hereto; that I am not a relative or employee of any attorney or counsel employed by the parties hereto; that I am not financially interested in the action; and further, I am not, nor is the court reporting firm with which I am affiliated, under contract as defined in Civil Rule 28(D).

In witness whereof, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 27th day of July, 2018.

*Rhonda Lawrence*

Rhonda Lawrence  
Notary Public, State of Ohio.

My commission expires: October 8, 2018

<hr/> <p><b>Exhibits</b></p> <hr/>	<p><b>2015</b> 17:12</p>	<p><b>81</b> 14:5</p>	<p><b>age</b> 59:18</p>
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**Young** 13:1,10

# Visual Impact Assessment

## Icebreaker Wind Farm City of Cleveland, Ohio

Prepared for:



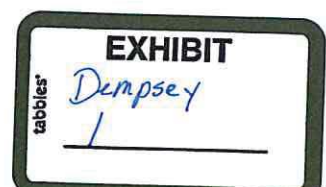
Icebreaker Windpower Inc.  
1938 Euclid Avenue, Suite 200  
Cleveland, OH 44115  
Telephone: 216-965-0613  
Facsimile: 216-965-0629  
[www.leadco.org](http://www.leadco.org)

Prepared by:



217 Montgomery Street, Suite 1000  
Syracuse, New York 13202  
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[www.edrdpc.com](http://www.edrdpc.com)

**January 2017**



# Icebreaker Wind

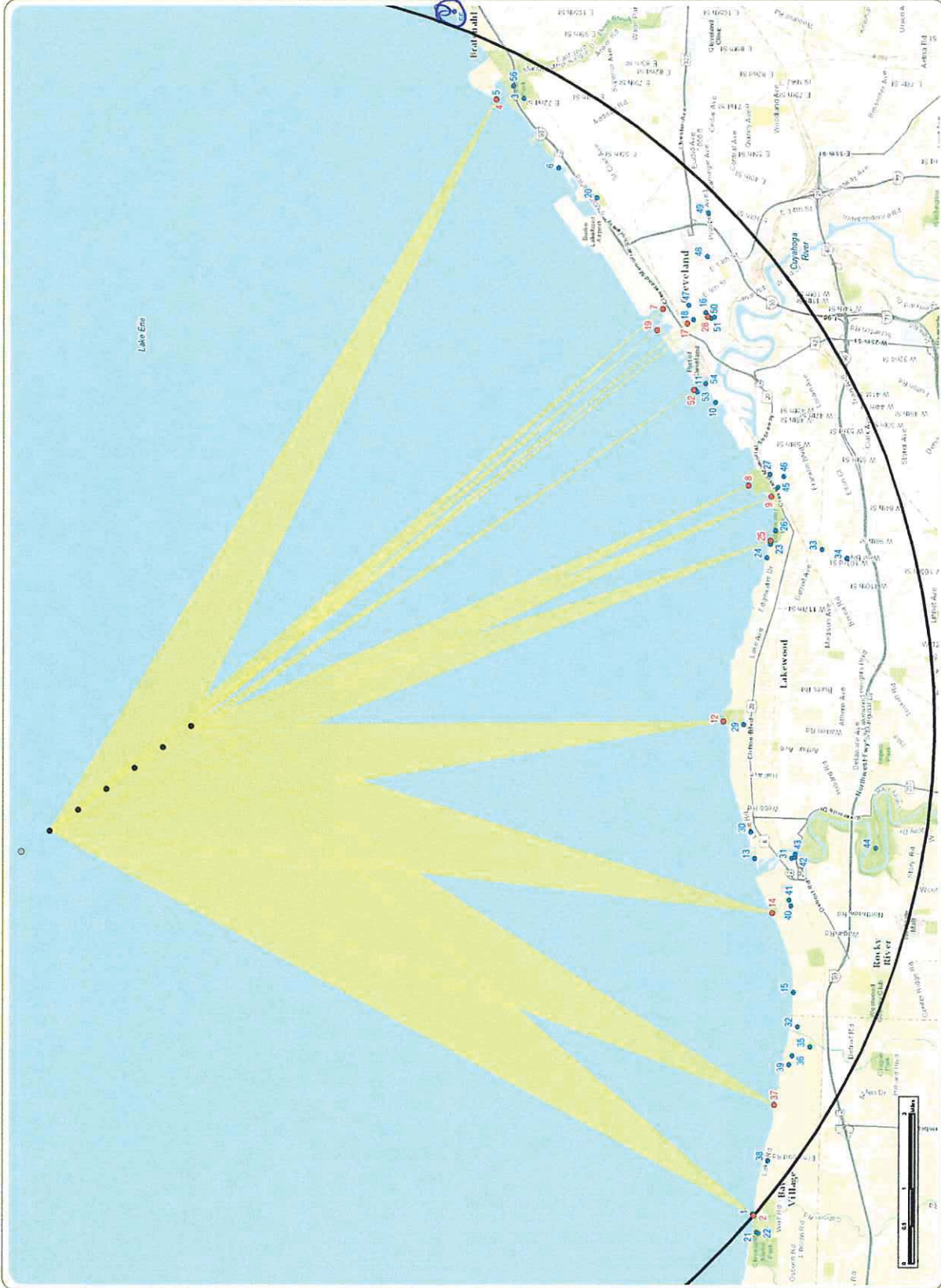
Lake Erie, City of Cleveland  
Cuyahoga County, Ohio

Figure 9: Viewpoint Location Map

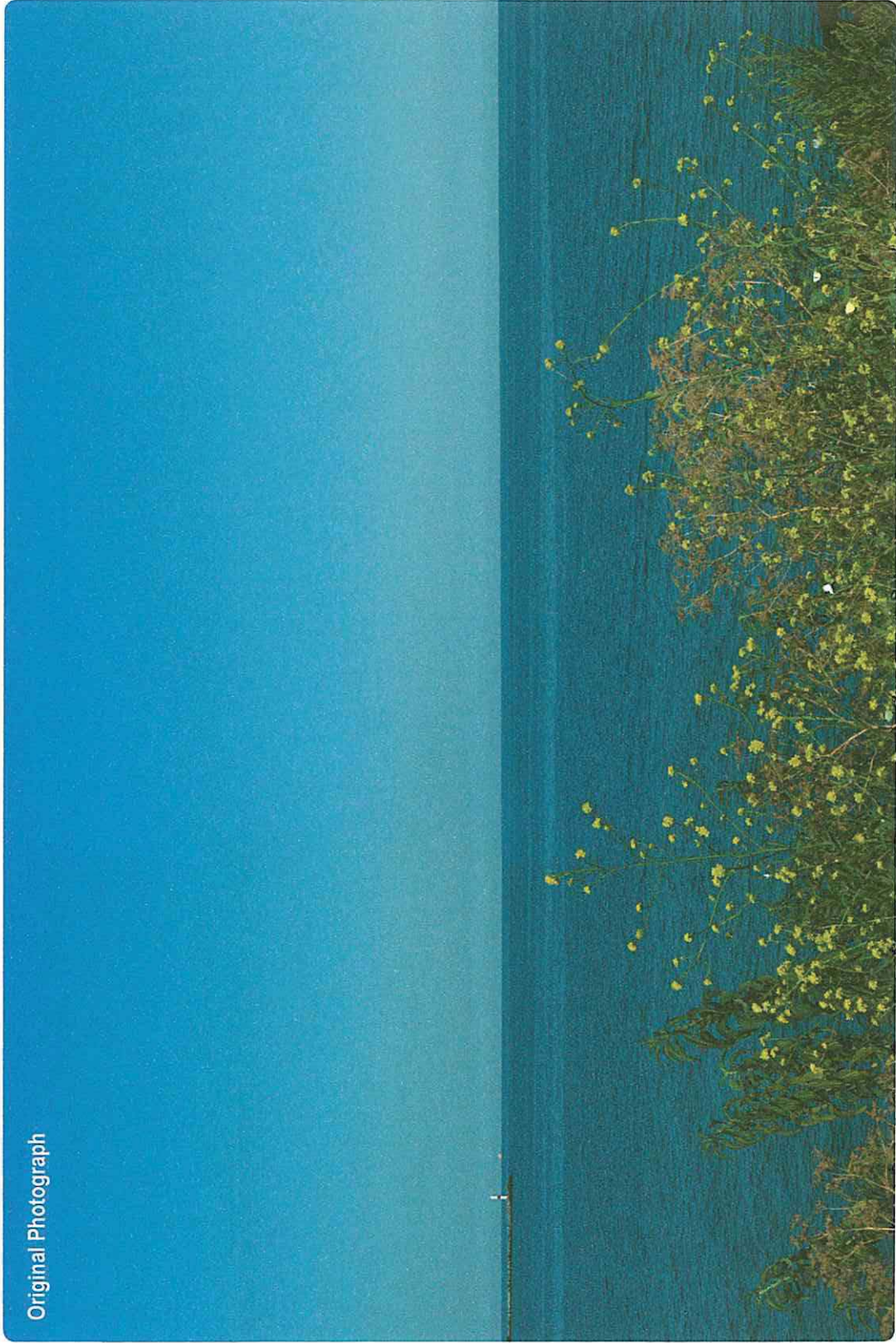
January 2017

- Primary Wind Turbine
- Alternate Wind Turbine
- Simulation Viewpoint
- Viewpoint
- Cone of View
- 10-Mile Visual Study Area

Notes:  
1. Basemap: ESRI ArcGIS Online "World Topographic Map" Map Service.  
2. This is a color graphic. Reproduction in grayscale may misrepresent the data.



Original Photograph



Simulation Information

Photograph Data

Date Taken: August 3, 2016  
Time: 10:28 AM  
Weather: Sunny and Clear

Camera Information

Camera Make/Model: Nikon D810  
Sensor Dimensions: 35 mm  
Lens Focal Length: 50.0 mm  
Camera Height: 5'

View Location

Orientation: Northwest  
Location: Cleveland Lakefront Nature Preserve

Icebreaker Wind

Lake Erie, City of Cleveland - Cuyahoga County, Ohio

Figure 14: Viewpoint 4, View Northwest from Cleveland Lakefront Nature Preserve, Original Photograph

January 2017



Sheet 1 of 2

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## Simulation

### Simulation Information

#### Photograph Data

Date Taken: August 3, 2016  
Time: 10:28 AM  
Weather: Sunny and Clear

#### Camera Information

Camera Make/Model: Nikon D810  
Sensor Dimensions: 35 mm  
Lens Focal Length: 50.0 mm  
Camera Height: 5

#### View Location

Orientation: Northwest  
Location: Cleveland Lakefront Nature Preserve

#### Structure Information

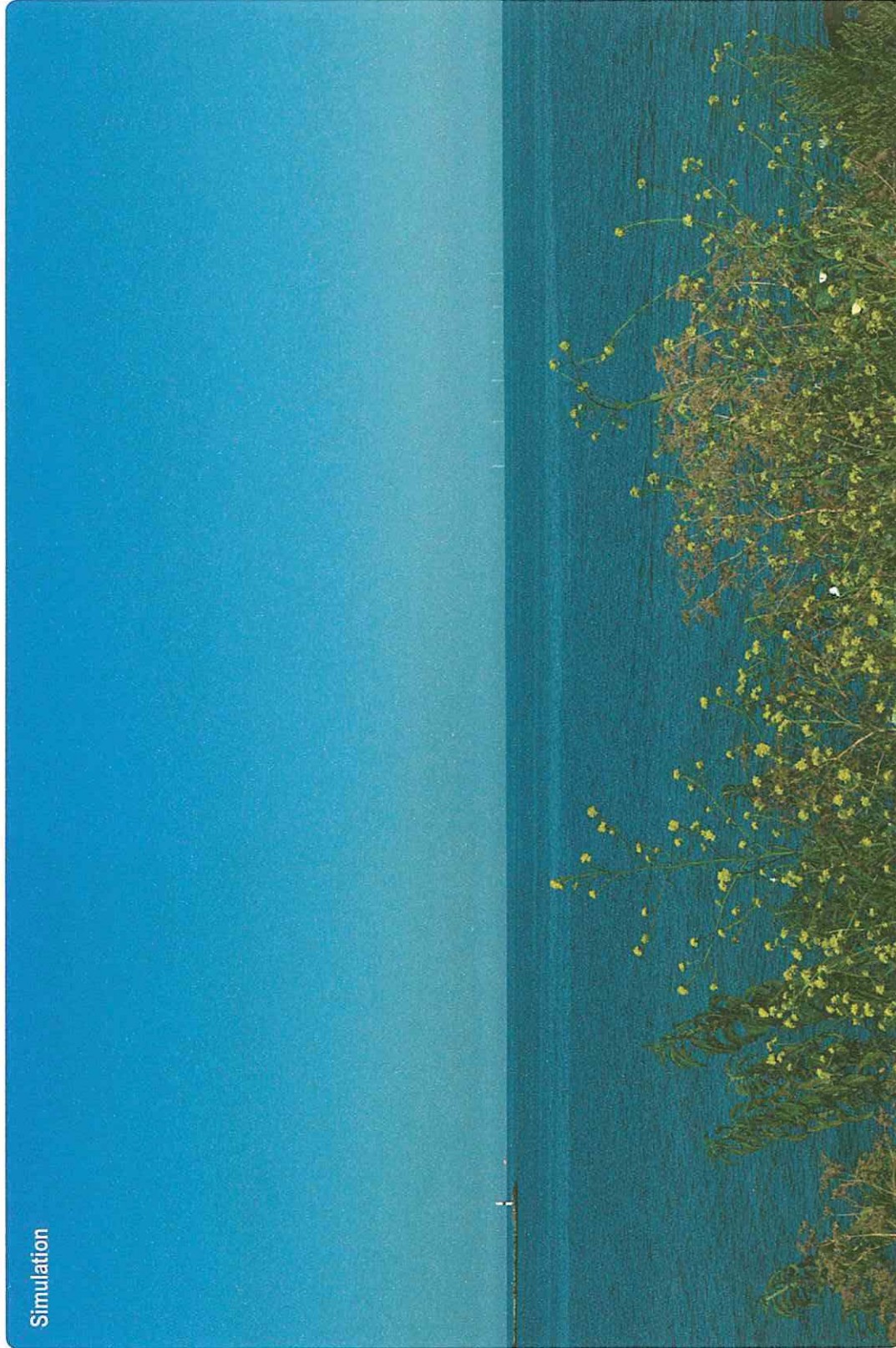
Model: Vestas V126 3.45 MW  
Hub Height: 83 meters  
Rotor Diameter: 126 meters  
Overall Turbine Height: 146 meters

#### Visual Simulation Notes

1. Visual Simulation is based on GIS data available at the time from Cuyahoga County, Ohio. Data is only as accurate as the original source and is not guaranteed by EDR.
2. This simulation depicts turbines relative to the viewer position, and considers the effects of refraction and curvature of the earth.

#### Technical Information

Software: AutoCad, 3ds Max, Adobe Photoshop  
CC: Digital elevation data source: 2005 OSIP digital LIDAR



## Icebreaker Wind

Lake Erie, City of Cleveland - Cuyahoga County, Ohio

Figure 14: Viewpoint 4, View Northwest from Cleveland Lakefront Nature Preserve, Simulation

January 2017



Sheet 2 of 2



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## Original Photograph

## Simulation Information

### Photograph Data

Date Taken: August 3, 2016  
Time: 1:13 PM  
Weather: Sunny and Clear

### Camera Information

Camera Make/Model: Nikon D810  
Sensor Dimensions: 35 mm  
Lens Focal Length: 50.0 mm  
Camera Height: 5'

### View Location

Orientation: North Northwest  
Location: Edgewater Park Beach



Icebreaker Wind  
Lake Erie, City of Cleveland - Cuyahoga County, Ohio

Figure 18: Viewpoint 9, View North Northwest from Edgewater Park Beach, Original Photograph

January 2017



Sheet 1 of 2

Simulation

## Simulation Information

### Photograph Data

Date Taken: August 3, 2016  
Time: 1:13 PM  
Weather: Sunny and Clear

### Camera Information

Camera Make/Model: Nikon D810  
Sensor Dimensions: 35 mm  
Lens Focal Length: 50.0 mm  
Camera Height: 5'

### View Location

Orientation: North Northwest  
Location: Edgewater Park Beach

### Structure Information

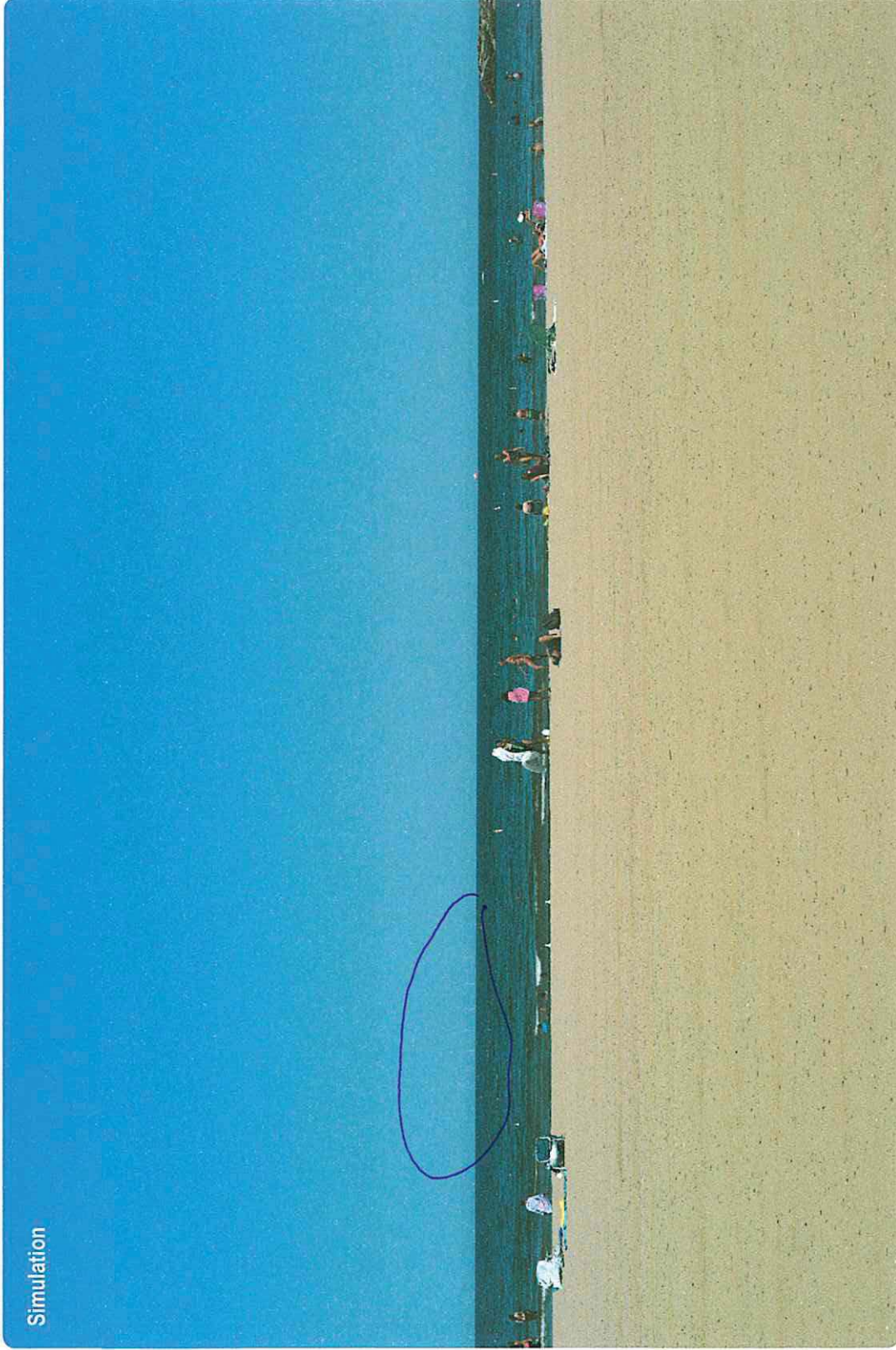
Model: Vestas V126 3.45 MW  
Hub Height: 83 meters  
Rotor Diameter: 126 meters  
Overall Turbine Height: 146 meters

### Visual Simulation Notes

1. Visual Simulation is based on GIS data available at the time from Cuyahoga County, Ohio. Data is only as accurate as the original source and is not guaranteed by EDR.
2. This simulation depicts turbines relative to the viewer position, and considers the effects of refraction and curvature of the earth.

### Technical Information

Software: AutoCad, 3ds Max, Adobe Photoshop  
CC, Digital elevation data source: 2006 CSIP  
digital UDAR



Icebreaker Wind

Lake Erie, City of Cleveland - Cuyahoga County, Ohio

Figure 18: Viewpoint 9, View North Northwest from Edgewater Park Beach, Simulation

January 2017



Sheet 2 of 2



# Staff Report of Investigation

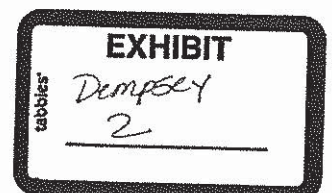
Icebreaker Wind Facility  
Icebreaker Windpower, Inc.

Case No. 16-1871-EL-BGN

July 3, 2018



John R. Kasich, Governor | Asim Z. Haque, Chairman



#### **IV. RECOMMENDED CONDITIONS OF CERTIFICATE**

Following a review of the application filed by the Applicant, and the record compiled to date in this proceeding, Staff recommends that a number of conditions become part of any certificate issued for the proposed facility. These recommended conditions may be modified as a result of public or other input received subsequent to the issuance of this report. At this time, Staff recommends the following conditions:

##### **GENERAL CONDITIONS**

Staff recommends the following conditions to ensure conformance with the proposed plans and procedures as outlined in the case record to date, and to ensure compliance with all conditions listed in this Staff Report:

- (1) The Applicant shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in this *Staff Report of Investigation*.
- (2) Prior to constructing a transmission line associated with this generating facility, the Applicant shall complete a separate filing with the Board to address its proposed electric transmission line. The separate filing shall take the form indicated by Ohio Adm.Code 4906-1-01 and its applicable appendices.
- (3) The Applicant shall not commence construction of the facility until it has a signed Interconnection Service Agreement with PJM Interconnection, LLC, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generation facility reliably and safely into the regional transmission system. The Applicant shall file in this proceeding either a letter stating that the Agreement has been signed or a copy of the signed Interconnection Service Agreement.
- (4) The facility shall be operated in such a way as to assure that no more than 18 megawatts would be injected into the American Transmission Systems, Inc. transmission grid at any time.
- (5) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may conduct separate preconstruction conferences for each stage of construction.
- (6) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial

operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.

- (7) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.
- (8) As the information becomes known, the Applicant shall file in this proceeding the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (9) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (10) At least 30 days prior to the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design, including the facility, construction staging areas, and any other associated facilities and access points, so that Staff can determine that the final project design is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically referenced electronic data. The final design shall incorporate all conditions of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate. The detailed engineering drawings of the foundation design and ice cone shall include the identity of the registered professional engineer, structural engineer, or engineering firm, licensed to practice engineering in the state of Ohio who reviewed and approved the designs.

### **SOCIOECONOMIC CONDITIONS**

Staff recommends the following conditions to address the impacts discussed in the **Socioeconomic Impacts** section of the Nature of Probable Environmental Impact:

- (11) Prior to construction, the Applicant shall finalize coordination with the appropriate federal agency (U.S. Department of Energy) in consultation with the Ohio Historic Preservation Office with regards to completing Section 106 of the National Historic Preservation Act of 1966, as amended. If the resulting coordination results in any mitigation efforts in order to ensure minimal effects on cultural resources, those results shall be submitted to Staff for review to ensure compliance with this condition.
- (12) No commercial signage or advertisements shall be located on any turbine, tower, or related infrastructure. If vandalism should occur, the Applicant shall remove or abate the damage within 30 days of discovery or as extended by Staff for good cause shown, to preserve the aesthetics of the project. Any abatement other than the restoration to

pre-vandalism condition is subject to review by Staff to ensure compliance with this condition.

- (13) At least 30 days prior to construction, the Applicant shall provide Staff, any affected property owners and tenants, the municipalities along the shore in the project viewshed, Cuyahoga County officials, emergency responders, and libraries with written notice regarding the start of construction and the complaint resolution process outlined in Appendix N of the application. The notice shall include a description of the nature of the project, contact information for the project, and the proposed timeframe for project construction. A copy of the notice shall be filed on the docket in this case.
- (14) During the construction and operation of the project, the Applicant shall file on the docket in this case a summary report of any complaints received through its complaint resolution process, a description of actions taken to resolve each complaint, and a status update if the complaint has yet to be resolved in the case record by the fifteenth day of April, July, October, and December of each year.

### **ECOLOGICAL CONDITIONS**

Staff recommends the following conditions to address the impacts discussed in the **Ecological Impacts** section of the Nature of Probable Environmental Impact:

- (15) The Applicant shall comply with all terms in the Avian and Bat memorandum of understanding (MOU) and the Fisheries and Aquatic Resources MOU, as well as any other protocols or documents resulting from these MOUs. Any modifications to the MOUs or resulting documents shall be filed in the case docket upon completion.
- (16) Prior to construction, the Applicant shall execute a modified submerged lands lease (SLL) with the Ohio Department of Natural Resources (ODNR) and adhere to all terms and conditions stated in the modified SLL. A copy of the modified SLL shall be filed in the case docket upon completion.
- (17) At least 60 days prior to commencement of construction, the Applicant shall submit a fisheries and aquatic resources construction monitoring plan to the ODNR and Staff for review and acceptance. The Applicant's plan shall be consistent with the ODNR approved Fisheries and Aquatic Resources MOU. The monitoring start date and reporting deadlines will be provided in the ODNR approval letter and the Staff concurrence letter.
- (18) 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 and bat species. The Applicant shall also provide the monitoring plan to, and seek consultation with, the U.S. Fish and Wildlife Service (USFWS). The Applicant shall update the mitigation plan as new information is attained through surveys. Any proposed modifications to the plans shall be submitted to the ODNR and Staff for review and acceptance.
- (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.

- (20) At least 60 days prior to commencement of construction, the Applicant shall submit a fisheries and aquatic resources mitigation plan which incorporates the most current survey results and post-construction fisheries and aquatic resources monitoring plan to the ODNR and Staff for review and acceptance that implementation of the plans would be effective in avoiding significant impacts to fisheries and aquatic resources. The Applicant shall also provide the plans to and seek consultation from the USFWS. The Applicant shall update the mitigation plan as new information is attained through surveys. Any proposed modifications to the plans shall be submitted to the ODNR and Staff for review and acceptance.
- (21) If state or federally listed endangered or threatened species are encountered during construction, operation, or monitoring activities, the Applicant shall contact Staff, the ODNR, and the USFWS, as applicable, within 24 hours. Construction or operation activities that could adversely impact the identified animals shall be modified to minimize risk to the identified species until an appropriate course of action has been agreed upon by the Applicant, Staff, and the ODNR in consultation with the USFWS. Nothing in this condition shall preclude agencies having jurisdiction over the facility with respect to wildlife from exercising their legal authority over the facility consistent with law.
- (22) The Applicant shall implement a radar monitoring program which includes the following:
  - (a) Radar must be able to detect and track directional movement and altitude of individual 10-gram and larger vertebrates.
  - (b) Radar must have the ability to collect data continuously, due to the pulsed nature of migration.
  - (c) Radar must suppress false detections from insects, wave clutter, and weather and without downtime bias with respect to biological periods (dawn, dusk, night) (80 percent or greater of survey time producing viable data, including during heavy precipitation events).
  - (d) Radar must be able to determine flight altitude of migrants at altitudes near and entirely within the rotor-swept zone at the project site to quantify collision risk.
  - (e) Radar must be able to provide information that can be used to determine and quantify behavioral avoidance or attraction to turbines in the open water setting.
  - (f) Radar must collect data for both small bird migratory seasons and bat migratory seasons (April to mid-June; August to mid-November) preconstruction.
  - (g) Radar must collect data for at least two spring/fall migratory seasons post-construction to determine behavioral changes that make collision more or less likely.

- (23) Prior to construction, the Applicant shall demonstrate that these requirements can be satisfied through implementation of the radar-monitoring program for one spring and one fall migration season. Proof of completion of these requirements shall be submitted to the ODNR and Staff for review and acceptance least 90 days prior to construction.
- (24) If Staff and the ODNR, in consultation with the USFWS, determine the project results in significant adverse impact to wild animals, adaptive management shall be prescribed to the Applicant.
- (25) All annual and final reports, as outlined in the MOUs shall be filed on the docket in this case upon completion.
- (26) Should construction be delayed beyond five years of the date of the certificate, certain wildlife and aquatic surveys would need to be updated and approved by Staff and the ODNR.

### **PUBLIC SERVICES, FACILITIES, AND SAFETY CONDITIONS**

Staff recommends the following conditions to address the impacts discussed in the **Public Services, Facilities, and Safety** section of the Nature of Probable Environmental Impact:

- (27) The Applicant shall comply with the turbine manufacturer's most current safety manual and shall maintain a copy of that safety manual in the operations and maintenance building of the facility.
- (28) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any traffic management issues. Coordination shall include, but not be limited to, the county engineer, the Ohio Department of Transportation (ODOT), local law enforcement, and health and safety officials. This coordination shall be detailed as part of a final transportation management plan submitted to Staff prior to the preconstruction conference for review and confirmation that it complies with this condition.
- (29) The Applicant shall enter into a road use agreement with the appropriate authorities prior to construction and subject to Staff review and confirmation.
- (30) The Applicant shall mitigate any observed impacts of the project to communication systems, including maritime VHF radio, within seven days or if good cause is shown within a longer time period acceptable to Staff. Avoidance and mitigation for any known communication systems shall consist of measures acceptable to Staff, the Applicant, and the affected path owner, operator, or licensee.
- (31) The Applicant shall comply with the following conditions regarding decommissioning:
  - (a) The Applicant shall provide the final decommissioning plan to Staff for review and confirmation of compliance with this condition, at least 30 days prior to the preconstruction conference. The plan shall:
    - (i) Indicate the intended future use of the land following reclamation.
    - (ii) Describe the following: engineering techniques and major equipment to be used in decommissioning and reclamation.

- (iii) Provide a detailed timetable for the accomplishment of each major step in the decommissioning plan, including the steps to be taken to comply with applicable air, water, and solid waste laws and regulations and any applicable health and safety standards in effect as of the date of submittal.
- (b) The Applicant shall file with the Board a revised decommissioning plan every five years from the commencement of construction. The revised plan shall reflect advancements in engineering techniques and reclamation equipment and standards. The revised plan shall be applied to each five-year decommissioning cost estimate. Prior to implementation, the decommissioning plan and any revisions shall be reviewed by Staff, in consultation with the ODNR, to confirm compliance with this condition.
- (c) The Applicant shall, at its expense, complete decommissioning of the facility, or individual wind turbines, within 12 months after the end of the useful life of the facility or individual wind turbines. If no electricity is generated for a continuous period of 12 months, or if the Board deems the facility or turbine to be in a state of disrepair warranting decommissioning, the wind energy facility or individual wind turbines will be presumed to have reached the end of its useful life. The Board may extend the useful life period for the wind energy facility or individual turbines for good cause as shown by the Applicant. The Board may also require decommissioning of individual wind turbines due to health, safety, wildlife impact, or other concerns that prevent the turbine from operating within the terms of the Certificate.
- (d) Decommissioning shall include the removal and transportation of the wind turbines off site. Decommissioning shall also include the removal of buildings, electrical components, and any other associated facilities, unless otherwise mutually agreed upon by the Applicant and the landowner. The disturbed area shall be restored to the same physical condition that existed before erection of the facility.
- (e) During decommissioning, all recyclable materials, salvaged and non-salvaged, shall be recycled to the furthest extent practicable. All other non-recyclable waste materials shall be disposed of in accordance with state and federal law.
- (f) The facility owner and/or facility operator shall not remove any improvements made to the electrical infrastructure if doing so would disrupt the electric grid, unless otherwise approved by the applicable regional transmission organization and interconnection utility.
- (g) Subject to confirmation of compliance with this condition by Staff in consultation with the ODNR, and seven days prior to the preconstruction conference, an independent, registered Professional Engineer, licensed to practice engineering in the state of Ohio, shall be retained by the Applicant to estimate the total cost of decommissioning in current dollars, without regard to salvage value of the equipment. Said estimate shall include: (1) an identification and analysis of the activities necessary to implement the most recent approved decommissioning plan including, but not limited to, physical construction and demolition costs assuming good industry practice and based on ODOT's Procedure for Budget Estimating and RS Means material and labor cost indices or any other publication or guidelines

approved by Staff, (2) the cost to perform each of the activities; (3) an amount to cover contingency costs, not to exceed 10 percent of the above calculated reclamation cost. Said estimate will be converted to a per-turbine basis (the "Decommissioning Costs"), calculated as the total cost of decommissioning of all facilities as estimated by the professional engineer divided by the number of turbines in the most recent facility engineering drawings. This estimate shall be conducted every five years by the Applicant.

- (h) The Applicant shall post and maintain for decommissioning a performance bond in an amount equal to the per-turbine Decommissioning Costs multiplied by the sum of the number of turbines constructed and under construction. The performance bond need not be posted separately for each turbine so long as the total amount reflects the aggregate of the Decommissioning Costs for all turbines constructed or under construction. For purposes of this condition, a turbine is considered to be under construction at the installation of the foundation. The performance bond shall be a financial instrument mutually agreed upon by the Board and the Applicant. The performance bond shall ensure the faithful performance of all requirements and reclamation conditions of the most recently filed and approved decommissioning and reclamation plan. At least 30 days prior to the preconstruction conference, the Applicant shall provide an estimated timeline for the posting of decommissioning funds based on the construction schedule for each turbine. Prior to commencement of construction, the Applicant shall file a statement from the holder of the performance bond demonstrating that adequate funds have been posted for the scheduled construction. Once the performance bond is provided, the Applicant shall maintain such funds or assurance throughout the remainder of the applicable term and shall adjust the amount of the assurance, if necessary, to offset any increase or decrease in the Decommissioning Costs.
- (i) The performance bond shall be released by the holder when the Applicant has demonstrated, and the Board concurs, that decommissioning has been satisfactorily completed, or upon written approval of the Board, in order to implement the decommissioning plan.

#### **AIR, WATER, SOLID WASTE, AND AVIATION CONDITIONS**

Staff recommends the following conditions to address the requirements discussed in Air, Water, Solid Waste, and Aviation:

- (32) The Applicant shall meet all recommended and prescribed Federal Aviation Administration (FAA) and ODOT Office of Aviation requirements to construct an object that may affect navigable airspace. This includes submitting coordinates and heights for all towers exceeding 200 feet AGL for ODOT Office of Aviation and FAA review prior to construction, and the non-penetration of any FAA Part 77 surfaces.
- (33) All applicable structures, including construction equipment, shall be lit in accordance with FAA circular 70/7460-1 K Change 2, Obstruction Marking and Lighting; or as otherwise prescribed by the FAA. This includes all cranes and construction equipment.

- (34) The Applicant shall comply with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.



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180 E. Broad St.  
Columbus, OH 43215-3793

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/3/2018 2:35:29 PM**

**in**

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

**Summary: Staff Report of Investigation electronically filed by Mr. Matt Butler on behalf of Staff of OPSB**

Exponent

Exponent  
149 Commonwealth Drive  
Menlo Park, CA 94025

telephone 650-326-9100  
fax 650-326-8072  
www.exponent.com

September 11, 2017

John Stock, Esq.  
Partner  
Benesch, Friedlander, Coplan & Aronoff LLP  
41 South High Street, Suite 2600  
Columbus, OH 43215

Subject: Icebreaker Windpower  
Exponent Project No. 1707425

Dear Mr. Stock:

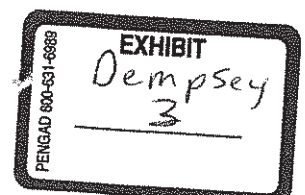
Thank you for your interest in retaining Exponent, Inc. (Exponent) to provide services related to the above-referenced project. This letter presents our current understanding of the scope of services sought and the terms of the engagement.

Our scope of services is anticipated to include engineering consulting as requested on the above matter. This project shall be performed at the direction of Benesch Friedlander Coplan & Aronoff LLP, but is generally expected to include expert witness support related to the Icebreaker Windpower project including issues related to (1) the economic viability of a small wind turbine fleet; (2) the general economics of wind power generation in the United States; and (3) the impact of extensive wind farm development on current PJM baseload and price impact.

Exponent's services will be provided on a time-and-expense basis. Charges will include professional fees, equipment use fees, and other out-of-pocket expenses according to our *Schedule of Rates & Charges*, a copy of which is enclosed and made a part hereof by reference. Exponent charges \$430 per hour for my services in calendar year 2017. Other Exponent staff members will be utilized where appropriate.

Exponent's services are provided only in accordance with our *Terms and Conditions of Agreement*, a copy of which is enclosed and made a part hereof by reference. It is our understanding that Exponent's retention on this project is with Benesch, Friedlander, Coplan & Aronoff LLP, on behalf of Murray Energy Corporation (Murray Energy), and, as such, all charges (i.e., fees and expenses) incurred by Exponent on this project will be billed to your office but will be the responsibility of Murray Energy, independent of other parties/payees involved. Please verify the contact information for billing purposes in the table at the end of this letter. If it is not correct, please provide the updated information. For purposes of the *Terms and Conditions of Agreement*, "client" shall mean Murray Energy.

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John Stock, Esq.  
September 11, 2017  
Page 2

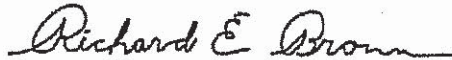
Based on the information you have provided, we have performed a conflict-of-interest check for the following parties:

- Murray Energy Corporation
- Bonheur ASA
- Lake Erie Energy Development
- LEEDCo
- Icebreaker Wind
- Fred.Olsen Renewables

Using this information, Exponent has determined that it does not currently have a conflict that would preclude us from assisting you in this matter. Please inform us as soon as possible if this list of parties is inaccurate or incomplete, and if other parties become involved as this matter proceeds.

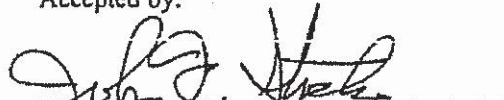
This proposed retention letter is valid for 15 days from the date first set forth above. Please sign and return this letter if you would like us to proceed with this work. If you have any questions or require additional information, please do not hesitate to contact me at (303) 882-6469. We look forward to working with you.

Sincerely,

  
Richard E. Brown, Ph.D., P.E.  
Principal Engineer & Practice Director

Enclosures (2)

Accepted by:

  
Authorized Signature

John F. Stock, Partner  
Name and Title

Borash, Friedman, Cople & Cunniff, LLC  
Organization

9/13/17  
Date

John Stock, Esq.  
September 11, 2017  
Page 3

**INVOICE TRANSMITTAL ADDRESS**

By default, Exponent will email invoices to the email address(es) listed below. Please verify the email address(es) as well as any reference information that should be contained on the invoice.

If you wish to receive hard copies of invoices via US Mail, please check the box below and provide the address(es) to which the hard copies should be mailed.

<b>Invoice Reference Number(s):</b>	
<b>Name/Title</b>	<b>Email</b>
John Stock, Esq. / Partner	jstock@Beneschlaw.com
Please send hard copy of invoices via US Mail: Yes <input type="checkbox"/> No <input type="checkbox"/>	
<b>Physical address for invoicing:</b>	
<b>Other Notes:</b>	



## SCHEDULE OF RATES AND CHARGES

### PROFESSIONAL FEES

Exponent charges its clients for services provided according to the qualifications and experience level of the individuals assigned to the client's project at each employee's specific current hourly rate. These rates are modified annually on or about January 1. Exponent provides the following staff classifications that designate relative experience, training, and accomplishment within a technical field, together with the range of hourly rates. Payment is required in U.S. dollars within 30 days after the date of the invoice, or interest charges may be applied.

Principal/Officer	Senior-level technical or management person, responsible for technical direction or general management or administration.	\$275-\$750
Senior Manager	Senior technical professional providing high-level or individual consulting assignments, or overall technical direction of projects, may have management responsibility for a technical field.	\$250-\$500
Manager	Senior technical professional providing high-level or individual consulting assignments or overall technical direction of projects.	\$200-\$425
Senior Engineer/Scientist/Associate	Experienced technical professional skilled in planning, organizing, controlling, and executing complex, higher-order projects or assignments.	\$175-\$325
Engineer/Scientist/Associate	Trained/degreed professional responsible for executing technical assignments in support of client projects.	\$150-\$275
Technical/Research Specialist	Personnel experienced in instrumentation, programming, testing, library science, or the development or execution of research methodologies in support of projects.	\$135-\$200
Technical/Research Assistant	Laboratory, data processing, engineering-graphics, engineering technician, or other personnel responsible for the execution of specialized tasks in support of projects.	\$90-\$150
Non-technical Assistant	Personnel who assist technical staff in various non-technical areas, including scheduling, report productions, communications, logistics, and project support.	\$ 75-\$125

### TECHNICAL EQUIPMENT, SOFTWARE AND LAB CHARGES

Exponent personnel may utilize Exponent's technical equipment and software to assist them in the performance of client's project. Exponent charges an hourly or daily usage fee for selected equipment, software and labs (e.g., scanning electron microscope, finite element software and biomedical laboratory).

### TRAVEL AND MEAL EXPENSES

Travel and meal expenses are charged at Exponent's cost. Local mileage is charged in accordance with I.R.S. guidelines. The most effective air travel for the project will be utilized and personnel below the Principal classification will charge coach fares.

### OTHER PROJECT EXPENSES

Project expenses including materials, subcontractors and third-party vendors are charged at cost plus fifteen percent. If the client prefers to procure the project expenses directly to avoid the additional fifteen percent charge then notify Exponent at the initiation of the engagement. Consumable materials may be charged on an applied rate rather than an incurred cost basis.



## TERMS AND CONDITIONS OF AGREEMENT

1. Work performed on a time-and-expenses basis will be billed in accordance with Exponent's most current Schedule of Rates and Charges. Work performed under a fixed-price arrangement will be billed at the agreed fixed amount. A payment in advance or a suitable retainer may be required from the client. Exponent will hold any retainer until the final invoice is prepared, at which time it will reconcile the client's account. Following Exponent's completion of work, the client is responsible for and may be charged for the storage and disposal of evidence, exemplars and samples. Exponent will charge taxes where applicable.
2. Invoices are typically rendered monthly or in accordance with the agreed upon payment schedule, and are due in U.S. dollars within 30 days of the date of the invoice. Exponent, without liability, may withhold delivery of reports and other data, and may suspend performance of its obligations to the client, pending payment of outstanding charges. Exponent reserves the right to decline further work with any client who has been delinquent in payment of Exponent's invoices.
3. Exponent will perform its services consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances. In the event that Exponent fails to meet the foregoing standard of care or that the client has any other claim, client's sole and exclusive remedy shall be limited to Exponent re-performing the work at Exponent's expense, or reimbursing the client up to the amount the client paid Exponent for the work. No other warranty, express or implied, is made concerning work performed under the agreement.
4. The client assumes full and complete responsibility for all uses and applications of Exponent's recommendations or work under this agreement, or failure to use recommendations or work, and agrees to indemnify and hold harmless Exponent, its affiliates, officers, directors, employees, agents, and stockholders against any and all liabilities, damages, losses, claims, demands, actions, causes of action, and costs including attorney's fees and expenses resulting from the death or injury to any person or damage to any property or any other alleged or actual damages resulting from the aforementioned use, application, or nonuse of Exponent's recommendations or work under this agreement.
5. In no event shall Exponent, its affiliates, officers, directors, employees, agents, or stockholders be liable for any incidental or consequential damages.
6. Exponent will hold in confidence all information provided by the client that the client designates and/or marks as confidential or proprietary. If Exponent and the client have entered into a separate non-disclosure agreement, it is deemed incorporated herein. All deliverables and any improvements to the client's processes or products arising from this agreement shall be and remain the property of client; however, Exponent has a right to retain a copy of such deliverable(s). Exponent shall retain all rights, title, and interest in and to its proprietary information (along with any modifications or improvements to such information), including, but not limited to Exponent's know-how, methodologies, techniques, processes, tools, test fixtures, technologies, trade secrets, software, data, databases, algorithms, source code, computational engines, logic formulas, non-interface worksheets, macros, and other materials used by Exponent in connection with providing its services.
7. Anybody required to be present at Exponent's laboratories for the project, including other parties and the like, will be required to sign an agreement that contains confidentiality obligations and a general release of claims for injuries or damages to property related to the visit.
8. Client understands that evidence, materials, test articles or the like ("Articles") may be damaged or destroyed during testing and as such Exponent is not responsible for any loss or damage thereto. The client shall bear the risk of loss of the Articles while they are in transit. Notwithstanding any language to the contrary herein, should Exponent be obligated to replace the Articles, the cost of such replacement shall be its fair market value and not any implicit value. Exponent, unless other specific arrangements are made, will maintain technical files and evidence for 30 days after the completion of work. Exponent will retain financial records according to I.R.S. requirements, but in no event less than 1 year after completion of the work.
9. Client shall not use Exponent's (or any of its affiliates' or its personnel's) name(s), trade names, service marks, trademarks, trade dresses, logos, symbols, or the like in any form for advertising, publicity, marketing, or in any way that could be construed as endorsement or promotion and the like without the prior written consent of Exponent in each instance.
10. This agreement is solely between, and may only be enforced by, Exponent and the client, and this agreement shall not create or be construed to create any third party rights, obligations, or liabilities including, but not limited to, affiliates, employees, contractors, stockholders, licensees, or the like. Any deliverables, recommendations, or service provided by Exponent shall be for the client's use only. Exponent's services are expressly limited to the terms herein and are not modified or supplemented by terms from the client's purchase order. Exponent will reference the client's purchase order for billing purposes only.
11. Upon receipt of written notice from the client, Exponent will terminate work under this agreement. Work under a fixed-price agreement that is terminated before completion will be billed on a percentage of completion basis. Exponent may terminate work under this Agreement only for cause. "Cause" includes, but is not limited to, development of a material conflict of interest, delinquency in payment, judicially required participation in onerous discovery or other legal process outside the intended scope of the work, or the presence of circumstances beyond Exponent's control, such as natural disasters or government intervention. Exponent shall not be liable for any delay or failure to perform resulting from unforeseen causes beyond its reasonable control.
12. If Exponent is required to testify or to produce information regarding work under this agreement in any third party litigation, including but not limited by subpoena or court order, the client agrees to provide counsel of its choosing and to pay Exponent's reasonable time and expenses, including attorney's fees associated with responding to such request. In the event of any such request, Exponent will promptly notify the client to enable the client to object to any such testimony or production. This paragraph is not intended to apply to claims between Exponent and the client.
13. This agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the internal laws of the state of California, without regard to the conflicts of laws principles of such state. The parties to this agreement consent to the jurisdiction of any state or federal court located in San Francisco, California. The prevailing party in any action shall recover from the losing party its reasonable attorney's fees and costs of suit incurred in addition to any other relief granted.

Rev. 010315

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**This foregoing document was electronically filed with the Public Utilities**

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**8/2/2018 2:31:18 PM**

**in**

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

Summary: Deposition of W. Susan Dempsey electronically filed by Christine M.T. Pirik on behalf of Icebreaker Windpower Inc.