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Did Ohio board certify Icebreaker wind project with enough bird, bat research? Ohio Supreme Court to decide

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A map of the proposed Icebreaker wind project that would include six turbines in Lake Erie located eight to 10 miles off Cleveland.



By [Laura Hancock, cleveland.com](https://www.cleveland.com)

COLUMBUS, Ohio – An Ohio panel that approves wind farm construction projects approved a certificate to the Icebreaker project on Lake Erie in violation of state law, which requires more detailed bird and bat research than was submitted to the state, an attorney representing two Bratenahl residents told the Ohio Supreme Court on Tuesday.

Mark Tucker, representing residents W. Susan Dempsey and Robert M. Maloney, [who oppose the project](#), argued that the Ohio Supreme Court should toss the Ohio Power Siting Board's certificate to Icebreaker Windpower Inc., which plans to build a demonstration project of six turbines, generating 20.7 megawatts of electricity, eight to 10 miles off the shore of Cleveland.

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If built, it would be the first freshwater wind project in North America.

“As we sit here today, there’s not one person in this courtroom, or anywhere for that matter, that can tell you how many birds and bats fly through rotor swept zone at the project site,” Tucker said, referring to the circular area through which the wind turbines move.

Tucker's firm received nearly \$1.1 million from now-bankrupt coal miner Murray Energy Corp. in 2019 and 2020 to fight wind and solar development, mostly in Ohio.

Ohio Power Siting Board attorney Cameron Simmons said that the Brantenahl residents only focus on one part and not all of the state law dictating how the board issues certificates. The Ohio Supreme Court previously ruled that "the certificate process was a dynamic process that does not end with the issuance of the certificate," he said.

The Ohio Power Siting Board issued conditions with the Icebreaker certificate, including requiring the company to submit radar data looking at bird and bat numbers and the potential for collisions, he said.

"Essentially, what the board will be doing is making sure that the items that are submitted comply with the conditions imposed as part of the certificate," Simmons said.

"So what happens if they don't?" Justice Jennifer Brunner asked Simmons.

"Your honor, if they don't meet those conditions, they cannot proceed with construction," he said. "They are a prerequisite for construction."

Bird and bat studies are required after construction, too, Simmons said.

"What happens if studies are conducted afterwards and you find that there is an environmental impact, maybe even a substantial one?" Justice Melody Stewart asked.

Simmons replied that the project would have to change to reduce environmental impacts, possibly including a slowing or stopping of the turbines at times when birds and bats are most likely to be killed.

When the Ohio Power Siting Board first certified the project on May 21, 2020, it required blades be curtailed from dusk to dawn between March 1 to Nov. 1 to reduce collisions with migrating birds. The board later removed the requirement, which Icebreaker called a poison pill that would have made the project financially unfeasible.

Tucker, however, said that the legislature never intended for the board to "skip over" environmental requirements outlined in state law for a later date in the project's development.

"For instance, when birds get over water, do they lower because there are no obstructions as there are on land? So do they fly right through the rotor swept zone of these turbines? Nobody really knows because no data has been collected," Tucker

said.

State law requires wind projects to be built in a manner that “represents the minimum adverse environmental impact,” Tucker said, meaning that the Ohio Power Siting Board must make decisions about the location of turbines and other project details that have the most negligible impacts to wildlife and nature.

But there’s not enough research at this point to determine whether Icebreaker, as currently planned, has a minimum adverse environmental impact, he said.

The board’s certificate directs Icebreaker “to come back to us with two years of radar collected at the project site before we’re going to allow you to begin construction,” he said.

“So you would say, they should have outright rejected the certificate and told them until you can get this or obtain this data” the certificate cannot be issued, Justice Sharon Kennedy asked.

“Absolutely, your honor,” Tucker said.

But Jonathan Secrest, an attorney representing Icebreaker, said that the board based its decision on an extensive record of studies, analyses and expert testimony.

But the Icebreaker wind project may actually be safer for bats than if it were constructed on land. Icebreaker looked at over 100 studies of wind projects in the Great Lakes region. All those wind projects are on land, where birds nest. Birds will not nest in Lake Erie, he said.

“There was no evidence in front of (the board) indicating that birds were at greater risk due to an offshore facility, but there was evidence that birds might actually be at a lower risk,” he said.

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