



ENVIRONMENTAL LAW & POLICY CENTER'S ADDITIONAL COMMENTS TO THE ILLINOIS POWER AGENCY ON HOUSE BILL 3445 POLICY STUDY – OFFSHORE WIND POWER IN LAKE MICHIGAN February 12, 2024

The Environmental Law & Policy Center (ELPC) is submitting the following additional Comments to the Illinois Power Agency (IPA) on its draft version of the 2024 Policy Study (January 22, 2024) regarding Illinois energy policy proposals included in House Bill 3445. ELPC previously submitted Comments to the IPA on October 20, 2023. Those ELPC Comments principally addressed the IPA's questions with regard to a potential procurement process for offshore wind power projects in Lake Michigan. ELPC's October 20, 2023 Comments are incorporated here by reference.

The IPA's new draft study confirms information ELPC provided in our October 20, 2023 Comments:

- Offshore wind power in Lake Michigan is significantly more expensive than onshore wind power development in Illinois.
- Offshore wind power in Lake Michigan is not a cost-effective, realistic strategy for best meeting Illinois' clean energy goals.
- As the IPA's draft study shows, the costs that would be charged to ratepayers for an offshore wind power project in Lake Michigan would likely exceed the funds available from the \$34 million annual rate increase authorized by HB 2132. The IPA's modeling indicates a \$46.5 million shortfall in 2022 dollars.¹ Using 2024 dollars would result in a larger shortfall – in excess of \$50 million.
- To complete the proposed offshore wind power project would require state legislation to raise the rate cap more than HB 2132 authorizes in order to cover more than \$80 million in Renewable Energy Credit payments for a single 200 MW project.

The IPA draft study explains in detail that lake-based offshore wind power is costly and unproven. The only wind power project attempted so far in the U.S. Great Lakes, the Lake Erie Icebreaker project, was halted in December 2023.²

The IPA draft study points out offshore wind is suited for “geographically constrained high-load demand areas” and “allows for larger turbines, bigger projects, and access to stronger oceanic winds compared to land-based turbines.”³ While Lake Michigan is next to a high-load demand area, Illinois does not have the same geographic concerns presented in some other states considering offshore ocean-based (or lake-based) wind power projects. Those ocean-based projects allow for larger wind turbines, up to 12 MW nameplate capacity. Wind turbines that large, however, are not available in Lake Michigan due to limitations in the St. Lawrence Seaway locks, and the study assumes only 6 MW capacity turbines for the project.⁴ Illinois is in a different

¹ Illinois Power Agency 2024 Policy Study Draft for Public Comment, January 22, 2024, at page 141.

² <https://www.cleveland.com/news/2023/12/icebreaker-wind-project-halted-no-plans-to-resurrect-effort-to-put-wind-turbines-in-lake-erie.html>

³ Illinois Power Agency 2024 Policy Study Draft for Public Comment, January 22, 2024, at page 96.

⁴ *Id.* at 103.

situation than states on the Atlantic and Pacific Oceans, and completing an offshore wind power project in Lake Michigan would require costly port improvements, technological advances, and potentially new vessels built specifically for Great Lakes offshore wind power projects. These issues, along with the continuing supply chain problems and cost increases, demonstrate that offshore wind power project development in Illinois' part of Lake Michigan is not a fiscally responsible option.

There are other concerns raised in the draft that deserve further examination, including the environmental impacts of offshore wind power project construction in Lake Michigan and the Public Trust Doctrine. The IPA's draft study acknowledges that "[g]iven the number of diesel-burning vessels needed to construct an offshore wind power project, Illinois' (and other states') development policy in the Great Lakes should take full account for the environmental impacts of offshore wind facilities."⁵ The IPA's draft study, however, fails to take this increased participant and other pollution from diesel emissions into account when discussing the "Offshore Wind Impacts on Environmental Justice Communities." That portion of the study is dedicated to potential positive economic impacts and does not reference the potential for increased diesel emissions from construction equipment, vessel traffic and truck traffic.⁶ Construction impacts on communities should be considered when discussing the totality of offshore wind power project development impacts.

Along with emissions concerns, leasing the lakebed for private wind power development raises a public trust doctrine issue under Illinois law. The draft study briefly mentions the public trust doctrine, but it does not discuss the implications of the doctrine. ELPC previously raised this issue in our October 20, 2023 Comments. The leading federal court decision on the public trust doctrine applicable to Illinois waters is *Lake Michigan Federation v. U.S. Army Corps of Engineers*, 742 F. Supp. 441 (N.D. Ill. 1990), in which the district court found that state legislation allowing Loyola University to create a lakefill for university facilities in Lake Michigan violated the public trust doctrine. The *Lake Michigan Federation* decision summarized three principles of Illinois public trust law: First, courts should be critical of attempts by the state to surrender valuable public resources to a private entity. Second, the public trust is violated when the primary purpose of a legislative grant is to benefit a private interest. Third, any attempt by the state to relinquish its power over a public resource should be invalidated under the doctrine. *Lake Michigan Federation*, 742 F. Supp. at 445.

An offshore wind power development project in Lake Michigan would appear to violate the public trust doctrine as applied in *Lake Michigan Federation*. Renewable energy projects, including both onshore and offshore wind power, in Illinois are developed by private for-profit businesses. Using the Lake Michigan lakebed and/or waters for construction of an offshore wind power project by a private entity directly or indirectly would likely violate the applicable public trust law and the State of Illinois' legal responsibilities.

The state of Illinois should focus on meeting our clean energy targets in a cost-effective manner, and the draft study shows that offshore wind power project development in Lake Michigan is not

⁵ *Id.* at 132.

⁶ *Id.* at 124-25.

the right answer. There are better, more economically cost-effective and environmentally sound renewable energy and energy efficiency solutions for Illinois, utility ratepayers, and taxpayers.

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ELPC Executive Director Howard Learner (HLearner@elpc.org, 312-795-3704) and Illinois Legislative Director David McEllis (DMcEllis@elpc.org, 630-439-4101) would be pleased to discuss these comments with the Illinois Power Agency in more detail and discuss any questions that you may have. ELPC appreciates the Illinois Power Agency's consideration of these comments.