

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 Robert Maloney**

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 Robert Maloney, 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 94585v1

IN RE: APPLICATION OF ICEBREAKER WINDPOWER

Deposition of
Robert Maloney
July 26, 2018



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1 BEFORE THE OHIO POWER SITING BOARD

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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 ROBERT MALONEY

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 11:56 a.m.

21 Reported by: Rhonda Lawrence

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STI PULATI ONS

It is stipulated by and among counsel
for the respective parties that the deposition
of ROBERT MALONEY, 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 ROBERT MALONEY

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 A. Robert Michael Maloney, M-A-L-O-N-E-Y.

8 Q. What would you prefer that I call you
9 today?

10 A. Bob.

11 Q. Bob. Okay.

12 Can you tell me your address?

13 A. 2 Bratenahl Place, Suite 11A, Bratenahl,
14 Ohio 44108.

15 Q. That is the 11th floor?

16 A. Yes.

17 Q. And how tall is your building?

18 A. 15 stories.

19 Q. 15. When did you -- it's a -- is it a
20 condo unit?

21 A. Yes.

22 Q. When did you purchase your condo unit?

23 A. I think this one -- we lived in
24 different ones between the two buildings, but I

1 think this one we purchased around 19 -- around
2 the year 2000.

3 Q. You said you had others before that?

4 A. We lived -- we originally moved to
5 Bratenahl, I think, in 1983. We lived in
6 building 1, which is the building Sue lives in,
7 and three different places in building 1. Then
8 we moved down the street a few blocks and lived
9 in a 3-level townhouse. And then we moved back
10 to the high-rises, but this time we moved to
11 building 2, which is right next to building 1,
12 and we moved in and redecorated. While the
13 redecorating was going on, we lived in another
14 one we purchased.

15 Q. So do you own more than one unit?

16 A. Three.

17 Q. You own three units. Are they all in --
18 are they both in that building?

19 A. Yes.

20 Q. What units do you own?

21 A. I own 11A, and then the floor below
22 me -- we have a three-bedroom. That's 11A. And
23 then we own two two-bedrooms that are adjacent
24 to each other on the floor but below it.

1 Q. Do you rent out the other two units?

2 A. My niece lives in one. She doesn't pay
3 rent. The other unit we do rent out to a woman
4 named Danielle Soreno.

5 Q. Are you planning on moving in the next
6 six months?

7 A. No.

8 Q. Have you ever had your deposition taken
9 before?

10 A. No.

11 Q. Do you have any questions about the
12 process since you just experienced one?

13 A. Yeah.

14 Q. Okay. Other than any conversations you
15 had with counsel or documents that your counsel
16 had you review in preparation for your
17 deposition, did you have any conversations or
18 review any documents in preparation for your
19 deposition today?

20 A. No.

21 Q. What is your view from your unit?

22 A. Our unit goes through the east and west
23 side of the building on both sides, so we have a
24 balcony on the west side and a balcony on the

1 east side. From the west side we look at
2 downtown Cleveland and Lake Erie. It's about
3 50/50 split view. And obviously, from the east
4 side, we look at Lake Erie and Euclid, Ohio,
5 which we can see the windmill.

6 Q. What's the windmill that you're
7 referring to?

8 A. Lincoln Electric put up a windmill. A
9 lot of building goes into making windmills, so
10 it's kind of advertising for themselves, I
11 assume.

12 Q. That's on land?

13 A. It's on land.

14 Q. Do you like looking at the windmill?

15 A. Doesn't bother me.

16 Q. Do you own any other properties?

17 A. Yes. We own a house in Concord, Ohio,
18 and my sister and her husband live in it. They
19 don't pay rent.

20 Q. Did you grow up in Concord, Ohio?

21 A. Grew up in Youngstown, Ohio.

22 Q. How long did you live in Youngstown?

23 A. They moved when I was 17 from Youngstown
24 to Mentor, Ohio.

1 Q. Why did you move to Mentor?

2 A. My father was transferred in his job
3 from Youngstown to Cleveland.

4 Q. And you did high school in Cleveland?

5 A. I did my first two years in Youngstown
6 and then my junior and senior year at Mentor.

7 Q. Okay. And you graduated from Mentor
8 High School?

9 A. Yes.

10 Q. Did you do any post high school
11 education?

12 A. Went to Lakeland Community College, Kent
13 State, and Lake Erie College, and I got my
14 degree from Lake Erie College.

15 Q. Okay. What did you get your degree in?

16 A. Transportation.

17 Q. When did you graduate with that, Bob?

18 A. 19 -- geez -- '76 or '77. I can't
19 remember.

20 Q. And you testified you're married?

21 A. Yes.

22 Q. Are you currently married?

23 A. Yes.

24 Q. And you testified -- I don't know if you

1 testified you had kids. You testified you have
2 a niece. Do you have any children?

3 A. No, we have no children.

4 Q. How old is your niece?

5 A. That lives in our building?

6 Q. Yeah.

7 A. She just turned 30.

8 Q. Do you have any other nieces or nephews
9 that live in Cleveland?

10 A. That live in Cleveland? No.

11 Q. Do you own any other properties other
12 than in Bratenahl and Concord, Ohio?

13 A. No.

14 Q. Tell me about your job experience
15 starting with your getting your degree from Lake
16 Erie in transportation in '76 or '77.

17 A. I went to work for Standard Oil of Ohio
18 in marine transportation. We were building
19 super tankers to move the Alaskan oil. I was
20 there building the pipeline. Right before the
21 pipeline was completed, they transferred me out
22 to Los Angeles. That's where we were going to
23 operate that business from, was out of Los
24 Angeles. So Standard Oil was eventually bought

1 out by British Petroleum, so my first job was in
2 marine transportation.

3 Q. How long did you have that job?

4 A. I quit in 1980. So a little bit over
5 three years.

6 Q. Were you employed by Standard Oil or BP
7 during any of the times where they had spills in
8 any bodies of water, like lakes or oceans?

9 A. No.

10 Q. You're aware that they have, correct?

11 A. I'm aware that they have spilled oil
12 from time to time, but I don't recall us having
13 any oil spills while I was working there.

14 Q. What did you do after you -- so you quit
15 working for there?

16 A. Uh-huh.

17 Q. Why did you quit?

18 A. I wanted to work for myself, so I quit
19 and started a company that buys and sells
20 petroleum products.

21 Q. Did you work for a company or was it
22 your own company?

23 A. My own company.

24 Q. You started your company?

1 A. Yes.

2 Q. When did you start it?

3 A. 1980.

4 Q. What's the name of your company?

5 A. Bulk, B-U-L-K, Trading & Transport
6 Company.

7 Q. How long -- do you still own that
8 company?

9 A. I'm semi-retired.

10 Q. Is it still an ongoing business?

11 A. We've shrunk it way, way down, but it's
12 still an ongoing business.

13 Q. Who runs it now?

14 A. I run it. My brother works for me.

15 Q. So is it a family business?

16 A. Yes.

17 Q. How many employees do you have? At your
18 biggest, how many employees did you have?

19 A. Five.

20 Q. Okay. And now that it's shrunk, how
21 many do you have?

22 A. Two.

23 Q. Is it you and your brother?

24 A. Yes.

1 Q. So you've done that since 1980 till now?

2 A. Uh-huh.

3 Q. When did you kind of semi-retire?

4 A. Two years ago.

5 Q. What did your company do?

6 A. Almost everything in the petroleum
7 business, from crude oil, buying and selling
8 crude oil, and different petroleum feed stocks,
9 gasoline, diesel, asphalt, petrochemicals.

10 Q. You say you did everything with it. Can
11 you be more specific? Did you transport it?

12 A. We would typically buy from a producer
13 or another oil company and sell to another oil
14 company. We never sold to the public.

15 Q. So you were kind of a middleman
16 wholesaler?

17 A. They'd probably call us a trader.

18 Q. Trader.

19 How far did you -- is your business in
20 Cleveland or Bratenahl?

21 A. We're based in Cleveland, but we bought
22 and sold oil in the Gulf Coast and Houston, New
23 Orleans, Chicago, Canada.

24 Q. Aside from Canada, did you do any other

1 type of international --

2 A. No.

3 Q. -- trade or sales?

4 A. No.

5 Q. None to Mexico, just Canada?

6 A. Correct.

7 Q. Other than what was going on in the
8 Gulf?

9 A. Uh-huh.

10 Q. Now that you're semi-retired, what do
11 you do with -- like, what are your hobbies now?

12 A. I try to play golf, and that's about it.

13 Q. Are you involved in any type of, like,
14 environmental, conservatory, bird, the Audubon
15 Society, are you involved in any type of
16 environmental organization?

17 A. No.

18 Q. Do you do any type of volunteer work for
19 any organizations?

20 A. I volunteer to try to raise money for my
21 high school.

22 Q. Okay. The Youngstown or Mentor?

23 A. Youngstown.

24 Q. What do you know about Murray Energy?

1 A. I've heard of the name. That's all I
2 know.

3 Q. You don't know anything about the type
4 of energy that Murray Energy --

5 A. What I would -- I assume it's coal.
6 I've heard of their name in the past. We're not
7 in that part of the energy business. Other than
8 hearing their name, that's all I know.

9 Q. So like the crude oil and the coal
10 industries, they don't really have that much
11 overlap?

12 A. No.

13 Q. Do they compete with each other? How
14 does that work?

15 A. They used to. Nobody uses oil anymore
16 to generate electricity because it's too
17 expensive.

18 Q. And so then are you saying that they --
19 if you're saying they don't use oil and oil
20 doesn't compete with coal, that coal is used for
21 electricity?

22 A. Years ago oil competed with coal for
23 power generation, but as the price of crude oil
24 went up and coal didn't, nobody essentially is

1 not -- oil products aren't used to generate
2 electricity these days.

3 Q. So what would coal's major competitor be
4 now for generating electricity?

5 A. I would say natural gas.

6 Q. What about wind?

7 A. I don't think it's that big of a factor
8 yet. It's getting larger, but I don't think
9 it's that much of a factor yet.

10 Q. Just to be clear, you never worked with
11 Murray Energy while you worked with your
12 business?

13 A. Never.

14 Q. You're not currently working with them
15 now in any type of capacity?

16 A. No.

17 Q. Do you know what the Campaign for
18 American Affordable and Reliable Energy, CAARE,
19 is?

20 A. No.

21 Q. You've never worked with them?

22 A. No.

23 Q. I apologize. A lot of these will be
24 similar questions that you've heard Sue already

1 go through.

2 Do you know if Benesch represents Lake
3 County and Cuyahoga County?

4 A. No.

5 Q. Do you know if Lake County and Cuyahoga
6 County both sit on the board of the Lake Erie
7 Energy Development Corporation?

8 A. I do not know that.

9 Q. Do you have any pets?

10 A. No.

11 Q. Is it just you and your wife?

12 A. Yes.

13 Q. Can you tell me what your understanding
14 of Lake Erie Energy Development is?

15 A. LEEDCo?

16 Q. Yes.

17 A. The entity trying to establish
18 water-based windmills.

19 Q. Do you understand the type of energy
20 that they're trying to derive with their
21 windmills?

22 A. Yes.

23 Q. What kind?

24 A. Electrical energy.

1 Q. When did you first learn about the
2 project?

3 A. I think it was probably a little bit
4 over two years ago. It was in the newspaper,
5 and the study -- they had some grant money and
6 they were going to study the feasibility of wind
7 power. I think they put a unit out on the water
8 intake to measure the wind.

9 Q. And what was your reaction when you read
10 about it?

11 A. I didn't want anything in Lake Erie, so
12 I was not against wind energy; I just didn't
13 want anything in Lake Erie.

14 Q. Why's that?

15 A. It's a beautiful, pristine body of
16 water. I agree that it should be a national
17 park. So I'm just opposed to putting something
18 that's affixed in the lake that's an industrial
19 entity, and I'm just opposed to putting it in
20 freshwater.

21 Q. What was your perspective when BP put
22 oil rigs in water?

23 A. They shouldn't put anything in
24 freshwater. BP had a huge oil spill in the Gulf

1 of Mexico. It was horrible. But it wasn't in
2 freshwater.

3 Q. What's the difference? Why do you take
4 issue with fixtures being placed -- I guess -- I
5 don't know if fixtures is the right word, but
6 something being placed in freshwater versus
7 salt?

8 A. Freshwater's scarce and it should be
9 protected. We drink freshwater. We don't drink
10 saltwater.

11 Q. What are your other concerns? Is it
12 just the drinking water?

13 MR. STOCK: About this project?

14 MS. JODKA: About this project.

15 A. I just don't think anything should be in
16 Lake Erie. It's a beautiful entity. I was a
17 boater. I've had three boats. I've spent a lot
18 of time in Lake Erie, and it's just absolutely
19 gorgeous. And I think it should be left as
20 pristine as possible.

21 Q. Do you still boat in Lake Erie?

22 A. I have a boat dock. I sold my boat a
23 number of years ago, but I plan on, once I fully
24 retire, buying another boat, because I'll have

1 the time to use it. But I've kept my boat dock,
2 paid condo fees on it every month. It sits
3 there empty.

4 Q. And you think that the wind turbines as
5 proposed would be problematic for boaters?

6 A. I would just hate -- I know -- I have a
7 pretty good idea where they're going to be
8 sited. I've been out in that area many, many,
9 many times on my boat, and it's a beautiful area
10 because there's nothing there.

11 Q. But there's nothing in any part of the
12 lake, correct?

13 A. Correct.

14 Q. It's a huge lake, correct?

15 A. 60 miles wide and I think 200-some miles
16 long.

17 Q. Do you have an issue with the project --
18 with the wind turbines being in the -- in Lake
19 Erie as it pertains to swimmers?

20 A. No.

21 Q. Fishermen?

22 A. Fishermen, yeah. It would affect them.

23 Q. How so?

24 A. It will interfere with them. You can't

1 drive your boat. I had my boat on auto pilot,
2 and so you could run into it with your boat.

3 Q. Do you know if people fish where the
4 wind turbines are projected to go?

5 A. I'm sure they do.

6 Q. Even though there's no fish there?

7 MR. STOCK: Objection.

8 A. Well, there's fish. I fished in that
9 area many times.

10 Q. Really?

11 A. Yeah.

12 Q. What kind of fish have you caught there?

13 A. Walleye.

14 Q. Anything else?

15 A. Typically walleye and perch.

16 Q. When is the last time you caught a
17 walleye or perch in that area?

18 A. In that area?

19 Q. Uh-huh.

20 A. I would say it's probably been at least
21 five years.

22 Q. What other issues do you have that form
23 your opposition to this project that we haven't
24 already talked about?

1 A. My only real point of opposition is
2 placing something industrial in Lake Erie.

3 Q. Why do you have an issue with something
4 being placed in Lake Erie?

5 A. I agree with Sue that I'm old enough
6 that I was around when the lake was polluted,
7 and it took generations to get it clean again,
8 and I don't want to take that risk of it being
9 polluted again.

10 The other issue is just the pure beauty
11 of the lake. Wind turbines are wind turbines.
12 I don't know anybody who says that they're
13 attractive. But I'm just against them being put
14 in Lake Erie.

15 Q. Do you believe that the wind turbines
16 will cause pollution?

17 A. I guess if they somehow spill the
18 turbine oil. If that ever happened, sure, it
19 would pollute the lake.

20 Q. Are you aware of spilled turbine oil
21 being an issue for this project?

22 A. No.

23 Q. So that's just a guess --

24 A. It's my guess.

1 Q. -- one of the potential pollution
2 impacts that you feel could be a result of this
3 project?

4 A. It's not impossible.

5 Q. Are there any others, pollution impacts?

6 A. Oh, pollution?

7 Q. Yes.

8 A. No.

9 Q. So the aesthetic appeal and spilled
10 turbine fluid oil are your concerns with this --
11 the implications of this project in Lake Erie,
12 correct?

13 A. Also that I just don't want something
14 industrial put into Lake Erie. I would like it
15 to remain as pristine as humanly possible.

16 Q. I'd like a better understanding of how
17 you got involved as an intervenor. When did you
18 first decide to be an intervenor in this matter?

19 A. Geez. I guess it was probably about a
20 year ago. We were speaking, the group, and we
21 wanted to get involved, find out more about the
22 project, where it was in the timeline, if it was
23 going to happen or not happen. And I would see
24 it from my house, I'm sure, but that wasn't my

1 maj or concern. My maj or concern was trying to
2 keep everything out of Lake Erie.

3 Q. Who is the "we"? You say "we" got
4 together. Who's that?

5 A. Sue, myself, Greg Binford and Lee
6 Blazey. Not all at the same time. We had
7 different conversations. Sue kind of took the
8 lead of trying to find if there's a group we
9 could join. So we looked around and we found
10 John and contacted him and wanted to know what
11 it would cost to join the group.

12 Q. When you say "join the group," what
13 group were you joining?

14 A. The effort to stop the wind turbines.

15 Q. Were you of the idea that there was a
16 group?

17 A. We were looking for a group to join.

18 Q. Were you aware if John had a -- was
19 representing a group?

20 A. As I recall, the feedback was that, yes,
21 he was involved in opposition to the wind
22 turbines, and we wanted to know if we could
23 join, and he said yes.

24 Q. Did you have an understanding as to the

1 basis for that opposition?

2 MR. STOCK: Do not disclose the
3 substance or content of any discussions we had
4 or any information you derived from those
5 discussions, but anything outside of that
6 context you can --

7 MS. JODKA: What did I just ask?

8 THE WITNESS: I forgot.

9 MS. JODKA: Me, too.

10 MR. STOCK: The basis for opposition, I
11 think was the gist of it.

12 A. We were looking to join the group, to
13 share the expense, because we didn't think we
14 could raise enough money, and so that's how we
15 got here.

16 BY MS. JODKA:

17 Q. So what is your understanding of the
18 group that you joined, their basis for their
19 opposition?

20 A. I didn't know. I didn't know what their
21 basis was. They were opposed, we were opposed,
22 and that was it.

23 Q. Who's "they"?

24 A. This entity.

1 Q. What entity?

2 A. I don't think we have a name.

3 Q. What do you know about this entity that
4 you've joined?

5 A. I knew that they were opposed to the
6 windmills going up in Lake Erie.

7 Q. Do you know why?

8 A. No.

9 Q. Did you ask?

10 A. No.

11 Q. Did you care?

12 A. I cared.

13 Q. Not enough to ask?

14 A. No.

15 Q. I'm not going to pull out your
16 interrogatories. You answered interrogatories
17 in this case. Have you had a chance to review
18 those interrogatories before your deposition
19 today?

20 A. Yes.

21 Q. In response to your interrogatories, you
22 indicated that you are not personally paying
23 your legal expenses, correct?

24 A. Correct.

1 Q. You've never received a bill for any of
2 your legal expenses?

3 A. No.

4 Q. Who do you understand is paying your
5 legal expenses in this case?

6 A. I don't know.

7 Q. Do you believe it's this group you've
8 partnered with?

9 A. I don't know that.

10 MS. LEPPLA: I'm sorry. Can I just
11 clarify? When we're referring to "group," are
12 you talking about the Bratenahl residents, or
13 Cuyahoga County residents? I'm just not really
14 clear.

15 MS. JODKA: He joined -- go ahead.

16 THE WITNESS: Bratenahl residents.

17 MS. LEPPLA: Okay. So the four of you
18 is who you're referring to?

19 THE WITNESS: Uh-huh.

20 MS. LEPPLA: I just wanted to clarify.

21 MS. JODKA: See, I thought -- I'm glad
22 you clarified it, because I thought we were
23 talking about --

24

1 BY MS. JODKA:

2 Q. So it's your understanding that the
3 other Bratenahl residents are paying the legal
4 fees --

5 A. No.

6 Q. -- or is it a different group?

7 A. No. I'm sorry.

8 Q. A different entity?

9 A. If you're talking about legal fees, no.
10 John, when we contacted him, said that they were
11 opposed to the windmills, and we asked if we
12 could join that group that's opposed, and he
13 said yes.

14 Q. Do you understand if that was the
15 Cuyahoga resident group that's no longer in the
16 case, the group you joined that's paying the
17 legal fees? Do you think it's that group?

18 A. I don't know.

19 Q. So a third -- so another entity of some
20 sort is paying your legal fees and you don't
21 know who?

22 A. Yes.

23 Q. And you have no understanding as to the
24 basis for their opposition?

1 A. No.

2 Q. Do you know how much in legal fees --
3 your legal fees have probably been estimated at
4 this point in this case?

5 MR. STOCK: Objection.

6 A. I have no idea.

7 Q. Do you think it would be a low number?

8 MR. STOCK: Objection.

9 A. I don't know.

10 Q. Do you have an opinion on what type of
11 group would spend so much money to oppose a wind
12 energy project?

13 MR. STOCK: So much money? How much
14 money?

15 MS. JODKA: I don't know how much money
16 because I haven't asked for legal bills, nor
17 would I.

18 MR. STOCK: What does so much mean?

19 MS. JODKA: Well, you're a very talented
20 lawyer, so you command very expensive rates and
21 you've had to put a lot of time and effort into
22 this case. So an entity that would be able to
23 pay for your level of expertise at your high
24 level rates, for as much work as you've had to

1 put into this case.

2 MR. STOCK: Can I get that printed out?

3 I want to put that on my wall.

4 He knows nothing about legal fees.

5 There's no claim for legal fees in this case.

6 You're not entitled to find out what legal fees
7 are.

8 Answer if you can.

9 A. No, I do not know how much money's been
10 spent on legal fees.

11 Q. And the motivation for opposing the
12 project by the group that is paying your legal
13 fees, correct?

14 A. Right.

15 Q. Thank you.

16 Have you had time or have you taken the
17 opportunity to read any of the materials or
18 familiarize yourself with any of the good things
19 about the project?

20 MR. STOCK: Objection.

21 A. Yeah, you know, producing electricity, I
22 guess, is a good thing. If they put them on
23 land, I'd probably sign up to buy some of the
24 power. But I'm opposed to being put in

1 freshwater and in Lake Erie.

2 Q. Have you went to any of the public
3 meetings on this?

4 A. I went to one.

5 Q. Which one?

6 A. It was in Cuyahoga -- no, it was at the
7 courthouse, I think. I forget. It was downtown
8 Cleveland. And it was probably about five
9 months ago. We signed up to speak, but the
10 electrical workers had signed prior to us and
11 they had probably 20, 30 people, maybe more. So
12 it was going to take all night to speak. So we
13 stayed for a while and then left.

14 Q. How do you know the other intervenors?

15 A. We're neighbors.

16 Q. They don't live in -- other than Sue, I
17 guess, who lives in the other building, are you
18 neighbors -- they live in the same condo
19 buildings?

20 A. Greg Binford lives in my building,
21 building 2, and Lee Blazey lives about 100 yards
22 away.

23 Q. Does he live in a home?

24 A. It's an attached condo. It's one level.

1 Q. You understand that they're no longer
2 participating as intervenors in this case?

3 A. Yes.

4 Q. Have they indicated to you why?

5 A. No.

6 Q. Whenever you went to the Cuyahoga
7 meeting, or in any of your other -- as you
8 familiarized yourself with the project, have you
9 seen any visuals of what the project will look
10 like, you know, from the land?

11 A. From the land?

12 Q. Uh-huh.

13 A. Only what was in this report that you
14 gave us. I think at one of the meetings
15 somebody spoke up and said it would be virtually
16 invisible from the shoreline.

17 Q. Do you have any reason to disagree with
18 that assessment of the --

19 A. Well, you know, yes. I mean, I'll take
20 his word for it, but from my unit, I can see a
21 good 15, 20 miles. We look at -- we can see the
22 power plant in Avon, Ohio, which has got to be
23 at least 20 miles. And during the winter, I can
24 see the steam coming up out of the Davis-Besse

1 nuclear plant in -- by Toledo, and I can see
2 Detroit Edison steam coming up from Detroit.
3 That's 100 miles.

4 Q. So you can see a power plant. What kind
5 of energy is it producing?

6 A. What type of energy?

7 Q. Yeah. What is the power plant
8 producing?

9 A. It produces electricity.

10 Q. And David-Besse, what does that produce?

11 A. Electricity.

12 MR. STOCK: It's Davis.

13 A. It's a nuclear power plant.

14 Q. And Detroit Edison?

15 A. That's an electrical generation.

16 Q. So you have no issue seeing a windmill
17 that you said is basically an advertisement for
18 Lincoln Electric, a power plant, a nuclear power
19 plant, an electrical, Detroit Edison from your
20 window, but you have a problem with six wind
21 turbines in the lake?

22 A. Those aren't in the lake. They're on
23 land.

24 Q. Do you have a problem seeing ships,

1 boats, boaters, or anything else in the lake?

2 A. No.

3 Q. Why?

4 A. You're right, it's used for commerce, to
5 move cement, stones, iron ore. There's
6 recreational boating. So yeah, some of it's
7 commercial, some of it's recreational.

8 Q. Do you have a --

9 A. I don't have a problem with them.

10 Q. Why's that?

11 A. I actually think the boats are
12 attractive, and it saves a lot of energy versus
13 moving it on rail or trucks.

14 Q. What other things do you see in the lake
15 that you don't have an issue with? How about
16 like the commercial boats that -- how about the
17 booze cruises?

18 A. It doesn't bother me.

19 Q. You don't have a problem with oil
20 tankers using the lake?

21 A. No, I don't.

22 Q. Coal barges using the lake?

23 A. No.

24 Q. Why?

1 A. I just don't have a problem with them.
2 They're not stationary.

3 Q. You don't think they'll spill?

4 A. A coal barge?

5 Q. Yeah. Can't it?

6 A. Yeah. I mean, I guess you could throw a
7 coal barge and all the coal would end up at the
8 bottom of the lake.

9 Q. We know that there could be oil spills?

10 A. Yes.

11 Q. Can you tell me about some of the
12 remediation efforts that have had to take place
13 in the lake recently to, I guess, clean it? I
14 guess it's a lot cleaner now than it used to be.

15 A. It's a lot cleaner. Basically, they
16 made sure any industrial discharge goes through
17 the water treatment plant and that's supervised
18 by the EPA. And so typically, any water that
19 gets discharged into Lake Erie or into the
20 Cuyahoga River has to be cleaner than when they
21 took the water out. So it has to be returned
22 cleaner than the -- before they brought it in
23 for use.

24 MS. JODKA: Did somebody just jump on

1 the call?

2 John, I don't know if the two little
3 beeps means they're on or off.

4 MR. STOCK: We're proceeding.

5 MS. JODKA: Okay. I just wanted to make
6 sure we have proper roll call of who's here.

7 BY MS. JODKA:

8 Q. So it's your understanding that there
9 are organizations and entities that are
10 regulating what goes on in the lake?

11 A. Yes.

12 Q. Do you have any concerns about any of
13 those entities that regulate what goes on in the
14 lake?

15 A. No. Most of it's the EPA and they seem
16 to be doing a good job, because the lake is
17 substantially cleaner. I drink that water.
18 When I was going out boating, I just drank right
19 out of the lake, and I wouldn't have done that
20 20 years ago.

21 Q. Does the current administration's
22 deregulation of a lot of the protections with
23 the EPA concern you?

24 MR. STOCK: You mean -- what do you mean

1 by the current administration?

2 BY MS. JODKA:

3 Q. The current Presidential administration,
4 the deregulation of some of the regulations in
5 the EPA. Does that concern you?

6 A. I think you can overregulate.

7 Q. Okay.

8 A. So if they're turning some of that -- if
9 it was overregulated, then reversing some of
10 that is probably a good thing.

11 Q. Do you think that the quality of water
12 issues that the EPA regulates has been
13 overregulated?

14 A. No.

15 Q. What is your experience with existing
16 wind farms?

17 A. I've seen them. I've been at refineries
18 where they have wind farms attached to the
19 refineries to generate electricity to supplement
20 electrical needs of the refinery.

21 Q. What's your -- sorry. Go ahead.

22 A. So I've seen a number of windmills
23 land-based.

24 Q. What's your understanding of the type of

1 energy that's used for electricity that's
2 created from windmills, say, as opposed to other
3 sources?

4 A. It's intermittent. That's an issue.

5 Q. How so?

6 A. Well, if there's no wind, then there's
7 no electricity. So it's hard to depend on it if
8 you're running a hospital or a refinery where
9 you have to have constant electricity. One of
10 the downfalls of wind energy and solar energy is
11 that if the sun's not out and the wind's not
12 blowing, there's no electricity being generated.

13 Q. So you see it as a supplemental source?

14 A. Yes.

15 Q. Okay. In terms of pollution levels,
16 what's your opinion on the pollution levels with
17 respect to wind energy created from windmills?

18 MR. STOCK: Objection.

19 Go ahead and answer to the extent you
20 can as a lay witness.

21 A. Can you repeat that?

22 Q. What's your understanding of the
23 pollution level of that type of energy?

24 MR. STOCK: Objection.

1 Go ahead and answer.

2 A. During its generation, it basically
3 doesn't pollute, as far as I know.

4 Q. Okay.

5 A. When you have to make a windmill, you
6 have to make it using steel. The blades come
7 from the petroleum industry. So you're
8 producing -- you're producing some pollution in
9 the manufacture of the windmill, but the
10 windmill, when it's operating after it's
11 constructed, to my knowledge, doesn't emit any
12 off-gases.

13 Q. Okay. Are you aware of any type of
14 pollution with the windmill sitting in Lake
15 Erie?

16 A. Only as I stated earlier, God forbid the
17 turbine catches on fire and some of the turbine
18 oil would spill into the lake, then that's the
19 only pollution, other than sight pollution.
20 Some people don't like looking at them. But as
21 far as any type of pollution, the only thing I
22 could think is if you have turbine oil.

23 Q. Talk to me about -- what is your
24 understanding of the type of pollution that is

1 emitted from coal-generated electricity?

2 A. What type of pollution?

3 Q. Uh-huh.

4 A. Well, you have CO2. You do have the
5 possibility of heavy metals, arsenic, being
6 emitted during burning process. You have fly
7 ash. That either gets recycled into cement or
8 disposed of.

9 Q. What's the implications of CO2
10 pollution?

11 MR. STOCK: Objection.

12 A. I'm not a scientist.

13 Q. Just whatever you know.

14 A. But it's a greenhouse gas and so it
15 produces CO2.

16 Q. What does that do?

17 MR. STOCK: Objection.

18 A. Potentially, I guess, it could cause
19 global warming.

20 Q. What are your concerns with global
21 warming?

22 A. I'm not all that concerned with it.

23 Q. Why's that?

24 A. I believe the earth is constantly

1 changing. I think, from what I've read, you
2 know, back in the Jurassic period, the CO2
3 levels were much, much higher than they are now.
4 So without CO2, everything dies. So too much of
5 it is bad, but the -- if we would suddenly not
6 have CO2 on this earth, everything would be
7 dead.

8 Q. When you talk about the Jurassic era,
9 indeed everything did die, correct?

10 A. Well, they had pretty big dinosaurs.

11 Q. What about the implications of arsenic
12 pollution?

13 A. Arsenic is poison, so there's nothing
14 good about it.

15 Q. Can it affect drinking water?

16 A. Yes.

17 Q. What can that then do?

18 A. If you ingested enough of it, it would
19 probably kill you.

20 Q. What about fly ash? You mentioned that.

21 A. Fly ash is the remnants of what's left
22 after burning coal, and I know it can be
23 recycled into making cement, and other than
24 that, you have to dispose of it, maybe taking it

1 back to the coal mine and putting it back.

2 Q. Have you ever intervened in anything
3 like -- anything before?

4 A. No.

5 Q. Have you ever protested anything before?

6 A. When I was in college.

7 Q. Okay. What did you protest in college?

8 A. The Vietnam War.

9 Q. Okay. So you've never -- other than
10 your participation in this, you've never
11 challenged a wind farm?

12 A. No. I'm in the energy business, and I
13 get attacked a lot because of the nature of my
14 business. So I'm sensitive about that. I only
15 try to pick and choose --

16 MR. STOCK: Just answer the question.

17 A. Yeah.

18 Q. Did you review the application for the
19 Ohio Power Siting Board --

20 A. No.

21 Q. -- from Icebreaker?

22 A. No.

23 Q. Did you review the draft environmental
24 assessment?

1 A. No.

2 Q. Any other documents in this project,
3 other than the ones that I gave you today?

4 A. No.

5 Q. This group that you are kind of joined
6 with for purposes of your legal representation,
7 are they providing you any other type -- any
8 type of incentive or monetary compensation for
9 your participation?

10 A. Nothing.

11 Q. Did you drive down today as well?

12 A. Drove down yesterday. We drove
13 together.

14 Q. And then you stayed overnight?

15 A. Yes.

16 Q. And you'll be paying for your hotel room
17 and your gas by yourself, or will you be
18 submitting that for reimbursement?

19 A. Paid for it by myself.

20 Q. Okay. I just want to make sure we went
21 through all of your issues, because there are
22 numerous issues that are cited in your
23 intervenor petition as things that are for
24 opposition of the project. I want to talk about

1 what your personal ones are, and I want to make
2 sure that we have covered them. We've covered a
3 number of them with Sue, and I want to make sure
4 we've covered everything that's an issue for you
5 as well. Have we, or do you have some more
6 issues that you would like to cover?

7 A. As far as I know, we've covered them.

8 Q. Because with her she talked about birds
9 and bats. Is that a concern of yours?

10 A. I'm concerned about birds and bats,
11 without a doubt, and I would assume that before
12 anybody would be allowed to build something that
13 they would have those answers.

14 Q. Okay. Do you understand if Icebreaker
15 is seeking those answers at this time?

16 A. I've been told that they're going to
17 conduct a study.

18 Q. Okay. There was -- before you there's a
19 staff report, and we had some conversation about
20 the staff report. And I'm assuming, prior to
21 today, that you had not seen the staff report,
22 correct?

23 A. That's correct.

24 Q. And you hadn't had a chance to look at

1 the conditions that have been designated by the
2 staff in the staff report, correct?

3 A. I reviewed them during our little break.

4 Q. Okay. Icebreaker submitted some
5 redlines to some of the stipulations in this
6 case earlier this week. Have those been shared
7 with you by your counsel?

8 A. No.

9 Q. If you could make your own conditions
10 for this project for it to get greenlit, what
11 would they be?

12 MR. STOCK: Objection.

13 Q. From your perspective.

14 A. Well, as you know, I'm opposed to
15 putting anything in Lake Erie. So in a perfect
16 world for me, they wouldn't go up in the lake.
17 They go up on land, no problem. So it's almost
18 a nonstarter, you know, for me because I just
19 don't want anything to be put in Lake Erie.

20 Q. I guess I just don't understand your
21 issues with them being on land versus in the
22 water.

23 MR. STOCK: Objection. You've asked him
24 that and he answered why he doesn't want them in

1 the water.

2 BY MS. JODKA:

3 Q. What's your understanding of the issues
4 with the land-based wind farms?

5 A. Issues? Other than you have to keep
6 them far enough away from human beings because
7 from time to time the blades have the
8 possibility of coming off, and so you have to be
9 far enough from humans for safety.

10 Q. And they take up part of our land,
11 correct?

12 A. Correct.

13 Q. And there's nothing else going in Lake
14 Erie as far as you understand, correct?

15 MR. STOCK: Objection.

16 A. Nothing else going in?

17 Q. There's nothing else that's been
18 proposed --

19 A. That's being built?

20 Q. Yeah. Are you aware of anything?

21 A. I'm not aware of anything.

22 Q. In your petition to intervene, you
23 indicated that you got involved because you
24 thought that there were more than six wind

1 turbines going into the lake, correct?

2 MR. STOCK: Objection.

3 A. No. I mean, I was opposed to the six.
4 I'm opposed to even one. So I was shocked when
5 I heard it could be a thousand or 1,500. I
6 mean, that really shocked me. But I'm opposed
7 to even one.

8 Q. What if this was so far out on the lake,
9 say -- you said you can see, what, how many
10 miles did you say you can see?

11 A. I can see the steam coming out of the
12 City of Detroit, and that's 100-some miles away.

13 Q. Okay. What if this was so far out that
14 there was no way that you could ever see
15 these --

16 A. I'm not that concerned about the sight
17 pollution. Like I say, some people look at a
18 windmill and think there's sight pollution
19 there. They're attractive or ugly. My point is
20 I want to try to keep Lake Erie pristine, and so
21 I don't want them anywhere in Lake Erie, even if
22 I can't see them.

23 Q. Okay. Just nothing in the lake?

24 A. Correct.

1 Q. No oil rigs?

2 A. No oil rigs.

3 Q. No nothing?

4 A. Nothing industrial.

5 Q. Okay. That's your main point?

6 A. Yeah. Yes.

7 Q. Gotcha.

8 Have you ever opposed any other type of
9 water-based projects before?

10 A. No.

11 Q. Have you ever had a chance to visit a
12 lake, ocean, or other body of water wind farm?

13 A. Wind farm?

14 Q. Yeah.

15 A. Yes. I went up to Buffalo to see the
16 ones that the steel mill built at the very end
17 of Lake Erie, and I've been to oil refineries
18 where they have them.

19 Q. So there's a wind farm, like, by Buffalo
20 where there's wind -- there's windmills in --

21 A. Right at the end of Lake Erie.

22 Q. Are they in it?

23 A. No.

24 Q. So these aren't water-based?

1 A. These are not water-based.

2 Q. They're just close?

3 A. They're close, right on the shore.

4 Q. Have you ever visited any that actually
5 sit in the water?

6 A. No.

7 Q. Are you opposed to those types of
8 projects?

9 A. No.

10 Q. Why's that?

11 MR. STOCK: "Those types of projects" --

12 Q. Of a wind --

13 A. Of land-based windmills.

14 Q. Water-based windmills, not in Lake Erie,
15 so if they were in another body of water?

16 A. If they were in saltwater, then I most
17 likely would not be opposed to them.

18 Q. Why's that?

19 A. We don't drink the water. We don't
20 drink saltwater. And Lake Erie is special.
21 It's the largest body of freshwater in the
22 world. It's a real gift.

23 Q. But you don't have an issue with, like,
24 boater enjoyment, fishermen enjoyment --

1 A. Right.

2 Q. -- with respect to salt-based windmills,
3 correct?

4 A. Correct.

5 Q. In this case you've identified a couple
6 of experts that we have already talked about in
7 Sue's deposition. Did you have any
8 participation or input into who you would be
9 hiring as your experts?

10 A. Zero.

11 Q. Zero. So have you ever met Richard
12 Brown, your expert?

13 A. (Shakes head.)

14 MR. STOCK: She can't take a nod.

15 A. No. I'm sorry.

16 Q. Verbal responses. Sorry.

17 You've never met Henry Streby?

18 A. No.

19 Q. Have you ever talked to them?

20 A. Never.

21 Q. Do you know what their -- the scope of
22 their testimony has been, just subject matter?

23 A. I think that they're economics and
24 environmental.

1 Q. Do you know who's paying their legal
2 expenses?

3 A. No, I do not.

4 Q. Do you care?

5 MR. STOCK: Objection. Did you say
6 legal expenses?

7 MS. JODKA: Yes. Their expenses.

8 MR. STOCK: They're not legal expenses,
9 right?

10 MS. JODKA: I guess we will clarify.

11 BY MS. JODKA:

12 Q. I understand that when experts provide
13 testimony that they have expert witness fees.
14 Do you understand that?

15 A. I understand it. I don't know if
16 they're being paid or not, and if they are being
17 paid, I don't know who's paying them.

18 Q. Do you know if it's the group that you
19 are working with with respect to this
20 intervening on this project?

21 A. I don't know.

22 Q. Could it be?

23 A. It could be.

24 Q. Would you have reason to believe that it

1 would be anyone else but --

2 A. Unless they're volunteering their time.
3 You know, they may have an interest similar to
4 mine, that we're not doing it to make money. So
5 they're either being paid to do it for their
6 expertise or they want to supply their expertise
7 free.

8 Q. And we put into evidence, which is in
9 front of you, it's Dempsey Exhibit 3. And
10 that's right in front of you. If you could take
11 a look that for me and tell me if you can
12 recognize this document, or at least identify
13 what you believe this document to be?

14 MR. STOCK: Objection. If you recognize
15 it, testify to that. If you don't recognize it,
16 don't guess as to what it is.

17 Q. Let's look at the first page.

18 A. Okay.

19 Q. What do you understand this document to
20 be, if you know?

21 A. It looks to me, from reading this, that
22 they're being retained to provide legal services
23 and expert witness.

24 Q. Who does it indicate -- and this would

1 be for your expert witness, Robert Brown; is
2 that correct? Richard Brown, rather.

3 A. Richard Brown. Yes.

4 Q. Who are the fees in this being paid by?

5 A. It says here Murray Energy.

6 Q. And you testified you don't know what
7 Murray Energy is, correct?

8 A. I've heard of the name, but that's all
9 I've ever heard of.

10 Q. Can you look on the second page. If you
11 look in the corner, it's BR16. Can you
12 indicate -- can you tell me what this indicates
13 that a conflict of interest check -- which
14 parties a conflict of interest check was
15 performed prior to this engagement?

16 A. I don't know.

17 Q. You can read those bullet points.

18 A. Okay.

19 Q. LEEDCo, Icebreaker Wind, Fred Olsen
20 Renewables, and Lake Energy Erie Development are
21 listed as four of the entities that a conflict
22 check was performed on prior to taking this
23 engagement, correct?

24 A. Yes.

1 Q. What would be your opinion as to why
2 Murray Energy, a coal company, would pay your
3 expert legal fees in this case?

4 MR. STOCK: Objection.
5 Go ahead and answer.

6 A. Okay. I assume that they're against the
7 windmills.

8 Q. Why's that?

9 A. I don't know.

10 Q. Why would a coal company be against
11 windmills?

12 A. I can't answer for them. I don't know.

13 Q. You testified earlier, though, that with
14 oil out of the game, in terms of electrical
15 energy, that now the sources are coal and wind,
16 correct?

17 A. Coal, natural gas, wind, solar.

18 Q. Okay.

19 A. Hydro.

20 Q. Do you think that a coal company's
21 interest aligns with your interest for the
22 reasons that you went through that you want to
23 keep this project out of Lake Erie?

24 MR. STOCK: Objection.

1 If you have any basis to know.

2 A. I don't know.

3 Q. Do you have any reason to believe that
4 Murray Energy's interest is because it doesn't
5 want something sitting in Lake Erie?

6 MR. STOCK: Objection.

7 If you have any basis to know.

8 A. I don't know. You'd have to ask them.

9 MS. PIRIK: I just want to clarify one
10 thing. I just want to be sure that when you
11 state an objection that you're not actually
12 coaching the witness.

13 MR. STOCK: You're not questioning, so
14 I don't want to hear objections from you.

15 MS. JODKA: Mr. Stock, stop coaching the
16 witness.

17 MR. STOCK: Don't tell me what to do.

18 MS. PIRIK: Stop coaching the witness.

19 MR. STOCK: If you want to be a
20 litigator, sit in the chair that's asking
21 questions.

22 MS. JODKA: If you want to be a
23 litigator, you'll stop coaching the witness.

24 MR. STOCK: I'm not going to take

1 instructions from you. I don't work for you.

2 MS. PIRIK: Yeah. You work for Murray
3 Energy. I know.

4 MR. STOCK: Are you testifying now?

5 MS. PIRIK: Thank you, Mr. Stock. We'll
6 move forward.

7 MR. STOCK: Are you testifying now?

8 MS. PIRIK: We'll move forward.

9 BY MS. JODKA:

10 Q. Do you currently have any investments or
11 business interest with any energy companies of
12 any sort, coal, natural gas, other than your own
13 company in crude oil?

14 A. No, we don't. I don't. I own stocks
15 and bonds, mutual funds, and I'm sure that
16 there's probably a coal company or electrical
17 company in those group of funds, but I have no
18 personal investment.

19 Q. You don't really know what your
20 portfolio looks like?

21 A. Right.

22 Q. Do you understand that Murray Energy is
23 not an intervenor in and of itself in this case?

24 A. I don't know.

1 Q. Okay. Do you realize that you and Sue
2 are the only two intervenors left in this case?

3 A. No.

4 MR. STOCK: And it's not true.

5 MS. JODKA: Then that's my mistake. I
6 didn't know that.

7 MR. STOCK: Don't we have some other
8 intervenors represented at the table here?

9 MS. JODKA: I mean of the residents.
10 Should have been clear on the residents.

11 BY MS. JODKA:

12 Q. Do you understand that you're the last
13 two residents?

14 A. Yes.

15 Q. Are you aware that Murray Energy has
16 funded other projects -- has funded other
17 attempts to kill other renewable energy
18 projects?

19 MR. STOCK: Objection.

20 Q. If you know.

21 A. Nothing that I know of.

22 Q. What would be your opinion if you
23 learned that Murray Energy, a coal company, was
24 paying for your legal services?

1 MR. STOCK: Objection.

2 Q. And your expert witness fees to --

3 A. I --

4 Q. -- stop this project because wind
5 competes with oil?

6 MR. STOCK: Objection.

7 Q. Or with coal?

8 MR. STOCK: Objection.

9 Go ahead and answer if you can.

10 A. In my opinion, both sources are good.
11 Coal is a good source of energy. It's cheap.
12 And wind is a very good source of energy also.

13 Q. Do you believe in free competition?

14 MR. STOCK: Objection.

15 Go ahead and answer.

16 A. I believe in free competition, or open
17 and fair competition.

18 Q. Open and fair, free enterprise.

19 A. Yes, I do.

20 Q. You testified earlier that wind
21 energy -- we're just on the cusp of it, correct?

22 A. It's up and coming. I assume they're
23 going to have improvements in turbine
24 technology, improvements in wind blade

1 technology, they become more efficient.

2 Q. And because it doesn't have any
3 pollution, any emissions of pollution, it's a
4 good thing for the environment?

5 MR. STOCK: Objection.

6 Q. Would you agree with me on that?

7 MR. STOCK: Specifically cited anywhere?

8 MS. JODKA: He just testified that it
9 doesn't have any type of emissions from it,
10 other than the emissions in actually using the
11 steel and the other types of --

12 MR. STOCK: Would you read back her
13 question, please.

14 (Record read as requested.)

15 MR. STOCK: A good thing, again,
16 anywhere? Are you talking land-based or
17 lake-based?

18 MS. JODKA: Land-based.

19 MR. STOCK: Okay. We're talking
20 land-based.

21 A. There's no pollution, as far as I know,
22 while it's generating the power. The pollution
23 incurs during the manufacturing.

24 Q. And that would be for water-based

1 production as well?

2 A. Yes.

3 Q. Sue testified a little bit about future
4 generations. You have a niece, you have family
5 younger, that are going to be around for future
6 generations. What type of energy sources do you
7 see those generations having?

8 MR. STOCK: Objection.

9 Go ahead and answer if you can.

10 A. You're going to have solar, where solar
11 makes sense. You're going to have wind, where
12 wind makes sense. You're going to have coal for
13 the base load. And you're going to have natural
14 gas. And I'm hoping that the new technology
15 evolves over the next few generations that we
16 can become more efficient and cheaper.

17 Q. In terms of environmental impact, let's
18 go through those four. You tell me which ones
19 are best from the environment and let's go to
20 the least. In terms of solar, wind, coal and
21 natural, which one is best for the environment?

22 A. I'd say solar.

23 Q. Okay. Then?

24 A. Then wind.

1 Q. Then?

2 A. Natural gas.

3 Q. Okay.

4 A. Coal.

5 Q. Coal would be the worst. And because of
6 all those reasons that we discussed earlier, the
7 CO2, the arsenic, the fly ash, any other reasons
8 why you put coal at the bottom of this list in
9 term of environmental impact?

10 A. It has more carbon than anything else.
11 So natural gas has less. Solar obviously has
12 none, and wind has none.

13 Q. Okay. Prior to you coming here today,
14 did you have any thoughts that your cooperation
15 in this was being paid for by the coal industry?

16 A. No.

17 Q. Does that bother you if that's true?

18 A. No. I'm not opposed to coal.

19 Q. Do you have an engagement letter or
20 representation letter with your attorney?

21 A. I don't remember.

22 Q. You don't remember if you signed a
23 document?

24 A. I think I did.

1 Q. Okay. Do you know what it said in terms
2 of your representation, the scope of it?

3 A. No.

4 Q. Do you know if any other parties were
5 listed on it, like a joint representation
6 agreement?

7 A. No.

8 Q. Do you know if Sue's name was listed on
9 it?

10 A. I don't know.

11 Q. Whenever it was brought up by the group
12 that you were getting this attorney, how is
13 it -- how were you informed you had no legal
14 fees?

15 A. I think, as I recall -- and I could be
16 wrong -- that I asked, you know, how much it's
17 going to cost us to join the group, and I was
18 told that there was no cost.

19 Q. Were you surprised?

20 A. Not really. I thought there's a lot of
21 people -- I mean not a lot -- there are people
22 out there that are opposed to putting anything
23 in Lake Erie, and I assume maybe it was some pro
24 bono work or whatever. No, I wasn't surprised.

1 It's a touchy subject.

2 Q. Are you aware of -- through your own --
3 Sue testified, for example, she has friends that
4 talked about opposition, other than you and the
5 other two now former intervenors. Are you aware
6 of other opposition, other Bratenahl residents?

7 A. No.

8 MS. JODKA: Can we just take a brief
9 minute, make sure I've got everything and get
10 ready to close up?

11 MR. STOCK: Yeah.

12 (Recess.)

13 BY MS. JODKA:

14 Q. We're back on the record. I just wanted
15 to remind you that you're still sworn in.

16 Are you familiar with the toxic algae
17 issue in Lake Erie?

18 A. Only what I read in the newspaper.

19 Q. What did you read?

20 A. That there are two types of algae, one
21 is basically not toxic and one is. That's all I
22 know.

23 Q. Do you know the scope of the impact
24 currently in Lake Erie?

1 A. No.

2 Q. Of the toxic algae?

3 A. No. We see algae from our property
4 because we're right on the lake, and so during
5 the summer we see algae.

6 Q. Do you understand the effects on the
7 drinking water of the toxic algae?

8 A. No.

9 Q. Have you taken any type of steps to do
10 any research to determine the --

11 A. No.

12 Q. -- effects of toxic algae on the
13 drinking water of Lake Erie?

14 A. No.

15 MS. JODKA: That's all I have for you.
16 Thank you. Do you have anything?

17 MS. LEPPLA: I just have a couple.

18 CROSS- EXAMINATION

19 BY MS. LEPPLA:

20 Q. I know we talked about whether you've
21 been a party to a lawsuit. I want to ask you
22 some specific questions to make sure I
23 understand. If you don't understand me, please
24 stop me.

1 Have you ever intervened in an Ohio
2 Power Siting Board case prior to this one?

3 A. No.

4 Q. Have you ever spoken out against a wind
5 farm at a public hearing?

6 A. No.

7 Q. Have you ever submitted written comments
8 related to a wind farm on a public docket?

9 A. No.

10 Q. So you didn't submit comments previously
11 in this case at any point?

12 A. No.

13 Q. Have you ever signed an anti-wind
14 petition?

15 A. No.

16 Q. Have you ever attended a meeting for
17 anti-wind advocates?

18 A. No.

19 Q. Have you heard of the Seneca County
20 Anti-Wind Union?

21 A. No.

22 Q. So you're not a member of any
23 organizations related to wind projects?

24 A. No.

1 Q. And you mentioned that your chief
2 concern about Icebreaker is the drinking water
3 mainly, correct?

4 MR. STOCK: Objection. I don't think
5 that accurately encapsulates his testimony.

6 MS. LEPPLA: He can answer.

7 Q. That was my understanding. If it's not
8 correct, please let me know.

9 A. That's part of it. But my main issue is
10 I just do not want anything in Lake Erie.

11 Q. Okay. And my understanding was just --
12 you didn't want anything in Lake Erie because of
13 the drinking water issue. I understand. And
14 you said you're not a member of any birding
15 organizations, correct?

16 A. Correct.

17 Q. And have you ever visited a coal plant?

18 A. Yes.

19 Q. Where did you visit a coal plant?

20 A. It was back in the '70s. We were in
21 Kentucky and somebody offered to give us a ride
22 in one of the coal machines, so they took us
23 into the mine, brought us out. That was it.

24 Q. You went into the mines?

1 A. Uh- huh.

2 Q. And do you know where that was located
3 in Kentucky?

4 A. Someplace in Kentucky. It was back in
5 the '70s. So I really don't recall.

6 Q. So you don't know who owned that coal
7 plant?

8 A. No.

9 Q. And why were you down in Kentucky at
10 that time?

11 A. We were on vacation.

12 Q. With your family?

13 A. No.

14 Q. Who were you with?

15 A. I was with a girlfriend.

16 Q. Sorry. Got it. Okay.

17 And you said you're familiar with
18 climate change?

19 A. Yes.

20 Q. And you're aware that climate change is
21 caused by carbon dioxide emissions?

22 A. That's one of the factors.

23 Q. And you know -- I believe you said this
24 earlier, but you know that wind energy produces

1 zero carbon emissions, right?

2 A. Yes.

3 Q. I'm going to ask you some similar
4 questions as Ms. Dempsey. Did you know that
5 Ohio is ranked 7th in the United States for
6 carbon emissions, according to the U.S. Energy
7 Information Administration?

8 A. No.

9 MR. STOCK: Can I have a continuing
10 objection?

11 MS. LEPPLA: Sure.

12 MR. STOCK: All right.

13 A. No. I was not aware of that.

14 Q. And you said that, again, one of your
15 concerns about this project is the drinking
16 water and the fact these would be sited in
17 freshwater, right?

18 A. Correct.

19 Q. And you're aware that coal plants
20 release arsenic, correct?

21 A. Yes.

22 Q. And you are aware that that can get into
23 drinking water?

24 A. Yes.

1 Q. And have you heard that studies show
2 that arsenic in drinking water is related to 1
3 out of 100 people getting cancer?

4 A. I was not aware of that.

5 Q. You were asked --

6 MR. STOCK: And you still aren't. Go
7 ahead. The answer is yes or no.

8 MS. LEPPLA: Mr. Stock, I'd appreciate
9 it, but the commentary isn't necessary. Thank
10 you. If you have an objection --

11 MR. STOCK: I'll practice law in a
12 manner --

13 MS. LEPPLA: If you have an objection,
14 that's fine. But if you're commenting on the
15 witness's answer, then I would appreciate it if
16 you would withhold.

17 MR. STOCK: And I'll practice law as I
18 seek to practice it.

19 MS. LEPPLA: And you'll also comment
20 your objections. So moving on.

21 BY MS. LEPPLA:

22 Q. You were asked earlier about coal barges
23 on Lake Erie, correct?

24 A. Yes.

1 Q. I just wanted to ask you if you were
2 familiar with the coal piles down in The Flats
3 in Cleveland?

4 A. Yes.

5 Q. And they're right next to the water,
6 correct?

7 A. Yes.

8 Q. And that could get into the water,
9 correct?

10 MR. STOCK: Objection.

11 A. I think that unit shut down. In fact,
12 I'm sure it is.

13 Q. I'm actually talking about the piles of
14 coal that are down in The Flats.

15 A. I haven't been down in that area for
16 years, but I remember piles of coal down there.

17 Q. I think you said earlier you're familiar
18 with the Davis-Besse nuclear plant?

19 A. Yes.

20 Q. Are you also familiar with the Perry
21 nuclear plant?

22 A. Yes.

23 Q. And that's really close to the lake,
24 correct, in Perry?

1 A. Yes.

2 Q. And you're aware that that -- both Perry
3 and Davis-Besse have repeatedly leaked reactive
4 cooling water?

5 A. I don't know that.

6 Q. Are you involved in any organizations
7 dedicated to protecting drinking water?

8 A. No.

9 Q. And then I'll just ask you a couple
10 questions. I think it was already covered with
11 the other Bratenahl intervenors. But did you
12 know the Cuyahoga County residents that also
13 intervened in this case?

14 A. I've read their names, but I don't know
15 them.

16 Q. So you've never met Vicci Weeks in
17 person?

18 A. Never.

19 Q. Have you ever spoken with her on the
20 phone?

21 A. No.

22 Q. Have you ever met Karen Good-Seward or
23 Steven Seward in person?

24 A. No.

1 Q. Have you ever spoken with either of them
2 on the phone?

3 A. No.

4 MS. LEPPLA: I think that's all my
5 questions. Thank you.

6 MS. JODKA: We will leave this one open
7 as we're still awaiting some discovery.

8 Does anyone on the phone have any
9 questions?

10 I think that is it.

11 MR. STOCK: Wait. We're still on the
12 record. What discovery are you awaiting?

13 MS. JODKA: We're still waiting on our
14 second request for production of documents or
15 second request that we have outstanding.

16 MR. STOCK: And you didn't cover those
17 in this deposition?

18 MS. JODKA: I covered them in Sue's.

19 MR. STOCK: Well, why don't we go over
20 them here?

21 MS. JODKA: Okay.

22 FURTHER RE-CROSS-EXAMINATION

23 BY MS. JODKA:

24 Q. Are you aware that we have a second

1 request for production in this case?

2 A. No.

3 Q. So you're not aware if you have produced
4 all the responsive information, correct?

5 A. Correct.

6 MS. JODKA: Then I will leave this
7 deposition awaiting for that discovery to
8 conclude.

9 MR. STOCK: Well, we're going to take a
10 break. I'm going to go get the discovery and
11 we'll go through it. We're not leaving this
12 deposition open. Let's take a break.

13 (Recess.)

14 --O--

15 (Deposition Exhibit 4 marked.)

16 --O--

17 DIRECT EXAMINATION

18 BY MR. STOCK:

19 Q. Mr. Maloney, I've handed you what I've
20 had marked as Maloney Deposition Exhibit 4. It
21 reads at the top, Icebreaker Windpower, Inc.,
22 Second Set of Interrogatories and Request for
23 Production of Documents to Intervenor Robert M.
24 Maloney. Do you see that?

1 A. Yes.

2 Q. All right. Let's go to page 6. I want
3 to have you answer these interrogatories under
4 oath in this transcript.

5 Interrogatory number 1, Please state
6 whether you purchase your transmission and
7 distribution electric service from Cleveland
8 Public Power or Cleveland Electric Illuminating
9 for your residence in Bratenahl, Ohio.

10 A. Our building, we don't buy anything
11 direct. I asked our manager of our building,
12 and she told me that we get the service from
13 Cleveland Electric Illuminating. The bill comes
14 in, they divide the bill up by number of square
15 footage, based on your height and how many
16 square feet you have, and it's broken out that
17 way.

18 Q. Number 2, Please state whether you
19 receive and pay for your electric service from
20 the Cleveland Electric Illuminating Company,
21 Cleveland Public Power, and/or a competitive
22 retail electric service producer for your
23 residence in Bratenahl, Ohio.

24 Would you please answer that

1 interrogatory?

2 A. We get our power delivered to us by
3 Cleveland Electric Illuminating, and my
4 understanding is this year we have -- the
5 provider of the electricity itself is a company
6 called Mid-America Energy.

7 Q. Okay.

8 A. But it's delivered to our building by
9 Cleveland Electric Illuminating.

10 Q. Okay. Interrogatory number 3, Please
11 state whether you have an ownership interest in
12 any residence or business that purchases
13 electric service from Cleveland Public Power.

14 A. I do not.

15 Q. Okay. Number 4, Please state whether,
16 as proposed in the application pending before
17 the Ohio Power Siting Board, you will receive
18 your electric service from any electric service
19 provider that has entered into a power purchase
20 agreement with Icebreaker.

21 A. I have no knowledge of that.

22 Q. Okay. Please list all entities that you
23 have provided -- that have provided electric
24 service to your residence in Bratenahl, Ohio in

1 the past five years.

2 A. Again, it's delivered by Cleveland
3 Electric Illuminating. I'd have to go back and
4 ask them if there have been other providers of
5 the electricity, but the -- who delivers it is
6 Cleveland Electric Illuminating.

7 Q. Have you lived in your current residence
8 at -- is it called Bratenahl 2?

9 A. Yes.

10 Q. The condo tower, have you lived there
11 for the past five years?

12 A. Yes.

13 Q. And while you've lived there, have you
14 been direct billed for your electricity?

15 A. No.

16 Q. Okay. Number 6, Please list all
17 entities that have provided electric service to
18 any residence or business for which you have an
19 ownership interest that has purchased service
20 from Cleveland Public Power in the past five
21 years.

22 What's your answer to that?

23 A. As far as I know, the only -- our office
24 building in Cleveland, I don't know who provides

1 power to the office, so we indirectly paid
2 through our rent, and I don't know who that is,
3 if it's Cleveland Public Power or CEI, but we
4 have no ownership in the building.

5 Q. The request for production of documents,
6 Please produce all electric billing statements
7 for your residence in Bratenahl, Ohio for the
8 past two years.

9 Have you received electric billing
10 statements directly for your residence at
11 Bratenahl 2 in the past two years?

12 A. No.

13 Q. Please produce -- this is request for
14 production number 2, Please produce all electric
15 billing statements for any residence or business
16 for which you have an ownership interest that
17 has purchased service from Cleveland Public
18 Power for the past two years.

19 Are you aware of any documents that are
20 responsive to that request?

21 A. No.

22 MR. STOCK: Okay. No further questions.

23 FURTHER RECROSS- EXAMINATION

24

1 BY MS. JODKA:

2 Q. Have you been asked to produce your
3 engagement letter in this case, as far as you
4 know, with your representation of the Benesch
5 law firm?

6 A. No.

7 Q. I'm going to ask you to produce that as
8 well.

9 MR. STOCK: And I'll decide whether or
10 not it's discoverable. Any other questions?

11 MS. JODKA: With that, I have nothing
12 further, but I will keep this open pending the
13 production of that document. And I guess there
14 are additional answers to other discovery
15 disputes that are still outstanding.

16 MR. STOCK: What are the other?

17 MS. PIRIK: Am I allowed to speak now?
18 I just want to be sure.

19 MR. STOCK: Well, you are speaking,
20 you're feeding it to her. And when you wanted
21 to speak earlier, you didn't seem to have a
22 problem with it.

23 MS. PIRIK: I didn't. I believe there
24 are still questions that are outstanding as far

1 as if there are other providers of electricity
2 in response to interrogatory number 5.

3 I believe there's additional information
4 that is required with regard to interrogatory
5 number 6 in the second set of interrogatories
6 with regard to who serves any buildings, perhaps
7 for his business. While it may be part of the
8 rent, electricity is purchased and it is sold to
9 that location, and so we need to know that
10 information.

11 And with regard to response for
12 production of documents number 1, we need to
13 have the billing statements for the electricity
14 that goes to his residence. We didn't ask for
15 anything that is directly billed to his
16 residence. We understand that it comes through
17 the association and it is split up in a fashion,
18 and we need to have those billing statements.

19 MR. STOCK: Well, let's ask about this.

20 MS. PIRIK: You can't ask about
21 something we need a request for production for.
22 We need to see hard copies.

23 MR. STOCK: No. I'm going to ask him.
24 We're still on the record.

1 REDI RECT EXAMI NATI ON

2 BY MR. STOCK:

3 Q. Do you personally possess any electric
4 billing statements for your residence?

5 A. No.

6 Q. Okay. Do you personally possess any
7 electric billing statements for any residence or
8 business for which you have an ownership
9 interest that has purchased service from
10 Cleveland Public Power for the past two years?

11 A. No.

12 MR. STOCK: All right. Thank you.

13 FURTHER RECROSS- EXAMI NATI ON

14 BY MS. JODKA:

15 Q. Do you have access to them?

16 A. Not that I know of.

17 Q. You could ask for them, correct?

18 MR. STOCK: Objection. Don't speculate.

19 Q. Would you see any reason why you
20 wouldn't be able to get -- if you're being
21 apportioned a responsibility for electricity,
22 that you wouldn't be able to ask your HOA for
23 those documents and be able to receive them?

24 A. I suppose so.

1 Q. I'd appreciate it if you did that.

2 Thank you.

3 FURTHER REDIRECT EXAMINATION

4 BY MR. STOCK:

5 Q. Follow-up question. You do not possess
6 them yourself, right?

7 A. No.

8 Q. They are not under your custody and
9 control; is that correct?

10 A. That's correct.

11 MR. STOCK: All right. No further
12 questions.

13 We'll waive.

14 - =0=-

15 Thereupon, the testimony of July 26,
16 2018, was concluded at 1:41 p.m.

17 - =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 ROBERT MALONEY 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

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Exponent

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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:

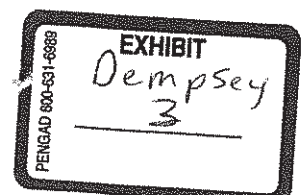
Thank you for your interest in retaining Exponent, Inc. (Exponent) to provide services related to the above-referenced project. This letter presents our current understanding of the scope of services sought and the terms of the engagement.

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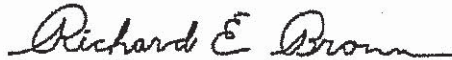
Based on the information you have provided, we have performed a conflict-of-interest check for the following parties:

- 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
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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.

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



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

BR000019

**BEFORE
THE OHIO POWER SITING BOARD**

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

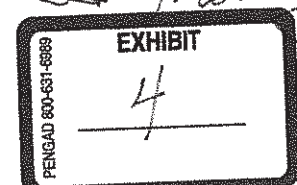
**ICEBREAKER WINDPOWER INC.'S
SECOND SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF
DOCUMENTS TO INTERVENOR ROBERT M. MALONEY**

Now comes Applicant Icebreaker Windpower, Inc. (hereinafter "Icebreaker") who, pursuant to Ohio Administrative Code (O.A.C.) 4906-2-17, 4906-2-19, and 4906-2-20 hereby submits the following Second Set of Interrogatories and Request for Production of Documents (collectively the "Discovery Requests") upon Intervenor Robert M. Maloney (hereinafter "Mr. Maloney") and requires Mr. Maloney to respond within twenty (20) days from the date of service. Documents produced in response to the Second Set of Interrogatories and Request for Production of Documents should be produced to Christine M.T. Pirik at 150 E. Gay Street, Suite 2400, Columbus, Ohio 43215.

INSTRUCTIONS

1. When production of any document in your possession is requested, such request includes documents subject to your possession, custody or control. In the event you are able to provide only part of the document(s) called for in any particular Request for Production, provide all document(s) you are able to provide and state the reason, if any, for the inability to provide the remainder.

2. These Discovery Requests are not intended to be duplicative. All requests should be responded to fully and to the extent not covered by other requests. If there are documents that are responsive to more than one request, please note and produce each such document first in



response to the request that is more specifically directed to the subject matter of the particular document.

3. Any word written in the singular shall be construed as plural or vice versa when necessary to facilitate the response to any request.

4. When asked to "Identify" a particular individual, provide their contact information including name, current or last known physical or business address, phone number, e-mail. When asked to "Identify" a particular document, provide the name of that document, writing, communication or otherwise, or a detailed description of the document, writing, communication or otherwise, so the requesting party may determine what document, writing, communication or otherwise to which you are referring.

5. In answering Discovery Requests furnish all information that is available to you, including information known to you or any of your present or former agents, officers, owners, employees, attorneys, consultants, or representatives of their own personal knowledge, as well as all information in the possession of said present or former agents, officers, owners, employees, attorneys, consultants, or representatives. If you cannot answer the Discovery Requests in full after exercising due diligence to secure the information to do so, so state, and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portions. If your answer is qualified at any particular time, set forth the terms and details of such qualifications.

DEFINITIONS

1. "You" and "Your" shall refer to Intervenor Robert M. Maloney.
2. "Writing" or "Document" shall mean all materials within the full scope of O.A.C. 4906-2-19 and, in addition, each and every document in your possession, custody, or control, whether a copy, draft, or original, wherever located, with all exhibits, attachments, and schedules, including but not limited to, the following: correspondence and drafts of correspondence; notes or summaries of conversations; electronic mail; income tax returns, forms, schedules, or worksheets; intra- and inter-office memoranda; reports; comments; worksheets; plans; minutes; notes; notices or notifications; findings; memoranda; brochures, circulars, bulletins, advertisements, sales catalogs, or literature; notes, records, summaries, or other reports of conferences, meetings, visits, surveys, discussions, inspections, examinations, reviews, or telephone conversations; purchase orders, quotations, estimates, invoices, bids, receipts, or acknowledgments, including the reverse sides of all such documents with printing, typing or writing on the reverse sides; bills of lading and other shipping documents; credit memoranda; contract or lease offers or proposals; executed or proposed agreements, contracts, franchise agreements, licenses, leases, insurance policies and riders, or options; proposals; diaries; desk calendars, appointment books, or telephone call books; property valuations or appraisals, and their updates; affidavits, depositions, transcripts and statements, or summaries or excerpts thereof; stenographic notes; books and records, including but not limited to journals, ledgers, balance sheets, profit and loss statements and notes and memoranda concerning them; financial data; stock certificates and evidence of stock ownership; newspaper or magazine articles; pamphlets, books, texts, notebooks, magazines, manuals, journals, and publications; notepads, tabulations, data compilations, calculations, or computations, schedules; drafts; charts and maps; forecasts and projections; drawings, designs, plans,

specifications, graphs, blueprints, sketches, or diagrams; orders; pleadings and court filings; checks and check stubs (front and back); records or transcripts of statements, depositions, conversations, meetings, discussions, conferences, or interviews, whether in person or by telephone or by other means; work papers; printouts or other stored information from computers or other information retention or processing systems; photographic matter or sound reproduction matter however produced, reproduced, or stored; government reports, regulations, filings, or orders; any other written, printed, typed, taped, recorded, or graphic matters; any exhibits, attachments, or schedules to or with the foregoing; any drafts of the foregoing; and any copies or duplicates of the foregoing which are different because of marginal or handwritten notations, or because of any markings thereon. "Writing" or "document" means any of the above type or description, including but not limited to the original and any copy of any of the following:

- (i) Paper: Including, but not limited to, contracts, facsimiles, computer printouts, agreements, business records, bills, receipts, tax records, employment records, work schedules, time clocks records, salary records, log reports, applications for employment, safety reports, accident reports, maintenance reports, titles, permits, licenses, audits, studies, summaries, tabulations, calculations, telephone records, notes, diaries, journals, opinions, lists, charts, graphs, meeting materials, including notes and minutes, presentations, calendars, photographs, correspondence, communications, reports, statements, agendas, estimated schedules, actual schedules, telegrams, memorandum computation sheets, computer records, brochures, invoices, forms, medical records, and handwritten notes;
- (ii) Microfilm;
- (iii) Electronic Mail: Access through text message, instant messenger; Microsoft Outlook; Microsoft Exchange; Apple Mail or other electronic mail services, e.g., gmail.com, yahoo.com, Hotmail.com, etc.; social media utility sites, e.g., Facebook, Twitter, G+, LinkedIn, Tumblr, etc.; or any other electronic media format;
- (iv) Other Electronic Files: Created using Microsoft Office programs, e.g., Word, PowerPoint, Excel, Access, Visio, etc.; files created in XLS, PDF, TIFF, TIP, JPEG, PPT, and all others; databases; web sites; blogs; and all other electronic files regardless of what form the electronic data is/was created/stored;
- (v) Electronically-Stored Information: Including, but not limited to, electronic files:

- (a) stored on any laptop or desktop computer regardless of whether located on your computers, your employer's computer, or other computer located at your home, work, accessible through public, terminal, or elsewhere;
 - (b) accessible through Microsoft Outlook;
 - (c) accessed from a computer over the internet; social media forum; website; blog; Cloud computing software, e.g., Amazon Web Service, Eucalyptus, iCloud, Yahoo! Cloud; or from a remote server;
 - (d) access through a personal digital assistant; Blackberry; Smartphone; tablet, e.g., iPad, Samsung Galaxy Tab, Playbook, Nvidia Tegra 23 CPU, Nook, Kindle); other wireless devices; and
 - (e) stored on magnetic or optical storage media, including, but not limited to, hard disk drives; backup tapes; CDs; DVDs; ZIP files; Jax or floppy disks, flash drives; thumb drives; or other mobile drives.
- (vi) Audio or Visual Media: Including, but not limited to, voicemail, CDs, DVDs, video tapes, YouTube or other streaming media, digital photographs, or other audio or visual media; and
 - (vii) All other documents as that term is used in Ohio Rules of Civil Procedure and further defined by relevant case law.

In the event the original or non-identical copy of a document is not available, "documents" mean any identical copy of an original or a copy of a non-identical copy. Any document bearing notations, markings or writings of any kind differing from the original shall be treated as a separate original document.

3. "Computer" or "Device" means a machine that contains hardware, inside or outside a case or housing for the essential components of the computer or devices itself, e.g., processor, memory, or data paths that is capable of providing input to the essential computer or of receiving output or of both. Computer or Device includes but is not limited to laptop computers; desktop computers; tablets, e.g., iPad, Samsung Galaxy; Smartphones, e.g., iPhone, Android; or any machine capable of allowing a user of the machine to communicate via electronic mail, e.g., Microsoft Outlook, Yahoo mail, gmail, AOL; social media, e.g., Facebook, Instagram, Twitter,

Linkedin, Snapchat, blogs; telephone; or text application, e.g., telephone-carrier specific texting, app technology texting, e.g., WhatsApp, WikrMe, GO SMS Pro, Google Messenger, MySMS, TextSecure, chomp SMS, Textra SMS, QKSMS, EvolveSMS, MightyText, Pinger, TextNow, etc.

4. "Communication(s)" means every manner or means of disclosure, transfer, or exchange of information, and every instance of disclosure, transfer or exchange of information, whether orally, by document, by telephone, mail, or otherwise.

5. The terms "relating," "related," and "relates" mean regarding, referring to, concerning, mentioning, reflecting, pertaining to, analyzing, evidencing, stating, involving, identifying, describing, discussing, documenting, commenting on, dealing with, embodying, responding to, supporting, contradicting, comprising, containing, or constituting (in whole or in part), as the context makes appropriate.

INTERROGATORIES

1. Please state whether you purchase your transmission and distribution electric service from Cleveland Public Power or Cleveland Electric Illuminating for your residence in Bratenahl, Ohio.

RESPONSE:

2. Please state whether you receive and pay for your electric service from The Cleveland Electric Illuminating Company, Cleveland Public Power, and/or a competitive retail electric service provider for your residence in Bratenahl, Ohio.

RESPONSE:

3. Please state whether you have an ownership interest in any residence or business that purchases electric service from Cleveland Public Power.

RESPONSE:

4. Please state whether, as proposed in the Application pending before the OPSB, you will receive your electric service from any electric service provider that has entered into a power purchase agreement with Icebreaker.

RESPONSE:

5. Please list all entities that have provided electric service to your residence in Bratenahl, Ohio in the past five (5) years.

RESPONSE:

6. Please list all entities that have provided electric service to any residence or business for which you have an ownership interest that has purchased service from Cleveland Public Power in the past five (5) years.

RESPONSE:

REQUEST FOR PRODUCTION OF DOCUMENTS

①. Please produce all electric billing statements for your residence in Bratenahl, Ohio for the past two (2) years.

RESPONSE:

2. Please produce all electric billing statements for any residence or business for which you have an ownership interest that has purchased service from Cleveland Public Power for the past two (2) years.

RESPONSE:

Respectfully submitted,

/s/ Christine M.T. Pirik
Christine M.T. Pirik
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June 20, 2018

Attorneys for Applicant Icebreaker Windpower, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Second Set of Interrogatories and Request for Production propounded upon Robert M. Maloney was served upon each person below via electronic mail this 20th day of June 2018.

/s/ Christine M.T. Pirik

Christine M.T. Pirik (0029759)

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Summary: Deposition of Robert Maloney electronically filed by Christine M.T. Pirik on behalf of Icebreaker Windpower Inc.