Icebreaker Wind appeals Ohio Power Siting Board ruling

Lake Erie wind turbine developers apply for rehearing and reconsideration of Board’s fatal May 21 ruling, saying board stepped outside its statutory authority and violated Ohio law

Columbus – June 22, 2020 -- The Ohio Power Siting Board (OPSB) ignored the evidence and acted contrary to state law when it disregarded the findings of its own technical staff and added a project killing condition to its approval of the Icebreaker Wind demonstration project in Lake Erie, according to an appeal filed today.

The Lake Erie Energy Development Corporation (LEEDCo) today asked the Board to reconsider its project-killing decision so that the plans to build and operate the six-turbine demonstration project eight miles of Cleveland’s shoreline can move forward. Icebreaker was expected to inject $253 million in the local economy over its lifetime and create more than 500 jobs. The project was reviewed by more than a dozen state and federal agencies including U.S. Fish and Wildlife, Ohio EPA and others. It has the support of many environmental groups, including the Sierra Club, the Environmental Defense Fund and the Ohio Environmental Council.

LEEDCo was stunned recently by an OPSB decision that masqueraded as approval though it imposed a “shutdown condition” which mandates the wind farm cease operations every night from March until November, which renders the project financially untenable. After many months of discussions, an agreement was reached last year without the condition after the state’s own experts testified under oath the shutdown mandate wasn’t needed.

Dave Karpinski, president of LEEDCo, said the OPSB decision, which reneged on the earlier agreement, was unjust, unreasonable and unlawful.

“The efforts to justify this decision simply don’t wash,” he said. “This dooming condition was added to the permit at the 11th hour after we spent years hammering out every detail of our operations with the OPSB Staff and the wildlife experts at ODNR. Why?

“We are respectfully asking every member of the board to carefully review our appeal and review this condition to make sure that they fully understand the facts that played out before they went along with the May 21st decision,” Karpinski said. “Perhaps the evidence wasn’t fully conveyed or some technical details were lost in translation. This was either a mistake, or the condition was added specifically to kill the project.

“If not corrected, the repercussions of this decision go far beyond this project. Should the decision stand, the implication is that evidence can be ignored, technical staff and expert testimony can be disregarded – setting a dangerous precedent for any project going before this board that controls the energy fate of millions of Ohioans,” he added.

Terrence O’Donnell, an attorney for Icebreaker Wind, said the appeal is on strong legal footing.
“As a legal matter, we think the shutdown mandate contradicts all of the evidence on the record that led the ODNR and Board technical staffs to approve the project. And the Board is bound to decide based on the evidence in the record. They can’t just arbitrarily add fatal requirements at the eleventh hour.”

O’Donnell also thinks the shutdown mandate exceeds the Board’s legal authority.

“We do not believe the Board can say ‘as a condition of operating, you cannot operate.’ Nothing in Ohio law grants the Board that kind of unchecked power. This shutdown mandate is without legal precedent, and we are hopeful the Board will reconsider.”

Karpinski is appealing to Ohio’s Governor Mike DeWine to weigh in.

“This decision sends a chilling message to anyone contemplating investing in renewable energy projects in Ohio,” he said. “Governor DeWine appointed every member of this Board. We urge him to take a closer look at this decision and not allow Ohio to miss the opportunity to diversify its economy and create jobs by expanding the state’s involvement in the nation’s rapidly growing, multi-billion dollar offshore wind industry.”

LEEDCo is a non-profit public-private partnership whose members include the City of Cleveland, the Port of Cleveland, the Cleveland Foundation and Cuyahoga, Lake, Ashtabula and Lorain counties in Ohio and Erie County, PA.

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