

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of)
NRG Ohio Pipeline Company LLC for)
Approval of a Letter of Notification for) Case No. 14-1717-GA-BLN
the Avon Lake Gas Addition Project in)
Lorain County, Ohio.)

OPINION, ORDER, AND CERTIFICATE

The Ohio Power Siting Board, considering the above-entitled matter, grants the application filed by NRG Ohio Pipeline Company LLC for the construction, operation, and maintenance of a natural gas pipeline, metering station, and regulating station in Lorain County, Ohio, subject to the conditions set forth in this Opinion, Order, and Certificate. Further, the Board approves and adopts the stipulation filed by NRG Ohio Pipeline Company LLC and Ohio Edison Company, The Cleveland Electric Illuminating Company, and American Transmission Systems, Inc.

APPEARANCES:

Bricker & Eckler LLP, by Sally W. Bloomfield, Thomas J. O'Brien, Daniel E. Gerken, and Dylan F. Borchers, 100 South Third Street, Columbus, Ohio 43215-4291, on behalf of NRG Ohio Pipeline Company LLC.

Mike DeWine, Ohio Attorney General, by John H. Jones, Assistant Section Chief, Public Utilities Section, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215-3793, and Sarah Bloom Anderson, Assistant Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, on behalf of the Staff of the Ohio Power Siting Board.

Goldman & Braunstein, LLP, by Michael Braunstein, William A. Goldman, and Clinton P. Stahler, 500 South Front Street, Suite 1200, Columbus, Ohio 43215, on behalf of Wesley Parker; Brandon and Mary Thorne; Charles Borling; Samuel Dennis; Carlos and Sonia Llado; Edmund and Angie Carter; Gary and Kathleen Conlin; Stephanie K. Unger; Edward Kurianowicz; Lawrence R. Plas; Mary B. Miller; Richard and Carol Petersen; Richard and Ellen Braatz; Thomas and Johanna Julius; Louis and Gale Betzel; Fathers of St. Joseph Church; K. Hovnanian Oster Homes, LLC; Barbara and Thomas Demaline; Matthias and Joanne Helfrich; Mark and Darlene Julius; Marty and Irene Kaulins; Thomas Oster, President, Avon Development, LLC; Robert and Debra Kubasak; George Mekker and Irene Noster; Joan Kerecz; Albert Kelling; William and Anna Marie Holt; and Theresa M. Wukie.

Porter, Wright, Morris & Arthur, LLP, by Robert J. Schmidt, Jr. and L. Bradfield Hughes, 41 South High Street, Columbus, Ohio 43215, and Anne Rericha, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, on behalf of Ohio Edison Company, Cleveland Electric Illuminating Company, and American Transmission Systems, Inc.

OPINION:

I. Procedural History of this Case

All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906.

On November 27, 2013, as amended on February 12, 2014, in Case No. 13-2315-PL-ACE, NRG Ohio Pipeline Company LLC (NRG Pipeline or Applicant) filed an application before the Public Utilities Commission of Ohio (Commission), pursuant to R.C. 4905.02, 4905.03(F), and 4905.63, for authority to operate as an intrastate pipeline company in the state of Ohio, in order to transport natural gas to a facility in Avon Lake, Ohio, and possibly other commercial and manufacturing customers along the pipeline route. In the application, NRG Pipeline stated that it is a wholly-owned subsidiary of NRG Energy, Inc. (NRG). NRG Pipeline further stated that one of NRG's subsidiaries, NRG Power Midwest LP (NRG Power), owns a coal-fired generating facility in Avon Lake, Ohio, and plans to add natural gas as a fuel source for the boilers at the facility. NRG Pipeline explained that it intends to provide the pipeline infrastructure to deliver natural gas to the facility, and plans to construct and operate approximately 20 miles of high pressure steel pipeline in Lorain County, Ohio. Additionally, NRG Pipeline noted that, at the appropriate time, it planned to file an application with the Board for a certificate to construct and operate the proposed pipeline. On February 26, 2014, the Commission approved the application filed by NRG Pipeline and granted the Applicant's request for authority to operate as an intrastate pipeline company in the state of Ohio. *In re NRG Ohio Pipeline Company LLC*, Case No. 13-2315-PL-ACE (*Certification Case*), Finding and Order (Feb. 26, 2014).

On September 29, 2014, in the above-captioned proceeding, NRG Pipeline filed a preapplication notification letter regarding its intent to file a letter of notification application with the Board for authority to construct, own, and operate a natural gas pipeline, metering station, and regulating station in Lorain County, Ohio (project or facility). On December 19, 2014, NRG Pipeline filed its letter of notification application in this case, which was corrected and supplemented on various dates (App. Ex. 1). The process followed for a letter of notification application will be further discussed below.

On January 6, 2015, Ohio Edison Company, The Cleveland Electric Illuminating Company, and American Transmission Systems, Inc. (collectively, FirstEnergy) filed a

motion to intervene in this proceeding. On January 9, 2015, and April 13, 2015, petitions to intervene in this proceeding were filed by various property owners in Lorain County, Ohio (collectively, LCPO): Wesley Parker; Brandon and Mary Thorne; Charles Borling; Samuel Dennis; Carlos and Sonia Llado; Edmund and Angie Carter; Gary and Kathleen Conlin; Stephanie K. Unger; Edward Kurianowicz; Lawrence R. Plas; Mary B. Miller; Richard and Carol Petersen; Richard and Ellen Braatz; Thomas and Johanna Julius; Louis and Gale Betzel; Fathers of St. Joseph Church; K. Hovnanian Oster Homes, LLC; Barbara and Thomas Demaline; Matthias and Joanne Helfrich; Mark and Darlene Julius; Marty and Irene Kaulins; Thomas Oster, President, Avon Development, LLC; Robert and Debra Kubasak; George Mekker and Irene Noster; Joan Kerecz; Albert Kelling; William and Anna Marie Holt; and Theresa M. Wukie. FirstEnergy and LCPO were granted intervention on March 3, 2015, and April 22, 2015.

By Entry dated March 9, 2015, the Board found that there was good cause to suspend NRG Pipeline's letter of notification application and the 90-day automatic certification process, pursuant to R.C. 4906.03(F), in order for the Board and Staff to conduct a thorough review of the application. In particular, the Board found further review was necessary, in light of the issues raised in this case, including the Applicant's assertion in the *Certification Case* that the proposed pipeline would be used to serve an affiliate, as well as other potential commercial and manufacturing customers along the project route, and the concerns raised by FirstEnergy and LCPO. Pursuant to Ohio Adm.Code 4906-5-02(A)(3)(a), the Board directed NRG Pipeline to provide additional information regarding the project. Additionally, pursuant to Ohio Adm.Code 4906-5-02(A)(3)(c), the Board determined that a local public hearing and an adjudicatory hearing should be held in this matter. Specifically, the Board directed that the adjudicatory hearing commence on April 14, 2015, at the offices of the Commission, in Columbus, Ohio, and that the local public hearing be scheduled by subsequent entry. Consistent with the Board's directive, NRG Pipeline filed a supplement to its letter of notification application (App. Ex. 7), on March 19, 2015, and March 20, 2015.

By Entry issued on March 25, 2015, the administrative law judge (ALJ) granted NRG Pipeline's motion for a continuance of the adjudicatory hearing, which was rescheduled to commence on April 23, 2015. The ALJ also scheduled the local public hearing for April 8, 2015, at 6:00 p.m., at Lorain County Community College, in Elyria, Ohio. Further, the Entry directed NRG Pipeline to publish notice of the hearings, in accordance with Ohio Adm.Code 4906-5-08(C)(2). NRG Pipeline filed its proofs of publication in local newspapers of notice of the application and the hearings on January 8, 2015 (App. Ex. 3), April 14, 2015 (App. Ex. 4), and April 20, 2015 (App. Ex. 5). On April 21, 2015, NRG Pipeline filed proof of service of the application upon local public officials and public agencies (App. Ex. 2), consistent with Ohio Adm.Code 4906-5-06 and 4906-5-07.

On March 27, 2015, Staff filed its report of investigation (Staff Report) of the letter of notification application (Staff Ex. 2). On April 6, 2015, NRG Pipeline filed direct testimony on behalf of Alan Sawyer (App. Ex. 8), Donell Murphy (App. Ex. 9), and Salvatore Caiazzo (App. Ex. 10). FirstEnergy filed direct testimony on behalf of Theodore Robert Krauss (FirstEnergy Ex. 1), on April 10, 2015. Staff filed direct testimony on behalf of Ed Steele (Staff Ex. 1) and James S. O'Dell (Staff Ex. 3), on April 15, 2015. On that same date, direct testimony was filed on behalf of various members of LCPO. On April 22, 2015, LCPO filed a motion for leave to file the direct testimony of Brandon and Mary Thorne, which was inadvertently excluded from LCPO's other direct testimony filed on April 15, 2015. NRG Pipeline and FirstEnergy filed a joint stipulation and recommendation (stipulation) (Jt. Ex. 1), which would resolve all of the issues between them in this case, on April 22, 2015.

The local public hearing was held, as scheduled, on April 8, 2015. At the local public hearing, 17 individuals offered testimony regarding the project. The adjudicatory hearing commenced, as rescheduled, on April 23, 2015, and concluded on April 24, 2015. During the adjudicatory hearing, the ALJ granted LCPO's motion for leave to file the direct testimony of Brandon and Mary Thorne (Tr. I at 211-212). The ALJ admitted into the record the following direct testimony from LCPO: Tom Oster for K. Hovnanian Homes (LCPO Ex. 8), John Eavenson for K. Hovnanian Homes (LCPO Ex. 9), Gary and Kathleen Conlin (LCPO Ex. 10), Robert Kubasak (LCPO Ex. 11), Brandon and Mary Thorne (LCPO Ex. 12), and Samuel Dennis (LCPO Ex. 13). Post-hearing briefs were filed by NRG Pipeline, FirstEnergy, LCPO, and Staff on May 5, 2015.

II. Summary of Ohio Revised Code and Ohio Administrative Code Certification Criteria - Accelerated Letter of Notification Process Versus Nonaccelerated Standard Application Process

Pursuant to R.C. 4906.04, before construction can begin on any major utility facility within the state of Ohio, such as the project proposed in this application by NRG Pipeline, a certificate of environmental compatibility and public need must be obtained from the Board. R.C. 4906.10(A) provides that the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless the application meets the eight criteria set forth in the statute. There are two types of applications for the siting of major utility facilities that come before the Board: accelerated applications, in the form of either a letter of notification application or a construction notice application; and nonaccelerated standard applications. In this case, issues regarding whether this application should be processed as an accelerated letter of notification application or a nonaccelerated standard certificate application process were debated.

R.C. 4906.03(F), as enacted by Amended Substitute Senate Bill 315 (S.B. 315), requires the Board to adopt rules to provide for an accelerated review of an application for

a construction certificate for a gas pipeline that is not more than five miles in length or is primarily needed to meet the requirements of a specific customer or specific customers. The statute specifies that the Board must adopt rules that provide for the automatic certification of such pipelines when the application is not suspended by the Board, ALJ, or chairperson or executive director of the Board for good cause shown, within 90 days of submission of the application. If an application is suspended, the Board shall approve, disapprove, or modify and approve the application not later than 90 days after the date of the suspension.

In Case No. 12-1981-GE-BRO, the Board issued a Finding and Order, noting that any revisions to its rules resulting from the enactment of S.B. 315 would be combined with the five-year review of the rules. *In re Review of Chapters 4906-1, 4906-5, 4906-7, 4906-9, 4906-11, 4906-13, 4906-15, and 4906-17 of the Ohio Administrative Code*, Case No. 12-1981-GE-BRO (*OPSB Rule Case*), Finding and Order (Sept. 4, 2012). In addition, the Board adopted an interim application process to account for the accelerated review provisions set forth in S.B. 315. Specifically, the Board determined that, on an interim basis, Attachment A to the Finding and Order (Interim Attachment) should supersede the matrices contained in Appendices A and B of Ohio Adm.Code 4906-1-01. Accordingly, an applicant seeking the Board's approval of a proposed project was directed to refer to the matrices contained in the Interim Attachment to determine the appropriate case code, process, and requirements that apply to its certificate application (nonaccelerated standard certificate application, accelerated letter of notification application, or accelerated construction notice application). On December 17, 2012, the Board issued a Second Finding and Order in the *OPSB Rule Case*, further delineating the necessary process for letter of notification applications. Among other matters, the Board determined that any letter of notification application filed after December 17, 2012, shall be subject to a 90-day accelerated review process.

In the present proceeding, NRG Pipeline asserts that the proposed project qualifies for the Board's accelerated letter of notification process and satisfies the criteria set forth in R.C. 4906.03(F), because, according to the Applicant, the project is primarily needed to meet the requirements of a specific customer or specific customers. NRG Pipeline represents that, as of the filing of the letter of notification application, its sole customer is the Avon Lake Power Plant and the primary purpose of the project is to provide natural gas as a fuel source to the plant. NRG Pipeline further asserts that, because the project meets the statutory criteria for a letter of notification application, the project should be evaluated based on the Board's requirements for such applications, which are set forth in Ohio Adm.Code 4906-11-01. (App. Ex. 1 at 3; App. Br. at 1-2.)

LCPO disagrees with NRG Pipeline's assessment of the proposed project. According to LCPO, NRG Pipeline does not qualify for the accelerated letter of notification process and should be required to file a nonaccelerated standard certificate application,

because the project is not needed to meet the requirements of a specific customer or customers. Specifically, LCPO asserts that NRG Pipeline is not a seller and NRG Power, which owns the Avon Lake Power Plant, is not a buyer or customer, as there will be no sale or transfer of ownership of the natural gas, which will merely flow from one NRG affiliate to another and, therefore, the Board should not regard the Applicant as a separate entity apart from NRG. LCPO believes that, essentially, NRG will be providing natural gas to itself and that the project should be considered a major utility facility, as defined by R.C. 4906.01(B)(1)(c), that is subject to the Board's nonaccelerated review process. LCPO also argues that, as affiliates, NRG Pipeline and NRG Power are prohibited, under various provisions of R.C. Chapter 4928, as amended by Senate Bill 3, from gaining competitive advantages for the power plant, including the benefits afforded by the accelerated and less stringent letter of notification process and the power of eminent domain, solely through their corporate affiliation. LCPO points out that there is no Commission-approved corporate separation plan between NRG and its affiliates. Additionally, LCPO notes that the proposed pipeline is designed to serve far greater requirements than are needed by the power plant, which is projected to operate at a capacity factor of between zero and 15 percent. Because the majority of the pipeline's capacity will be available for sale to other unspecified customers, LCPO believes that the pipeline is not primarily needed to meet the requirements of the power plant. LCPO requests that the Board give proper effect to the requirements set forth in R.C. 4906.03(F). (LCPO Br. at 6-11.)

In the Entry dated March 9, 2015, the Board determined that additional investigation was necessary to complete a thorough review of NRG Pipeline's letter of notification application, particularly in light of the issues raised in this case, including the Applicant's assertion in the *Certification Case* that the proposed pipeline would be used to serve an affiliate, as well as other potential commercial and manufacturing customers along the project route, and the concerns raised by FirstEnergy and LCPO. The Board, therefore, found good cause to suspend the application and the 90-day automatic certification process, pursuant to R.C. 4906.03(F), in order for the Board and Staff to further review this matter, and directed that a local public hearing and an adjudicatory hearing be held, consistent with Ohio Adm.Code 4906-5-02(A)(3)(c).

Among other things, R.C. 4906.06 requires that an application for a certificate must contain the following information:

- (1) A description of the location and of the major utility facility.
- (2) A summary of studies made of the environmental impact of the facility.
- (3) A statement explaining the need for the facility.

- (4) A statement of the reasons why the proposed location is best suited for the facility.

Ohio Adm.Code Chapter 4906-15 sets forth the specific information an applicant must provide in its application, including: a facility overview; a review of the need for the facility; the site and route alternative analyses; technical and financial data; and socioeconomic, land use, and ecological impact analysis.

Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline.
- (2) The nature of the probable environmental impact.
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.
- (4) In the case of an electric transmission line or generating facility, such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and such facility will serve the interests of electric system economy and reliability.
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111 and all rules and standards adopted under those chapters and under R.C. 1501.33, 1501.34, and 4561.32.
- (6) The facility will serve the public interest, convenience, and necessity.
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternative site of the proposed major utility facility.
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available

technology and the nature and economics of the various alternatives.

Although R.C. 4906.10 does not specifically set forth requirements for letter of notification applications filed under the accelerated process in R.C. 4906.03(F), the Board does consider the criteria enumerated in R.C. 4906.10 in all cases in which an applicant seeks a certificate from the Board, both nonaccelerated standard certificate applications and accelerated applications. *In re North Coast Gas Transmission, LLC*, Case No. 14-1754-GA-BLN (*North Coast Case*), Entry (Apr. 6, 2015) at 10.

In this case, given the concerns noted by the Board in the March 9, 2015 Entry, we find it appropriate to consider NRG Pipeline's letter of notification application as if it were a standard certificate application to construct a major utility facility, as is reflected in our findings and conclusions set forth below. Through a rigorous analysis of NRG Pipeline's letter of notification application that is consistent with our consideration of standard certificate applications, the concerns identified by the Board in the March 9, 2015 Entry, as well as those raised in LCPO's brief, are rendered moot.¹ In light of the Board's additional review of NRG Pipeline's letter of notification application and supplement, the parties' direct testimony, and the transcripts and exhibits from the local public hearing and the adjudicatory hearing, as evaluated below against the criteria set forth in R.C. 4906.10, we find that the record is sufficient to enable the Board to make an informed decision in this case and one that is fully in accordance with R.C. Chapter 4906.

III. Summary of the Description of the Proposed Facility and the Local Hearing

A. Applicant's Description of the Proposed Facility

According to the application, the project would involve the installation of a 24-inch diameter high-grade steel natural gas pipeline, with a minimum pipeline delivery pressure of 100 pounds per square inch gauge (PSIG), that would extend south approximately 20 miles from the existing Avon Lake Power Plant, which is located along the Lake Erie shoreline in the city of Avon Lake, to a proposed supply tap location southwest of the village of Grafton. NRG Pipeline notes that approximately 3,400 feet of the pipeline would be located above ground. NRG Pipeline states that the pipeline would require new permanent right-of-way (ROW) that is typically 50 feet in width for operation and maintenance and a temporary ROW of 100 feet for construction, although, in some areas, the ROW would be narrowed in order to reduce potential environmental impacts or in response to landowner requests. NRG Pipeline further states that additional temporary workspace areas outside of the temporary construction ROW would be needed in some

¹ With respect to LCPO's corporate separation claims under R.C. Chapter 4928, the Board notes that such claims are a matter for the Commission, not the Board.

areas for short durations during construction for staging, laydown, and other construction purposes. Noting that construction would commence during the summer of 2015, NRG Pipeline plans a commercial operation date of April 2016 for the proposed project, with a commercial operation date of June 2016 for the gas-fired Avon Lake Power Plant, which has a capacity obligation with PJM Interconnection, LLC (PJM) for the delivery year that commences on June 1, 2016. (App. Ex. 1 at 1-2, 4, 9-10.)

NRG Pipeline explains that the metering station, which would be up to one acre in size, would be located at a supply tap southwest of the village of Grafton, at which point the proposed pipeline would tap into an existing natural gas pipeline owned and operated by Dominion East Ohio (DEO), which would also design, build, own, and operate the metering station. NRG Pipeline further explains that a secondary potential supply tap, which would provide for additional supply reliability, is located in the city of North Ridgeville, approximately nine miles south of the Avon Lake Power Plant, at which point the proposed pipeline would tap into an existing natural gas pipeline owned and operated by Columbia Gas Transmission. According to the application, the regulating station, which would be located at the Avon Lake Power Plant and require up to one acre in size, would reduce the pressure of the gas to 50 PSIG, as required by the boiler facilities at the plant. (App. Ex. 1 at 2.)

With respect to route selection, NRG Pipeline states that the evaluation of route alternatives was generally aimed at reducing proximity to existing buildings and other above and below ground infrastructure or features, while also balancing other routing considerations related to socioeconomic, ecological, engineering, construction, and cost concerns. NRG Pipeline explains that the project study area was defined by delineating an area encompassing the project's predetermined end points, specifically a termination point at the Avon Lake Power Plant and the proposed tap into the existing DEO gas pipeline southwest of the village of Grafton, and an area of sufficient width to allow for identification and comparative analysis of multiple potential route corridors. NRG Pipeline notes that a comprehensive routing study was conducted to identify a preferred alternative and that multiple potential route corridors or alternatives, or iterations thereof, were identified and comparatively evaluated, in accordance with its routing considerations. According to NRG Pipeline, the resulting preferred alternative, which was developed in May 2014, served as the basis for negotiation of easements with affected landowners for the required ROW and that, as a result, more than 200 landowner requests have been accommodated. NRG Pipeline concludes that its proposed location is best situated for the proposed facility in that it provides for a reduced potential for impacts by incorporating landowner preferences, while also balancing consideration of various socioeconomic, ecological, engineering, construction, and cost related routing objectives. (App. Ex. 1 at 6-9.)

In the supplement to the letter of notification application, NRG Pipeline explains that two feasibility studies of potential routes were conducted, each of which identified and evaluated alternative routes, accounting for a range of factors, including, but not limited to, impacts associated with socioeconomic, natural environment, construction, and engineering related issues. NRG Pipeline notes that the overlap between routes was limited to 40 percent or less. According to NRG Pipeline, both feasibility studies concluded that the proposed route is superior to the alternatives considered. (App. Ex. 7 at 2-3.)

In its brief, NRG Pipeline argues that, under the Board's procedures for letter of notification applications, the Applicant was required to present only a single proposed route, which was the result of an exhaustive route selection process that considered 13 routing objectives. NRG Pipeline notes that, in contrast to nonaccelerated standard certificate applications, specific alternative routes are not required for a letter of notification application under Ohio Adm.Code 4906-11-01. NRG Pipeline contends that its letter of notification application complies with this rule, providing the required discussion of the alternatives considered, as well as the numerous factors and constraints that led to the proposed route, including the population of the surrounding areas, public safety concerns, increased traffic congestion, and environmental impact. (App. Br. at 2-3.)

NRG Pipeline also emphasizes that the proposed route is the result of substantial accommodations of landowners' concerns and requests, as reflected by approximately 12 major and over 200 minor route revisions, and, where such revisions were not possible, through commitments such as drilling horizontally under an entire property to eliminate any surface work, identifying and plotting trees to be avoided on a property, and reducing the size of the requested easement. Although NRG Pipeline notes that it remains committed to addressing landowners' requests, such requests must be balanced with permitting requirements, ecological and construction considerations, and impacts to other landowners. NRG Pipeline adds that issues primarily related to monetary compensation and other contractual terms for easements are not matters within the scope of this proceeding. (App. Br. at 4-7.)

B. Testimony at the Local Public Hearing

At the local public hearing on April 8, 2015, 17 individuals offered testimony regarding NRG Pipeline's proposed project. Testimony in support of the project was offered by 16 individuals, including the state representative for the 57th district; the mayor of the city of Avon; the mayor of the city of Avon Lake; a city council member for the city of Avon Lake; the school board president for the Avon Lake City Schools; representatives of the Boilermakers Local 744, International Union of Operating Engineers, Local 18, and the Utility Workers Union of America, Local 270; and the director of Community Resource Services. Among other benefits, these witnesses noted that the project would enable the

Avon Lake Power Plant to continue its operations, as well as provide jobs, electric grid stability, local tax revenues, and a clean fuel source to the plant. A few of these witnesses, although supportive of the project, stated a concern with NRG Pipeline's efforts to reduce its local tax obligations, while others testified that property owners impacted by the project should receive fair compensation from the Applicant. One individual testified in opposition to the project, raising objections to the project's encroachment on her property and the amount of compensation offered by NRG Pipeline. (Apr. 8, 2015, Local Hearing Transcript.) Additionally, a number of written public comments noting similar benefits and concerns were filed in the docket by interested stakeholders.

IV. Consideration of the Criteria in R.C. 4906.10

The Board has reviewed the evidence presented by the parties and has also considered the eight criteria set forth in R.C. 4906.10 in evaluating the letter of notification application. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

A. Summary of the Facts and Board's Conclusion for the Basis of Need Criterion in R.C. 4906.10(A)(1)

R.C. 4906.10(A)(1) requires the Board consider the basis of the need for the facility if the facility is a pipeline. In the application, NRG Pipeline states that the Avon Lake Power Plant is a 734 megawatt coal-fired electricity generating facility owned by NRG Power, which is an indirect subsidiary of NRG. NRG Pipeline further states that, although the Avon Lake Power Plant was originally slated for retirement by its prior owner due to the need for significant environmental expenditures, NRG Power has decided to keep the plant in operation by using natural gas as a fuel source to the plant, which would be provided by the Applicant. NRG Pipeline asserts that the project, by enabling the Avon Lake Power Plant to remain in operation, would result in environmental, economic, employment, and electric supply reliability benefits for the state, particularly for the local economy through jobs and tax revenues. (App. Ex. 1 at 3-4; App. Ex. 8 at 1-3.) Staff also notes that the project would allow the Avon Lake Power Plant to generate electricity using natural gas, which would help to maintain a reliable supply to the electric grid (Staff Ex. 2 at 1).

The Board finds that the basis of need for the project has been demonstrated on the record in this case, consistent with R.C. 4906.10(A)(1). The evidence indicates that the project is needed to supply natural gas as a fuel source to the Avon Lake Power Plant, which will ensure that the plant is able to remain in operation and fulfill its capacity obligation to PJM for the delivery year that commences on June 1, 2016. We find that the project, by enabling the Avon Lake Power Plant to remain online, will contribute to the

reliability of the electric grid in Ohio and throughout the PJM region. (App. Ex. 1 at 3-4; App. Ex. 8 at 2-3; Staff Ex. 2 at 1.)

B. Nature of Probable Environmental Impact and Minimum Adverse Environmental Impact Criteria, and Other Pertinent Considerations in R.C. 4906.10(A)(2) and (A)(3)

R.C. 4906.10(A)(2) and (A)(3) require the Board to consider the nature of the probable environmental impact and whether the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.

1. Summary of Applicant's Position for R.C. 4906.10(A)(2) and (A)(3)

NRG Pipeline asserts that impacts to land use and agricultural, archaeological, and cultural resources would be minimized by the proposed route, which is generally near or parallel to existing utilities, both overhead and underground, and other existing linear features, such as roadways, through an area that varies between industrial, commercial, undeveloped, and mixed residential uses, with some agricultural uses. NRG Pipeline witness Murphy testified that, through the implementation of best management practices (BMPs) and strict adherence to the Erosion and Sediment Control Plan/Storm Water Pollution Prevention Plan (SWPPP), any potential for impacts to existing land uses will be mitigated. Ms. Murphy also testified that, based on the results of the collective Phase I archaeological surveys that were completed, no impacts to archaeological and cultural resources are anticipated and no further archaeological work is recommended for the project prior to construction. With respect to impacts on federal or state designated species identified as being of potential concern, Ms. Murphy testified that no adverse effects are anticipated, given that NRG Pipeline intends to adhere to seasonal tree removal. Ms. Murphy further testified that the pipeline would be installed beneath the East Branch of the Black River via horizontal directional drilling (HDD) to avoid any potential impact to freshwater mussels. Finally, regarding areas of ecological concern, Ms. Murphy testified that impacts to wetlands and waters will be avoided or minimized through the implementation of BMPs and strict adherence to the SWPPP, with HDD used in some areas, while unavoidable impacts will be offset through compensatory mitigation. (App. Ex. 1 at 14-20, 25-29, Att. K; App. Ex. 9 at 3-5.) In its brief, NRG Pipeline asserts that the project, as proposed, represents minimal social and environmental impacts (App. Br. at 8-10).

2. Summary of Staff's Position for R.C. 4906.10(A)(2) and (A)(3)

In the Staff Report and its brief, Staff recommends that the Board approve NRG Pipeline's application, subject to eight conditions, and find that the project represents

minimal social and environmental impacts (Staff Ex. 2 at 1, 12-13; Staff Br. at 16-19, 24). Staff reviewed the environmental information contained in the letter of notification application, as supplemented, and determined the nature of the probable impact to the environment. The following is a summary of Staff's findings.

- (1) Land use is comprised of multiple uses, including a large segment of transitional area between more dense population centers. Commercial, industrial, undeveloped, and agricultural areas are also present, as well as varying densities of residential use. The project would not significantly alter existing land use. No recreational or public park land would be crossed and no residences would need to be removed in order to accommodate the project. (Staff Ex. 2 at 7, 11.)
- (2) Overall expected impacts to cultural resources are expected to be minimal. NRG Pipeline conducted a literature/desktop review and Phase I archaeological surveys for the project area. Subsequent Phase I field archaeological survey work was conducted within portions of the project area that were assumed to have a high potential to encounter significant archaeological resources. Archaeological field work of this survey area was conducted in May 2014, with additional testing conducted for route adjustments in September and October 2014. The records review revealed one archaeological site previously recorded within the project area. An additional 16 archaeological sites were recorded beyond the project area but within one mile of the centerline of the proposed pipeline. The Phase I field work identified five newly recorded archaeological sites within the survey area, each of which was recommended as not eligible for listing in the National Register of Historic Places (NRHP). As such, no further archaeological survey work was recommended for these sites. The Ohio Historic Preservation Office (OHPO) has concurred that the project would not affect historic properties, as outlined in May 2014. In December 2014, NRG Pipeline provided additional information to OHPO pertaining to route adjustments for the proposed pipeline, which included results from an updated Phase I analysis that identified one newly recorded archaeological site. This site was recommended as not eligible for listing in the NRHP and no further archaeological work was recommended prior to construction of the project. As of the date of the Staff Report, OHPO was in the

process of reviewing the results of the updated analysis. (Staff Ex. 2 at 7-8, 12.)

- (3) The proposed pipeline would cross 24 streams and ditches. No high quality streams would be impacted. Approximately 1,248 linear feet of intermittent streams would be impacted, and 79 feet of perennial streams would be crossed via HDD. As a result, NRG Pipeline has developed a frac-out plan for the project. (Staff Ex. 2 at 8.)
- (4) The project area contains 58 wetlands, of which 39 would be impacted. A total impacted wetland area of 59.4 acres is anticipated. Approximately 42 acres of this total would consist of forested wetland impacts. All wetlands delineated were category 1 and 2 wetlands. No high quality wetlands would be impacted. Compensatory mitigation would be required for the project. NRG Pipeline would mitigate for wetland impacts by purchasing credits from mitigation banks and permittee-responsible sites. NRG Pipeline has committed to work with the Ohio Environmental Protection Agency (Ohio EPA) to satisfy all mitigation requirements as a function of obtaining the required approvals from the United States Army Corps of Engineers (USACE) and Ohio EPA. NRG Pipeline requested a preliminary jurisdictional determination from USACE, which consented to the preliminary jurisdictional determination request on July 21, 2014. Due to this determination, a separate isolated wetlands permit from Ohio EPA would not be anticipated. (Staff Ex. 2 at 9.)
- (5) NRG Pipeline would utilize BMPs to minimize impacts to surface waters. The proposed BMPs are outlined in the SWPPP, and a copy has been provided to Staff. Staff also recommends that NRG Pipeline be required to provide a construction access plan for review prior to the preconstruction conference. The plan would consider the location of streams, wetlands, wooded areas, and park lands, and explain how impacts to sensitive resources would be avoided or minimized. NRG Pipeline has submitted or will submit applications for a number of surface water permits from Ohio EPA and USACE. NRG Pipeline has sited the route and proposed BMPs to avoid impacts to surface water resources to the greatest extent practical. By applying for all the applicable surface water permits, NRG Pipeline would be bound to restrictions specified

by the permits. These steps would ensure that impacts to surface water resources would be minimized. Staff concludes that impacts to water resources and wetlands have been addressed by NRG Pipeline through its acquisition of required permits, wetland banking mitigation plans, utilization of HDD, and employment of BMPs. (Staff Ex. 2 at 9, 12.)

- (6) NRG Pipeline requested information from the Ohio Department of Natural Resources (ODNR) and the United States Fish and Wildlife Service (USFWS) regarding state and federally listed threatened and endangered plant and animal species. Additional information was provided through field assessments and review of published ecological information. The state and federally listed species with ranges in the project area include the state and federally endangered Indiana bat, the federally protected bald eagle, the state and federally endangered piping plover, the state endangered lake sturgeon, the state and federally endangered Kirtland's warbler, and the state threatened spotted turtle. (Staff Ex. 2 at 9-10.)
- (7) In order to reduce or avoid impacts to the Indiana bat, NRG Pipeline has committed to adherence to seasonal tree cutting dates of October 1 through March 31 for the clearing of the riparian foraging habitat and potential roost trees (Staff Ex. 2 at 10).
- (8) With respect to bald eagles, USFWS recommends that no tree clearing occur within 660 feet of a bald eagle nest or within any woodlot supporting a nest tree. USFWS requests that work within 660 feet of a nest or within the direct line-of-site of a nest be restricted from January 15 through July 31, in order to prevent disturbance of the eagles during their most vulnerable times. (Staff Ex. 2 at 10.)
- (9) NRG Pipeline identified Kirtland's warbler habitat consisting of scrub/shrub area within three miles of the Lake Erie shoreline along the project corridor. This habitat could be utilized as stopover habitat during migration. In order to avoid impacts, clearing of this habitat must not occur from April 22 through June 1 or from August 15 through October 15. (Staff Ex. 2 at 10.)

- (10) The project is within one mile of a great blue heron rookery. Due to the distance between the proposed facility site and the nesting location, the project is not likely to impact great blue herons. (Staff Ex. 2 at 10.)
- (11) Given that all mussels are protected in Ohio, if in-water work is planned in any stream that meets any of the criteria of the Ohio Mussel Survey Protocol, the ODNR Division of Wildlife (DOW) recommends that NRG Pipeline provide information to indicate that no mussel impacts will occur. If this is not possible, DOW recommends that a professional malacologist conduct a mussel survey in the project area. If mussels that cannot be avoided are found in the project area, as a last resort, DOW recommends that a professional malacologist collect and relocate the mussels to suitable and similar habitat upstream of the project site. Mussel surveys and any subsequent mussel relocation should be done in accordance with the Ohio Mussel Survey Protocol. DOW also recommends that no in-water work occur in perennial streams from April 15 to June 30 to reduce impacts to other indigenous aquatic species and their habitat. The East Branch of the Black River would be the only waterway subject to the protocol that NRG Pipeline proposes to cross. Because NRG Pipeline would install the proposed pipeline beneath the waterway via HDD, no impacts to mussels are anticipated. (Staff Ex. 2 at 10.)
- (12) No additional wildlife impacts are anticipated for the project. Through coordination with wildlife agencies, NRG Pipeline, Staff, and the agencies have determined that the species mentioned above could be impacted by the project. With the specified precautions, adverse impacts are not expected. In order to provide additional assurance that impacts to listed species do not occur, Staff recommends that NRG Pipeline have an environmental specialist on site when working in potential listed species habitats. Staff also recommends that NRG Pipeline ensure that construction personnel are able to identify listed species if encountered and cease construction activities immediately to ensure that listed species are not impacted. (Staff Ex. 2 at 10-11, 12.)
- (13) No national or state parks or forests, wilderness areas, wildlife refuges, wildlife management areas, or wildlife sanctuaries are

located in the immediate vicinity of the project (Staff Ex. 2 at 11).

Staff reports that NRG Pipeline conducted an exhaustive route selection study and, although it is not required for a letter of notification application, the Applicant evaluated and weighed two final potential routes before selecting the proposed route. Staff notes that key components of the route selection study included engineering concerns, ROW constraints, environmental factors, and regulatory permits. According to Staff, overall length, potential for colocation with existing utilities, and avoidance of highly populated areas were central engineering concerns, while ROW constraints of landowners and avoidance of public lands were given high importance. Further, Staff points out that wetlands, waterbodies, and the minimization of tree clearing were critical to weighing ecological constraints. With respect to regulatory permitting, the route selection study considered the need to evaluate sensitive locations and avoid threatened or endangered species, while also evaluating issues related to water quality and use, wildlife, cultural resources, geology, and soils. Finally, Staff reports that land use and costs also factored into NRG Pipeline's feasibility and route selection studies, with landowner concerns incorporated into the route once the studies were completed. Staff indicates that NRG Pipeline has coordinated extensively with affected landowners to avoid or minimize impacts where practicable. (Staff Ex. 2 at 7, 11-12; Staff Br. at 12-15.) The testimony offered by NRG Pipeline's witnesses also describes the comprehensive and iterative process used by the Applicant to determine the proposed route, as set forth in greater detail in the letter of notification application and supplement, including consideration of environmental impacts (App. Ex. 1; App. Ex. 7; App. Ex. 8 at 3-4, 6; App. Ex. 9 at 2-5; App. Ex. 10 at 4-5).

3. Summary of LCPO's Position for R.C. 4906.10(A)(2) and (A)(3)

LCPO contends that NRG Pipeline failed to adequately consider alternatives, including the eastern corridor depicted in the application in the *Certification Case*, as required by R.C. 4906.10(A)(3). LCPO further contends that, despite the Board's directive in the Entry dated March 9, 2015, NRG Pipeline failed to analyze or even address the eastern corridor in the supplement to the letter of notification application. LCPO asserts that, although NRG Pipeline claims that the east corridor is not a feasible alternative due to insufficient pressure from DEO's gas line at the southern end of the corridor, the Applicant provided no analysis in support of its claim. LCPO concludes that it is not possible to determine whether the proposed route represents the minimum adverse environmental impact, considering the various alternatives, because there has been no analysis of alternatives. (LCPO Br. at 12-15.)

4. Board's Conclusion for R.C. 4906.10(A)(2) and (A)(3)

Upon review of the record, the Board finds that there is sufficient evidence on the record in this case to enable the Board to determine the nature of the probable environmental impact of the project, consistent with R.C. 4906.10(A)(2), and we conclude that the project, as proposed, represents the minimum adverse environmental impact, consistent with R.C. 4906.10(A)(3) (App. Ex. 1; App. Ex. 7; App. Ex. 8 at 3-4, 6; App. Ex. 9 at 2-5; App. Ex. 10 at 4-5; Staff Ex. 2). Contrary to the arguments raised by LCPO, nothing in R.C. Chapter 4906 or the Board's rules requires NRG Pipeline to have considered every possible route or even every potential corridor. Rather, as required, NRG Pipeline addressed, in the application and supplement, the alternatives considered and explained the numerous constraints that resulted in its proposed route, including such factors as environmental impact, public safety, traffic congestion, and population density. The record reflects that, following the filing of NRG Pipeline's application in the *Certification Case* in November 2013, but before the route selection studies began for the application in the present case, the Applicant had already determined that the eastern corridor was not feasible. This decision occurred after NRG Pipeline's consultation with DEO regarding the most suitable tap location, in comparing the two corridors, and the tap location for the eastern corridor was deemed an inferior option. (Tr. I at 55-58, 100-102.)

With respect to NRG Pipeline's compliance with the March 9, 2015 Entry, we agree with LCPO that the Applicant did not fully address both corridors in the supplement filed in response to the Entry. Although the Board noted in the Entry that we did not expect NRG Pipeline to undertake any new analysis in preparation of the supplement, the Applicant has shown no reason why it could not have provided information in the supplement regarding its discussions with DEO about the tap location. Nevertheless, we find that NRG witness Sawyer sufficiently addressed both corridors depicted in the application in the *Certification Case* during the evidentiary hearing (Tr. I at 55-58, 100-102). Additionally, NRG Pipeline's application, supplement, and testimony, as well as the Staff Report, confirm that the Applicant implemented a comprehensive process in selecting the proposed route, including two feasibility studies that both identified and evaluated alternative routes (App. Ex. 1; App. Ex. 7; App. Ex. 8 at 3-4, 6; App. Ex. 9 at 2-5; App. Ex. 10 at 4-5; Staff Ex. 2 at 7).

For these reasons, the Board finds that NRG Pipeline has explained why the proposed route is best suited for the project, as required by R.C. 4906.06, and that the record supports the Applicant's assertion. Accordingly, we find that, with the conditions set forth below, the project is designed to have the minimum adverse environmental impact, while providing the desired benefit of enabling the Avon Lake Power Plant to remain in operation and fulfill its PJM capacity obligation, in accordance with R.C. 4906.10(A)(2) and (A)(3).

C. Summary of the Facts and Board's Conclusion for the Electric Power Grid Criterion in R.C. 4906.10(A)(4)

R.C. 4906.10(A)(4) provides that, in the case of an electric transmission line or generating facility, the Board must ensure that such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and such facility will serve the interests of electric system economy and reliability. According to the letter of notification application, the proposed project consists of a natural gas pipeline (App. Ex. 1 at 1). Because the proposed project is not an electric transmission line or generating facility, the Board finds that R.C. 4906.10(A)(4) is not applicable under the circumstances. We note, however, that, by enabling the Avon Lake Power Plant to continue its operations (App. Ex. 1 at 3), the project will contribute to the interests of electric system economy and reliability.

D. Summary of the Facts and Board's Conclusion for the Air, Water, Solid Waste, and Aviation Criterion in R.C. 4906.10(A)(5)

R.C. 4906.10(A)(5) requires that the Board consider whether the facility will comply with the following provisions in the Revised Code and all rules and standards adopted under these provisions: Chapter 3704, air pollution control standards; Chapter 3734, solid and hazardous waste standards; Chapter 6111, water pollution control standards; R.C. 1501.33, criteria to be followed when applying to ONDR for a permit for a major increase in withdrawal of waters in the state of Ohio; R.C. 1501.34, criteria to be applied by ODNR when considering an application under R.C. 1501.33; and R.C. 4561.32, rules regarding the Ohio Department of Transportation's regulation of airports located in Ohio.

In its letter of notification application, NRG Pipeline provides various environmental compliance information that pertains to this criterion, including a list of permits that are required for construction of the project and a detailed Erosion and Sediment Control Plan/SWPPP (App. Ex. 1 at 24-25, Att. K). Among other information, NRG Pipeline notes that it intends to implement BMPs and strictly adhere to the Erosion and Sediment Control Plan/SWPPP (App. Ex. 1 at 27-29, Att. K; App. Ex. 9 at 3-5).

The Board finds that, in the letter of notification application, NRG Pipeline provided the information required under Ohio Adm.Code 4906-11-01, including the environmental data necessary to ensure that the project will comply with R.C. Chapters 3704, 3734, and 6111 and the rules and standards adopted under those chapters (App. Ex. 1). Further, Staff provided an analysis of the project's environmental impact in the Staff Report (Staff Ex. 2). We, therefore, find that the project will comply with the requirements specified in R.C. 4906.10(A)(5), to the extent that they are applicable, and provided that the certificate includes the conditions set forth below.

E. Public Interest, Convenience, and Necessity Criterion in R.C. 4906.10(A)(6)

R.C. 4906.10(A)(6) provides that the Board must consider whether the facility will serve the public interest, convenience, and necessity.

1. Summary of Applicant's Position for R.C. 4906.10(A)(6)

In the letter of notification application, NRG Pipeline states that, because the project mostly crosses lands already developed and parallels previously disturbed existing ROW, there has already been prior ground disturbance and maintenance in the area of the project. NRG Pipeline notes that, other than potential health and safety issues associated with construction, which will be minimized with the implementation of BMPs during construction, there are no additional health, social, or safety impacts that will result from the operation and maintenance of the project. (App. Ex. 1 at 30.) Additionally, NRG Pipeline witness Sawyer testified that the project will serve the public interest, convenience, and necessity by allowing the Avon Lake Power Plant to generate electricity using natural gas and maintaining a reliable supply to the electric grid, as well as bringing environmental, economic, and employment benefits to the state. Mr. Sawyer also testified that NRG Pipeline, after developing an initial preferred route, incorporated over 200 adjustments to the route in order to accommodate landowner requests and remains committed to working with landowners. In terms of public outreach, Mr. Sawyer explained that NRG Pipeline elected to hold two public meetings regarding the project, in addition to maintaining consistent communication with landowners and public officials. (App. Ex. 8 at 2-3, 6, 7.) NRG Pipeline, in its brief, asserts that it exceeded the requirements for a letter of notification application with respect to its efforts to notify and educate the affected communities regarding the project (App. Br. at 11).

Regarding the safety of the proposed project, NRG Pipeline witness Caiazzo testified that, although the pipeline class location varies along the route, the Applicant conservatively decided to design the pipeline with a Class 3 specification for its entire length in order to exceed the mandated pipeline safety standards (App. Ex. 10 at 3). As explained by Staff, a Class 3 specification refers to the designation used by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) to describe a pipeline that is utilized in high-density, residential land use areas (Staff Ex. 2 at 11). Mr. Caiazzo further testified that, in response Staff's concerns regarding the proximity of the pipeline to houses near the Mile Post 12 area, NRG Pipeline agreed to use thicker pipe in this area. Noting that the project has been designed in accordance with all applicable federal safety standards, Mr. Caiazzo concluded that NRG Pipeline has designed and located the proposed pipeline to maximize the use of existing access points, reduce landowner impacts, and ease construction, with steadfast attention to public safety. (App. Ex. 6; App. Ex. 10 at 3.) In its brief, NRG

Pipeline reiterates that the project will exceed federal safety requirements (App. Br. at 10-11).

2. Summary of Staff's Position for R.C. 4906.10(A)(6)

In the Staff Report, Staff notes that NRG Pipeline held public meetings regarding the project on August 27, 2014, in the village of Grafton, and on August 28, 2014, in the city of Avon. Staff reports that, during these meetings, NRG Pipeline distributed information describing the project and the proposed pipeline corridor. Staff further reports that, according to NRG Pipeline, all of the affected landowners have been contacted and will be notified by letter regarding the timeline for construction and provided a point of contact for questions about the project. In its brief, Staff asserts that NRG Pipeline has coordinated extensively with affected landowners to avoid impacts where practicable. (Staff Ex. 2 at 8; Staff Br. at 21.)

With respect to public safety, Staff notes that the proposed pipeline has been designed to meet or exceed PHMSA's Class 3 specifications used for high-density, residential land use areas. Staff explains that the only higher class designation is Class 4, which is used where buildings with four or more stories above ground are prevalent. Additionally, Staff points out that, for sections of the pipeline that would be installed via boring or HDD, as well as sections near the housing development immediately west of the Mile Post 12 area and the Chestnut Ridge Road crossing, NRG Pipeline would increase the pipeline wall thickness beyond the mandated federal safety requirement. In terms of the need for the project, Staff states that the pipeline is needed to provide a natural gas fuel source to the Avon Lake Power Plant, which would otherwise be slated for deactivation due to increasing environmental requirements. Staff adds that the project would help to maintain a reliable supply to the electric grid. (Staff Ex. 2 at 1, 11, 12; Staff Br. at 20-21.)

3. Summary of LCPO's Position for R.C. 4906.10(A)(6)

A number of LCPO witnesses also offered testimony addressing the proposed project as it relates to the public interest, convenience, and necessity criterion in R.C. 4906.10(A)(6). LCPO witnesses Oster and Eavenson testified that they are employed by K. Hovnanian Oster Homes, LLC (K. Hovnanian), which owns 20 residential lots in the Arlington Place subdivision in the city of Avon that are affected by the project. According to Mr. Oster, because of the project, K. Hovnanian will suffer a considerable financial loss, given that it will be unable to develop 10 of the 20 affected lots, will experience increased land development and other costs, and will have difficulty in selling the 10 remaining lots due to concerns from potential buyers regarding the safety of the pipeline. Mr. Eavenson testified that the easement necessary for the project would interfere with existing dimensional building requirements, which would reduce the size of the lots that could be developed and limit K. Hovnanian's ability to build the types of homes proposed for the

subdivision. Mr. Eavenson also testified that a proposed retention pond would have to be redesigned or relocated. Both Mr. Oster and Mr. Eavenson requested that the project be rerouted away from Arlington Place. (LCPO Ex. 8; LCPO Ex. 9.)

Several residents of the Flint Ridge development in Grafton, Ohio also testified in opposition to the project and requested that the pipeline be moved outside of the development. LCPO witness Conlin testified that the proposed pipeline, which would be located approximately 140 feet from his home, would present a safety hazard, particularly in light of the fact that it would be routed under the only entrance/exit road for the subdivision, as well as its close proximity to existing electrical and sewer lines. Mr. Conlin further testified that the project would negatively impact the value of his property; result in aesthetic damage due to the removal of large trees that provide a visual and privacy barrier from existing power lines and neighbors; restrict his ability to build structures or replant trees; and cause considerable disruption during construction and any future maintenance. Mr. Conlin also asserted that NRG Pipeline has not been receptive to his safety concerns or questions regarding the proposed project route. (LCPO Ex. 10.) LCPO witness Kubasak raised similar concerns, specifically noting safety, aesthetic damage, tree removal, wildlife habitat destruction, privacy loss, reduced property value, and disruption during construction and maintenance. Mr. Kubasak also testified that NRG Pipeline has not been responsive to his concerns. (LCPO Ex. 11.) LCPO witness Thorne's concerns also related to safety, property value, aesthetic damage, tree removal, and disruption during construction and maintenance. Noting that it will be difficult to sell her home, Ms. Thorne emphasized safety and privacy concerns, particularly with respect to her children, and testified that NRG Pipeline has not offered a fair price or been receptive to her concerns. (LCPO Ex. 12.)

Finally, LCPO witness Dennis testified that he owns a commercial property used for tree service, raising fish, camping, and family activities that would be impacted by the project. Mr. Dennis noted concerns with safety, property value and future resale value, aesthetic damage, tree removal, impacts on wildlife and three ponds on the property, disruption during construction and maintenance, topsoil and drain tile repair and restoration, continuous access to fields, and loss of crop production. (LCPO Ex. 13.)

In its brief, LCPO argues that NRG Pipeline, which has no assets or employees, is a shell corporation and alter ego with no identity separate from NRG or the Avon Lake Power Plant. LCPO believes that NRG Pipeline was created by NRG to avoid liability and circumvent Ohio law, seeking to impose an unjust risk on property owners by limiting liability for the project to a shell corporation with no assets. LCPO points out that neither NRG nor NRG Pipeline has provided any assurances that NRG will assume responsibility for the liabilities associated with the project. LCPO contends that the project should not be approved without further oversight, investigation, and explanation of which company will bear the risks of construction, operation, and maintenance, which, according to LCPO,

should be assumed by NRG. LCPO points out that, in the *Certification Case*, NRG was designated as the entity having the financial capabilities to operate the proposed pipeline and, therefore, NRG should be required to guarantee LCPO indemnification against any and all harm caused by the construction or operation of the pipeline; insurance to protect against the risks associated with the pipeline; and specific contractual terms to ensure proper land restoration. (LCPO Br. at 2-6.)

4. Board's Conclusion for R.C. 4906.10(A)(6)

With the adoption of the conditions set forth below, the Board finds that the record supports our finding that the project will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6) (App. Ex. 1 at 30; App. Ex. 6; App. Ex. 8 at 2-3, 6; App. Ex. 10 at 3; Staff Ex. 2 at 1, 11-12). Specifically, we find that, as reflected by the evidence presented in this case, the project will serve the public interest, convenience, and necessity by enabling the Avon Lake Power Plant to generate electricity using natural gas, thus, allowing the plant to remain in operation, fulfill its capacity obligation to PJM, and assist in maintaining the stability of the electric grid. Additionally, the project will result in environmental, economic, and employment benefits for the state of Ohio, particularly for the local communities in the vicinity of the project. The record also reflects that the project has been designed to meet or exceed all applicable safety standards and that the need for the project, which was established under the first criterion discussed above, is evident, given that the project will enable the Avon Lake Power Plant to remain in operation. We, therefore, agree with NRG Pipeline and Staff that the project will serve the public interest, convenience, and necessity in numerous ways.

With respect to the issues raised by LCPO in its testimony and brief, the Board notes, initially, that, to the extent that LCPO's concerns relate to monetary compensation, the valuation of property, and other contractual terms for easements, such concerns are matters to be negotiated between NRG Pipeline and the individual members of LCPO and are not within the scope of this proceeding. *North Coast Case*, Entry (Apr. 6, 2015) at 8. Likewise, LCPO's arguments regarding the corporate status of NRG Pipeline, as well as the risks and liabilities associated with the project, are also matters best reserved for judicial determination. Regarding LCPO's remaining concerns, we note that the record reflects that NRG Pipeline has taken considerable steps to accommodate landowners' concerns and individual requests, as evidenced by approximately 12 major and over 200 minor route revisions, and, where such revisions were not feasible, through other types of commitments, such as horizontal drilling, plotting trees, and reducing the size of easements. With respect to the Flint Ridge development, NRG Pipeline explained that it identified and analyzed four alternative routes, independent of cost, in order to avoid or at least minimize the impact to the residents of the development; however, none of these alternatives were ultimately determined to be feasible. (App. Ex. 1; App. Ex. 7; App. Ex. 8 at 6; Tr. I at 16-19, 104, 128-130.) In terms of NRG Pipeline's receptiveness to LCPO's

concerns, the Applicant explained that its ability to communicate directly with individual property owners ended with their retention of counsel (Tr. I at 15; LCPO Ex. 12). NRG Pipeline has nevertheless committed to address and minimize landowners' concerns, if they are economically reasonable, environmentally sound, and communicated to the Applicant (App. Ex. 8 at 6). Finally, although the Board acknowledges that the project will impact LCPO and other property owners along the proposed route, we find that the potential associated impact, taking into account the conditions imposed on the certificate addressed below, is offset by the significant benefits that will result from construction of the project. As reflected in the conditions below, however, the Board fully expects that NRG Pipeline will continue to work with LCPO and other affected property owners to appropriately mitigate, to the extent feasible, the effects of the project.

F. Summary of the Facts and Board's Conclusion for the Agricultural Districts and Agricultural Lands Criterion in R.C. 4906.10(A)(7)

R.C. 4906.10(A)(7) requires the Board to consider the impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternative site of the proposed major utility facility. In the letter of notification application, NRG Pipeline states that approximately 82.1 acres of agricultural land occur along the proposed route and that, of this acreage, 34 affected properties are designated as agricultural districts. NRG witness Sawyer testified that the Applicant intends to include requirements to protect existing agricultural land in its construction contract, which will include a minimum depth of five feet to the top of the pipe, in order to ensure no impact on farm activities and tilling the land; the identification and repair of all drain tiles; the double ditch method of trenching, in order to ensure that topsoil and subsoil do not mix and the fertility of the land is not impacted; temporary fencing for livestock; and repairs to, and the addition of, property boundary fences and gates, where required. (App. Ex. 1 at 19; App. Ex. 8 at 5.) The Board finds that, consistent with R.C. 4906.10(A)(7), the record supports our finding that the impact of the project on the viability of existing farmland and agricultural districts has been determined and will be minimal through the implementation of NRG Pipeline's proposed mitigation measures (App. Ex. 1 at 19; App. Ex. 8 at 5).

G. Summary of the Facts and Board's Conclusion for the Water Conservation Practice Criterion in R.C. 4906.10(A)(8)

R.C. 4906.10(A)(8) requires the Board to consider whether the facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of the various alternatives. In the Erosion and Sediment Control Plan/SWPPP provided with the letter of notification application, NRG Pipeline notes that, after installation, the pipeline will require testing using hydrostatic pressure to ensure integrity of the welds and seams. NRG Pipeline

further notes that BMPs will be implemented during the hydrostatic pressure testing. (App. Ex. 1 at Att. K at 20.) The Board finds that, to the extent that the project requires the use of water, the project will incorporate, through the implementation of BMPs, maximum feasible water conservation practices and, therefore, is consistent with R.C. 4906.10(A)(8).

V. Summary of the Stipulation Between NRG Pipeline and FirstEnergy and Board's Conclusion on the Stipulation

As stated previously, NRG Pipeline and FirstEnergy filed a stipulation on April 22, 2015, which would resolve all of the issues between them in this case. In their stipulation, NRG Pipeline and FirstEnergy recommend that the Board approve the letter of notification application, subject to the following condition:

NRG Pipeline shall provide FirstEnergy, as reasonably necessary, with drawings and other technical information for the construction of the pipeline within, or adjacent to, FirstEnergy's electric infrastructure, which includes, without limitation, existing transmission and distribution circuits, electric distribution and/or transmission line ROW and/or corridors and substation sites. NRG Pipeline shall reach an agreement with FirstEnergy on the location and other details of the pipeline located within FirstEnergy's electric infrastructure and shall obtain necessary land rights to permit the use of FirstEnergy's electric infrastructure by the Applicant prior to the construction of the pipeline located within FirstEnergy's electric infrastructure.

(Jt. Ex. 1 at 1, 2.)

NRG Pipeline witness Sawyer explained that the stipulation represents the product of serious bargaining among capable and knowledgeable parties. Mr. Sawyer further explained that NRG Pipeline and FirstEnergy were represented by competent counsel familiar with proceedings before the Board. Additionally, Mr. Sawyer testified that the stipulation is in the public interest, because it would enable both NRG Pipeline's proposed project and FirstEnergy's infrastructure to coexist and operate in a safe and appropriate manner. Finally, Mr. Sawyer testified that the stipulation violates no important regulatory principle or practice. (Tr. I at 91-92, 121-123.)

In its brief, FirstEnergy requests that any certificate issued to NRG Pipeline be subject to the condition set forth in the stipulation. FirstEnergy asserts that the stipulation will ensure that the project is constructed in a manner that is consistent with FirstEnergy's use of its existing electric infrastructure, as well as all applicable safety considerations,

which will, in turn, ensure that the project will serve the public interest, convenience, and necessity, at least as it relates to FirstEnergy's electric infrastructure. (FirstEnergy Br. at 2-3.)

Although not binding on the Board, stipulations are given careful scrutiny and consideration, particularly where no party objects to the stipulation. Accordingly, based upon all of the above, the Board finds that the stipulation is the product of serious bargaining among knowledgeable parties, will promote the public interest, convenience and necessity, and does not violate any important regulatory principle or practice (Tr. I at 91-92, 121-123; Jt. Ex. 1 at 2). Therefore, the Board approves and adopts the stipulation, as a reasonable resolution of the issues between NRG Pipeline and FirstEnergy.

VI. Board's Overall Conclusion and Certificate Conditions

The Board has considered the record in this proceeding, as well as the interests and arguments asserted by the parties. Based upon the record, the Board finds that the requirements for a letter of notification application, as set forth in R.C. Chapter 4906 and the Board's rules, as well as the criteria found in R.C. 4906.10 for a standard certificate application, are satisfied for the construction, operation, and maintenance of the proposed project, as described in the application filed with the Board on December 19, 2014, as corrected and supplemented on various dates, and subject to certain conditions adopted by the Board. To the extent that a request for a particular condition is not discussed or adopted in the conditions set forth in this Opinion, Order, and Certificate, it is hereby denied. Accordingly, the Board approves the letter of notification application, as corrected and supplemented, and hereby issues a certificate to NRG Pipeline for the construction, operation, and maintenance of the proposed project, subject to the conditions set forth below:

- (1) NRG Pipeline shall comply with the April 22, 2015 stipulation between the Applicant and FirstEnergy, which has been approved and adopted in this proceeding.
- (2) Prior to construction, NRG Pipeline shall obtain and comply with all applicable permits and authorizations required by federal and state entities for any activities where such permit or authorization is required. Copies of such permits and authorizations, including all supporting documentation, shall be provided to Staff.
- (3) NRG Pipeline shall conduct a preconstruction conference prior to the start of any construction activities. Staff, NRG Pipeline, and representatives of the prime contractor and all

subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by NRG Pipeline and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on site investigations by Staff during construction. Prior to the conference, NRG Pipeline shall provide a proposed conference agenda for Staff review. NRG Pipeline may conduct separate preconstruction meetings for each stage of construction.

- (4) NRG Pipeline shall adhere to seasonal cutting dates of October 1 through March 31 for removal of suitable Indiana bat habitat trees, unless coordination efforts with ODNR and USFWS reflect a different course of action.
- (5) NRG Pipeline shall not clear Kirtland's warbler migration stopover habitat from April 22 through June 1 or from August 15 through October 15.
- (6) NRG Pipeline shall contact Staff, ODNR, and USFWS, within 24 hours, if state or federally listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by NRG Pipeline, Staff, and ODNR, in coordination with USFWS. Nothing in this condition shall preclude agencies having jurisdiction over the facility with respect to wildlife from exercising their legal authority over the facility consistent with law. NRG Pipeline shall provide a reference of listed species described by USFWS and ODNR in coordination letters that shall be available on site and provided to all construction personnel. The reference shall include pictures, along with descriptions of identifying characteristics.
- (7) NRG Pipeline shall have a Staff-approved environmental specialist on site during construction activities that may affect sensitive areas, as mutually agreed upon between the Applicant and Staff, and as shown on the Applicant's final approved construction plan. Sensitive areas include, but are not limited to, areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat. The environmental specialist shall be familiar with water quality

protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction.

- (8) Prior to construction, NRG Pipeline shall finalize coordination of the assessment of potential effects of the proposed pipeline on cultural resources, if any, with Staff and OHPO. If the resulting coordination discloses a find of cultural significance, or inclusion in the NRHP, NRG Pipeline shall submit an amendment, modification, or mitigation plan to Staff to ensure compliance with this condition. Any such mitigation effort shall be developed in coordination with OHPO and submitted to Staff for review.
- (9) If an alternate route is certificated by the Board, NRG Pipeline shall be required to conduct a Phase I archaeological survey and an assessment of potential impacts to historical and architectural resources prior to construction. If the Phase I alternate route survey discloses a find of cultural or architectural significance, or a structure that could be eligible for inclusion in the NRHP, NRG Pipeline shall submit an amendment, modification, or mitigation plan. Any such mitigation effort, if needed, shall be developed in coordination with OHPO and submitted to Staff to ensure compliance with this condition.
- (10) NRG Pipeline shall employ the following erosion and sedimentation control measures, construction methods, and BMPs when working near environmentally-sensitive areas and/or when in close proximity to any watercourses, in accordance with the Ohio National Pollutant Discharge Elimination System permits and SWPPP obtained for the project:
 - (a) During construction of the facility, seed all disturbed soil, except within actively cultivated agricultural fields, within seven days of final grading with a seed mixture acceptable to the appropriate County Cooperative Extension Service. Denuded areas, including spoils piles, shall be seeded and stabilized within seven days, if they will be undisturbed for more than 21 days. Reseeding shall be done within seven days of

emergence of seedlings as necessary until sufficient vegetation in all areas has been established.

- (b) Inspect and repair all erosion control measures after each rainfall event of one half of an inch or greater over a 24-hour period, and maintain controls until permanent vegetative cover has been established on disturbed areas.
 - (c) Delineate all watercourses, including wetlands, by fencing, flagging, or other prominent means.
 - (d) Avoid entry of construction equipment into watercourses, including wetlands, except at specific locations where construction has been approved.
 - (e) Prohibit storage, stockpiling, and/or disposal of equipment and materials in these sensitive areas.
 - (f) Locate structures outside of identified watercourses, including wetlands, except at specific locations where construction has been approved.
 - (g) Divert all storm water runoff away from fill slopes and other exposed surfaces to the greatest extent possible, and direct instead to appropriate catchment structures or sediment ponds, using diversion berms, temporary ditches, check dams, or similar measures.
- (11) NRG Pipeline shall dispose of all contaminated soil and all construction debris in approved landfills in accordance with Ohio EPA regulations.
 - (12) NRG Pipeline shall comply with any drinking water source protection plan for any part of the facility that is located within drinking water source protection areas of the local villages and cities.
 - (13) Prior to commencement of construction, NRG Pipeline shall develop a public information program that informs affected

property owners of the nature of the project, specific contact information of the Applicant's personnel who are familiar with the project, the proposed timeframe for project construction, and a schedule for restoration activities. Notification to property owners shall be given at least 30 days prior to work on the affected property.

- (14) Any damage to driveways, roadways, agricultural field systems, paved pathways, residential lawns, or other property of affected landowners as a result of this project shall be restored upon completion of construction.
- (15) NRG Pipeline shall replace agricultural field tiles damaged from the project, and segregate and restore excavated topsoil in agricultural fields upon backfilling. Severely compacted soils shall be plowed or otherwise decompacted, as necessary, in order to restore them to original condition, unless otherwise agreed to by the landowner.
- (16) NRG Pipeline shall accommodate, to the extent feasible, landowner requests for accommodations such as horizontal drilling, plotting trees, reducing easement size, double ditching, septic system restoration, removing stumps, and tilling easements.
- (17) NRG Pipeline shall continue to be open and responsive to the concerns of the affected landowners, and consider adjusting the route within parcels to address affected landowners' concerns without increasing overall impacts. NRG Pipeline shall keep Staff informed regarding such communications with the affected landowners.

The Ohio Supreme Court has recognized that the Board is vested with the authority to issue certificates upon such conditions as the Board considers appropriate. As acknowledged by the Court, the construction of projects subject to the Board's authority necessitates a dynamic process that does not end with the issuance of a certificate. The Court concluded that the Board has the authority to allow Staff to monitor compliance with the conditions that the Board has set. *In re Buckeye Wind, LLC*, 131 Ohio St.3d 449, 2012-Ohio-878, 966 N.E.2d 869. Such monitoring includes the convening of preconstruction conferences and the submission of follow-up studies and plans by an applicant. Additionally, as with all certificates, the Board emphasizes that, if Staff should discover, through its continued monitoring and review of the progress of the project, that NRG Pipeline is not complying with any of these conditions, Staff should bring such

concern to the attention of the Board. If NRG Pipeline fails to comply with any of the established conditions, the Board may take appropriate action to ensure compliance, in accordance with R.C. Chapter 4906.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On December 19, 2014, NRG Pipeline filed a letter of notification application for authority to construct, own, and operate a natural gas pipeline, metering station, and regulating station in Lorain County, Ohio.
- (2) NRG Pipeline is a person under R.C. 4906.01(A).
- (3) The project is a major utility facility as defined in R.C. 4906.01(B)(1)(c).
- (4) On January 6, 2015, FirstEnergy filed a motion to intervene in this proceeding, which was granted by the ALJ on March 3, 2015.
- (5) On January 9, 2015, and April 13, 2015, petitions for leave to intervene in this case were filed by LCPO, which were granted by the ALJ on March 3, 2015, and April 22, 2015, respectively.
- (6) On March 9, 2015, the Board suspended NRG Pipeline's letter of notification application and the 90-day automatic certification process, pursuant to R.C. 4906.03(F). The Board also scheduled an adjudicatory hearing to commence on April 14, 2015.
- (7) On March 19, 2015, and March 20, 2015, NRG Pipeline filed a supplement to its letter of notification application, in accordance with the Entry of March 9, 2015.
- (8) By Entry issued on March 25, 2015, the ALJ scheduled a local public hearing for April 8, 2015, at Lorain County Community College, in Elyria, Ohio, and rescheduled the adjudicatory hearing to commence on April 23, 2015, at the offices of the Commission, in Columbus, Ohio.
- (9) On March 27, 2015, Staff filed its report of investigation of the letter of notification application.

- (10) A local public hearing was held, as scheduled, on April 8, 2015. At the local public hearing, 17 individuals offered testimony regarding the project.
- (11) NRG Pipeline filed its proofs of publication in local newspapers of notice of the application and hearings on January 8, 2015, April 14, 2015, and April 20, 2015, in accordance with Ohio Adm.Code 4906-5-08 and Ohio Adm.Code 4906-5-09.
- (12) On April 21, 2015, NRG Pipeline filed its proof of service of the letter of notification application upon local public officials and public agencies, consistent with Ohio Adm.Code 4906-5-06.
- (13) On April 22, 2015, NRG Pipeline and FirstEnergy filed a stipulation resolving all of the issues between them in this proceeding.
- (14) The evidentiary hearing commenced, as rescheduled, on April 23, 2015, and concluded on April 24, 2015.
- (15) Post-hearing briefs were filed by NRG Pipeline, FirstEnergy, LCPO, and Staff on May 5, 2015.
- (16) The record establishes the need for the project, consistent with R.C. 4906.10(A)(1).
- (17) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the project, consistent with R.C. 4906.10(A)(2).
- (18) The record establishes that the project, subject to the conditions set forth in this Opinion, Order, and Certificate, represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations, consistent with R.C. 4906.10(A)(3).
- (19) The record establishes that the project is not an electric transmission line or generating facility and that R.C. 4906.10(A)(4) is, therefore, inapplicable.
- (20) The record establishes that the project, subject to the conditions set forth in this Opinion, Order, and Certificate, will comply with R.C. Chapters 3704, 3734, and 6111; R.C. 1501.33, 1501.34,

and 4561.32; and all rules and regulations thereunder, to the extent applicable, consistent with R.C. 4906.10(A)(5).

- (21) The record establishes that the project, subject to the conditions set forth in this Opinion, Order, and Certificate, will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).
- (22) The record establishes that the project has been assessed as to viability of agricultural land in an existing agricultural district, consistent with R.C. 4906.10(A)(7).
- (23) The record establishes that, to the extent that the use of water is required, the project will incorporate maximum feasible water conservation practices, consistent with R.C. 4906.10(A)(8), and subject to the conditions set forth in this Opinion, Order, and Certificate.
- (24) The stipulation filed by NRG Pipeline and FirstEnergy is reasonable and should be adopted.
- (25) The evidence supports a finding that all of the criteria in R.C. 4906.10(A) are satisfied for the construction, operation, and maintenance of the project as proposed by NRG Pipeline, subject to the conditions set forth in this Opinion, Order, and Certificate.
- (26) Based on the record, the Board should issue a certificate of environmental compatibility and public need, pursuant to R.C. Chapter 4906, for construction, operation, and maintenance of the project, subject to the conditions set forth in this Opinion, Order, and Certificate.

ORDER:

It is, therefore,

ORDERED, That a certificate be issued to NRG Pipeline for the construction, operation, and maintenance of the project, subject to the conditions set forth in this Opinion, Order, and Certificate. It is, further,

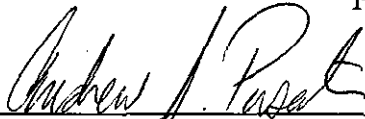
ORDERED, That the stipulation filed by NRG Pipeline and FirstEnergy be approved and adopted. It is, further,

ORDERED, That a copy of this Opinion, Order, and Certificate be served upon all parties and interested persons of record.

THE OHIO POWER SITING BOARD




Andre T. Porter, Chairman
Public Utilities Commission of Ohio



David Goodman, Board Member
and Director of the Ohio
Development Services Agency



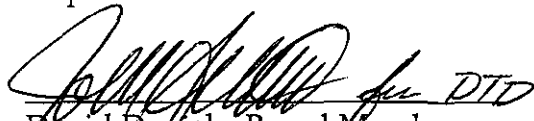
James Zehringer, Board Member
and Director of the Ohio
Department of Natural Resources



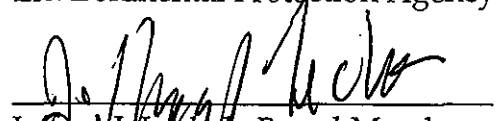
Richard Hodges, Board Member
and Director of the Ohio
Department of Health



Craig Butler, Board Member
and Director of the Ohio
Environmental Protection Agency



David Daniels, Board Member
and Director of the Ohio
Department of Agriculture

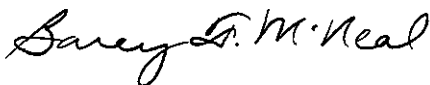


Jeffrey J. Lechak, Board Member
and Public Member

SJP/sc

Entered in the Journal

JUN 04 2015



Barcy F. McNeal
Secretary