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June 13, 2000

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The Ohio Power Siting Board
180 East Broad Street
Columbus OH 43215

Re: Application of Norton Energy Storage,
Case No. 99-~~1629~~-EL-BGN

1626

Attention: Docketing

Dear Board Members:

Enclosed for filing herewith please find an original and twenty-six copies of the Motion of Norton Energy Storage for Waiver of the Board's requirements of RC 4906.06 (A); OAC 4906-5-04(A)(1), OAC 4906-1-03 and 4906-5-04(B); OAC 4906-13-05(B)(1) and (3), and OAC 4906-13-05 (C)(1) and (3), for which an expedited ruling is requested.

Movant respectfully submits that good cause exists for the grant of these waivers for the reasons stated in the accompanying Memorandum in Support, particularly the uniqueness of the proposed project which distinguishes it from the typical generation site.

Respectfully submitted,

Langdon D. Bell

Langdon D. Bell
Attorney for
Norton Energy Storage

LDB/is

Enclosures

cc: Kim Wissman w/enclosure
Leon Wingett w/enclosure
Ray Strom w/enclosure

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**BEFORE
THE OHIO POWER SITING BOARD**

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In the Matter of the Application of)
Norton Energy Storage, LLC for)
Certificate of Environmental Compatibility)
And Public Need for an Electric Power)
Generating Facility)

Case No. 99-~~1629~~-EL-BGN
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**MOTION
OF NORTON ENERGY STORAGE, LLC FOR WAIVERS
AND AN EXPEDITED RULING**

Langdon D. Bell
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33 South Grant Avenue
Columbus OH 43215
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**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Norton Energy Storage, LLC for)	
Certificate of Environmental Compatibility)	Case No. 99-1629-EL-BGN
And Public Need for an Electric Power)	
Generating Facility)	

**MOTION
OF NORTON ENERGY STORAGE, LLC FOR WAIVERS
AND AN EXPEDITED RULING**

Norton Energy Storage, LLC (NES) files this motion with the Ohio Power Siting Board (Board) pursuant to Ohio Revised Code (RC) Section 4906.06 (A)(6) and Ohio Administrative Code (OAC) Rules 4906-1-03, 4906-1-05, 4906-5-04(B), and 4906-7-12(C), for waivers of the following provisions of the Board's statute and regulations on an expedited basis:

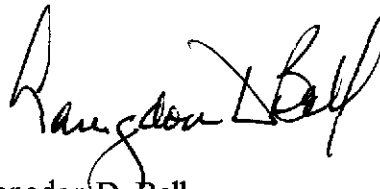
- 1) The requirement of RC Section 4906.06(A) that an application for a certificate of Environmental Compatibility and Public Need for a major utility facility be filed at least two years prior to the planned date of construction;
- 2) The requirement of OAC Rule 4906-5-04(A)(1) that applications include fully developed information for two sites, pursuant to OAC Rules 4906-1-03 and 4906-5-04 (B); and
- 3) The requirements of OAC Rule 4906-13-05(B)(1) and (3) and 4906-13-05(C)(1) and (3) that financial information be submitted according to Federal Energy Regulatory

Commission (FERC) uniform system of accounts prescribed by the Public Utilities Commission of Ohio (PUCO) for electric utility companies, and that present worth and annualized cost calculations be submitted, pursuant to OAC Rule 4906-1-03.

RC Section 4906.06(A) and OAC Rules 4906-1-03 and 4906-5-04(B) permit waiver of these filing requirements. For the reasons set forth in the attached Memorandum in Support, good cause exists to grant the requested waivers.

WHEREFORE, NES respectfully requests that these waivers be granted, and that an expedited ruling be made pursuant to OAC Rule 4906-7-12 (C).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Langdon D. Bell". The signature is fluid and cursive, with the last name "Bell" being particularly prominent.

Langdon D. Bell
BELL, ROYER & SANDERS CO., LPA
33 South Grant Avenue
Columbus OH 43215
(614) 228-0704

MEMORANDUM IN SUPPORT

Norton Energy Storage, LLC (NES) will submit an application for a Certificate of Environmental Compatibility and Public Need to the Ohio Power Siting Board (Board) for the construction of a 2700 MW electric generating facility (NES facility) located in Summit County, Ohio. NES is a Delaware limited liability corporation with its principal offices in Houston, Texas. NES is a wholly owned subsidiary of CAES Development Company, LLC (CDC) which was formed to develop electric generating facilities using storage features to bring exceptional value and flexible services to bulk power markets. CDC is a wholly owned subsidiary of Haddington Ventures, a Houston company investing in energy-related projects in the gas and electric industries. NES expects to be in a position to submit such application in July of this year and, accordingly, respectfully requests expedited ruling on its requests herein order that it may effect such a submission.

The NES facility is being developed because capacity margins within the East Center Area Reliability Council (ECAR) region are expected to continue to decline from 11.6% in 1999 to 1.8% in 2008, even with the assumed addition of approximately 6,600 MW of new capacity. The NES facility will help meet this expected capacity shortage within ECAR. The electric generated by this facility will be sold on the wholesale market.

The NES facility will consist of gas-fired combustion turbine units (modified for the desired service), electric generators, electric motor-driven compressors separate from the gas turbines, a cavern for storage of air, air-to-air heat exchangers, and the associated controls, switching, substations, transformers and connections typical to a generating facility.

The NES facility, as proposed, would utilize an existing, idle limestone mine in Norton, Ohio for underground storage of compressed air. The mine, located 2,200 feet below the ground surface,

has a volume of approximately 338,000,000 (338 million) cubic feet. Surface operations at the mine utilized approximately 92 acres.

A site selection study for the identification of suitable locations for above-ground facilities was undertaken by NES. In addition to the normal criteria utilized in such studies, including environmental and social impacts and access to electric and gas transmission, access to the storage cavity at a reasonable cost was a primary consideration. Potential sites in the vicinity of the mine were investigated and, following consultation with the City of Norton and the nearby community, it was determined that development of the former industrial site utilized for the mine surface operations, directly above the mine, would be the most cost effective and would create less impact to the surrounding area. The mine site is a former industrial site that, because of agreements with the seller and continuing observation by environmental regulatory bodies, can be used only for industrial purposes. The surface area of the prior mine operations was designated the Preferred Site for the project. An area of undeveloped land near the FirstEnergy Star Substation, approximately 2.5 miles distant, was identified as a suitable site, but the cost of connecting the mine to the surface equipment utilizing large underground stainless steel pipelines for air transfer was found to be prohibitively expensive, at an incremental cost of approximately \$20 million. In addition, the site is currently being used for agricultural purposes and is suitable for future residential development. NES has obtained an option to purchase the property, and has designated it as the Alternate Site for the proposed NES facility.

The site selection process clearly indicates that the most suitable site for the NES facility is the Preferred Site. It is located directly above the mine cavity, and is a "brownfield" site that has been used for industrial purposes for over fifty years. The Alternate Site is viable, but the prohibitive costs

associated with its development, including the environmental and social costs associated with a “greenfield” site, indicate that further investigation of the site at this time is unwarranted.

NATURE OF THE WAIVERS SOUGHT

A. Waiver of the Two-year Notice of Filing Requirement

NES submits that the requirement of RC 4906.06(A) for the filing of an application at least two years before the planned commencement of construction is not necessary for the Board’s approval process for this project. Waiver of the two year notice of filing requirement so as to permit earlier construction and completion of this project within the service area of FirstEnergy will also support the competitive, deregulated, market for power generation scheduled to commence January 1, 2001.¹ Further, the statute permits waiver of this provision for “unforeseen emergencies”. The need for additional generating capacity in Ohio as well as the ECAR region has been well documented, and the desirability of providing additional “services” to the bulk power grid in the FirstEnergy control area by a facility of this design is evident. These services will include conventional services for system control and stability as well as commercial services to be defined as the unregulated marketplace develops, including short-term electricity storage, spinning reserve, “Ten-minute” Reserve capacity, load-following, frequency regulation, and reactive power (VAR) support. The availability of such services within FirstEnergy’s control area, will enhance the operational reliability of First Energy’s transmission system and stimulate the competitive marketplace for generated power.

¹ See In the Matter of The Applications of FirstEnergy, Cases 99-1212-EL-ETP, 99-1213-EL-ATA, 99-1214-EL-AAM, filed December 22, 1999.

NES has been working closely with First Energy to determine the appropriate interconnection procedures for integrating the NES facility in the bulk power grid, and the results of these investigations will be presented in the application.

In addition, this proposed project has been subject to extensive review by the City of Norton, Ohio and the citizens in the surrounding communities for approximately one year, and their concerns will be addressed in the application. A Board Docket for the NES facility was established in 1999. Clearly neither the public nor the Board will be disadvantaged by the filing of this application less than two years prior to the planned date of commencement of construction.

For these reasons, NES urges that the Board grant the requested waiver from the requirement in RC Section 4906.06(A) that an application for filed two years in advance of construction.

B. Waiver of Fully Developed Information on the Alternate Site

OAC Rule 4906-5-04(B) specifically provides that, for good cause show, the requirement of fully developed information with respect to an alternate site may be waived. NES urges the Board to waive this requirement for fully developed information for the Alternate Site. This request is made because both the site selection process for a compressed air energy storage electric generating facility is inherently much more restrictive than the typical electric generating facility project for which Board certification is normally requested, and the process here employed clearly identified fewer negative impacts, both social and environmental, associated with development of the Preferred Site.

The costs of constructing underground pipelines for air movement between the generating equipment and the mine cavity increase greatly with distance. The impacts associated with constructing multiple underground air pipelines, either bored horizontally from the mine cavity or

buried overland from the existing mine location to the Alternate Site, 2.5 miles distant, clearly indicate that the Preferred Site, located directly above the mine cavity, could be developed with less costs, in less time, and with fewer impacts to the surrounding community. The advantages of utilizing a previously impacted industrial area instead of utilizing agricultural fields for new development are obvious at this point in the site selection process. As part of its site selection process NES has extensively communicated with residents in the area, sending over seven thousand letters to each resident and business owner in the City of Norton. NES extensively publicized and held two open public informational meetings, exceeding the requirements of R.C. 4906-5-08, and the public overwhelmingly supports the mine site location.² In addition, NES and the City of Norton have negotiated an agreement that assures the City of Norton that it will have control over the mine and everything that might be stored or disposed of in the mine cavity. Indeed, it is this agreement that presents NES with the opportunity to develop its facility at the Preferred Site.

Further supportive of the instant waiver request is the fact that the subject mine site has previously been certified as an electric generating site under a much more environmentally intrusive pumped hydro-electric storage project (now abandoned) than this compressed air energy storage project. See: In the Matter of the Application of Summit Energy Storage Inc. Case No. 89-1302-EL-BGN, Opinion, Orders, and Certificate issued June 17, 1991.

Some of the information developed for the Preferred Site will apply to the Alternate Site, and such information will be clearly identified in the application. The application will contain a map and diagrams of the Alternate Site indicating the orientation of the major pieces of equipment, the location of proposed access roads, the necessary routes for gas and electric transmission, and the proposed

² See informational filings dated March 10, 2000 and May 4, 2000 in this Docket.

final elevations.

NES urges the Board to grant the waiver with respect to OAC Rules 4906-13-04, -05, -06, and -07. As indicated above, NES will include any appropriate alternate site information in its control in the application and will cooperate fully with the Board Staff during the discovery process in both the Completeness Review and the review of the filed application.

NES submits that the foregoing clearly demonstrates that good cause exists to grant a waiver of the requirement to provide fully developed information on the site designated as alternate.

C. Waiver of Financial Data

OAC Rules 4906-13-05-(B)(1) and (3) and 4906-13-05 (C)(1) and (3) require that financial information be submitted according to the FERC uniform system of accounts prescribed by the PUCO for electric utility companies, and that present worth and annualized cost calculations be submitted. NES is not an entity regulated either by the PUCO or the FERC, is not required to maintain its records in accordance with the FERC uniform system of accounts, and its records are not so maintained. It would be cost prohibitive for NES to change its accounting system for purposes of meeting this filing requirement. Rather, NES will submit data using its present system of accounts. Should the Board Staff have any questions concerning these accounts, NES will provide whatever information is necessary to address any concerns.

In addition, NES does not tabulate the present worth and annualized cost for capital costs in the manner contemplated by the rules. This requirement appears to be only appropriate for a regulated utility.

NES submits that good cause exists to grant a waiver of the requirement to provide the

specific financial data discussed above.

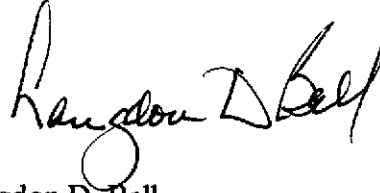
OAC Rule 4906-7-12(C)

NES respectfully urges the Board or Administrative Law Judge to grant the requested waivers on an expedited basis. Because the application has not been filed, and indeed should not be until these requested waivers have been acted upon, there are no parties in this proceeding and thus no parties could be notified nor could they object to the expedited ruling. However, as a matter of courtesy, a copy of this motion is being served on the Mayor of the City of Norton, Ohio.

NES requests an expedited ruling on its Motion pursuant to OAC 4906-7-12(C) in order to permit a timely filing of its application. NES plans to file its application by July of 2000 and to begin construction in early 2001 for the facility to be operational by the summer of 2003. Except for the limited waivers pertaining to financial data, NES proposes to submit fully developed information and data for the Preferred Site and to indicate where such data applies to the Alternate Site. NES believes that the grant of the requested waivers will not deprive the Board, the Board Staff, or the public of a complete and thorough evaluation of this important project.

WHEREFORE, applicant NES respectfully requests that the Board or the Administrative Law Judge grant its Motion for Waivers on an expedited basis.

Respectfully submitted,



Langdon D. Bell
Attorney for Norton Energy Storage L.L.C.

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CERTIFICATE OF SERVICE

I hereby certify that, as a matter of courtesy, a copy of the foregoing has been served upon the Mayor of the City of Norton, Ohio.



Langdon D. Bell
Attorney for Norton Energy Storage L.L.C.