

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
South Field Energy, LLC for a)	
Certificate of Environmental)	Case No. 15-1716-EL-BGN
Compatibility and Public Need to)	
Construct an Electric Generation)	
Facility in Columbiana County, Ohio)	

In the Matter of the Application of)	
South Field Energy, LLC for a)	
Certificate of Environmental)	Case No. 15-1717-EL-BTX
Compatibility and Public Need for a)	
Transmission Line in Columbiana County)	

**NOTICE OF INTERLOCUTORY APPEAL TO BOARD
AND APPLICATION FOR REVIEW**

Pursuant to Ohio Admin. Code §4906-2-29(A)(2), Columbiana County Resident Kenneth Johnson (“Mr. Johnson”) and the Ohio Valley Jobs Alliance (“OJVA”) (collectively, “Proposed Intervenors”) hereby give notice of their appeal to the Board from the Administrative Law Judge’s June 6, 2016 Entry in this case denying their Petition to Intervene in the above-captioned consolidated cases. A copy of the June 6, 2016 Entry is attached hereto.

Pursuant to Ohio Admin. Code §4906-2-29(C), the basis for this appeal and citations of the authorities relied upon are set forth in the attached application for review.

Respectfully submitted,

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APPLICATION FOR REVIEW

I. INTRODUCTION AND STATEMENT OF FACTS

Applicant South Field Energy, LLC (the “Applicant”) seeks to obtain a Certificate of Environmental Compatibility and Public Need from this Board to construct a proposed 1,100 megawatt natural gas-fired combined cycle electric generating facility (the “Facility”) in Yellow Township, Columbiana County (No. 15-1716-EL-BGN), and a proposed transmission line (the “Transmission Line”) to connect the Facility to the PJM electric grid (No. 15-1717-EL-BTX). The Facility is not only a “major utility facility” under R.C. 4906.01(B), but also is a new “major stationary source” subject to review under the Federal Prevention of Significant Deterioration Program under 40 CFR 52.21 and Ohio regulations. The proposed Facility will emit significant emissions for virtually all regulated air pollutants, including CO, SO₂, NO_x, particulates (PM, PM₁₀ and PM_{2.5}), VOCs, greenhouse gases (CO₂ and CO_{2e}), and Hazardous Air Pollutants, most notably formaldehyde. The Facility is subject to full PSD review, including Best Available Control Technology, ambient air quality, and air quality modeling. The pollutant dispersion area of the proposed Facility will cover significant parts of Ohio and West Virginia. Beside air quality, the Facility and Transmission Line will impact wetlands, rivers and other protected water bodies, habitat areas for wildlife, conservation and recreation areas, and regional infrastructure.

The proposed Facility is but one of a number of large gas-fired electric generation facilities that are proposed to be built in Ohio and West Virginia and connected to the PJM grid. The proliferation of such competing facilities—facilities that all rely on a single source of fuel, natural gas—presents substantial issues as to whether such single-fuel-source electricity generation will adequately and reliably serve Ohio’s future electricity demand in an

unpredictable energy environment. Future electric generation sources, especially new-entry base-load generation sources, must be subject to a reasoned, balanced, and long-view Ohio energy policy. Proper review of the applications in these proceedings requires the Board to maintain a broad, inclusive perspective of the best interests of Ohio residents that is not tied to the Applicant's personal economic interests in the subject proposed projects.

Because the construction and operation of the Facility and the Transmission Line will have direct and significant impacts on Mr. Johnson and other residents of Columbiana County, Proposed Intervenor sought to intervene in these proceedings by filing a Petition to Intervene on March 4, 2016.¹ Mr. Johnson is a life-long resident of Columbiana County and a director and member of OVJA. OVJA is a public interest organization whose primary mission is to support good paying jobs in the Ohio Valley including in Ohio and West Virginia. Affidavit of James Russell Thomas ("Thomas Affidavit"), the Secretary-Treasurer of OVJA, at ¶2 (attached to Reply Memorandum in Support of Petition to Intervene). It has 242 individual members—137 residing in Ohio and 76 in West Virginia—who are residents, property owners, taxpayers, users of outdoor recreational facilities, and electric utility ratepayers in the Ohio Valley region, including Columbiana County, Ohio. Thomas Affidavit at ¶¶3-4. Mr. Johnson, who serves as a

¹At the time the Petition to Intervene was filed, OVJA was not registered with the Secretary of State to do business in Ohio. A nonprofit corporation is not, however, required to register with the Secretary of State unless it "exercise[s] its corporate privileges in this state in a continual course of transactions" R.C. 1703.27. See also *State ex rel. Physicians Comm. for Responsible Medicine v. Ohio State Univ. Bd. of Trustees*, 108 Ohio St.3d 288, 292, 2006-Ohio-903 at ¶20 (foreign nonprofit corporation that has "no office or employees in Ohio" and has engaged in only "rare and sporadic" "financial transactions in the state," is not required to register to do business in Ohio prior to commencing public records litigation). Nevertheless, in its opposition to the Petition to Intervene, Applicant challenged the legitimacy of OVJA because it was not licensed to do business in Ohio. See Applicant's Response to Petitions to Intervene at 9. In any event, OVJA registered with the Secretary of State to do business in Ohio on April 19, 2016.

director of OVJA, is one of OVJA's *eighteen members residing in Columbiana County*. Thomas Affidavit at ¶¶3.

OVJA's members, and particularly those in and around Columbiana County, will be significantly impacted by the Facility and Transmission Line. Thomas Affidavit at ¶4. OVJA and Mr. Johnson sought to intervene in these proceedings to ensure that the Board has a full, complete, and accurate record upon which it can base its findings and determination in these proceedings. *Id.* OVJA's membership, and especially those residing in Columbiana County, including Mr. Johnson, will be impacted by the predicted environmental impacts of the proposed Facility, particularly air pollutant emissions that will be dispersed over a wide-ranging geographical region, both in Columbiana County and nearby areas in other counties in Ohio and in West Virginia. Thomas Affidavit at ¶5.

OVJA's members, including Mr. Johnson, also reside in areas that will be served with electrical power generated from the Facility. Thomas Affidavit at ¶6. Thus, OVJA's membership has legitimate concerns with the generation of electricity in the Ohio Valley region, including the protection and promotion of existing affordable and reliable coal-fired generation, which has provided thousands of jobs throughout the region for many years. *Id.*

The Applicant opposed Proposed Intervenor's Petition to Intervene, and on June 6, 2016, the Administrative Law Judge ("ALJ") issued his Entry denying the Petition. *In the Matter of the Application of South Field Energy LLC*, Nos. 15-1716-EL-BGN & 15-1717-EL-BTX at 3-5, ¶¶9-15 (June 6, 2016). In his ruling, the ALJ concluded that OVJA's concerns were "generic and lack specificity," and that OVJA had "not sufficiently demonstrated how the interests of its members would be directly impacted by the construction of the facility or the transmission line." *Id.* at 4, ¶14. With regard to Mr. Johnson, the ALJ concluded that "Mr. Johnson does not claim

any specific interest that would be directly affected by the project,” and that “[l]iving in the county of a proposed project is not enough on its own to warrant intervention.” *Id.* at 5, ¶15. It is from this Entry that Proposed Intervenors have appealed, seeking the full Board’s review of the denial of intervention.

II. ARGUMENT

A. Standard for Intervention

The Ohio Supreme Court has interpreted R.C. 4903.08(A) and O.A.C. 4906-7-04, the predecessor to current O.A.C. 4906-2-12, as providing that “*[a]ll interested parties* may intervene in [Board] proceedings upon a showing of good cause.” *State ex rel. Ohio Edison Co. v. Parrott*, 73 Ohio St.3d 705, 708 (1995) (citation omitted) (emphasis added). In ruling on a petition to intervene, the Board is to consider: “[t]he nature and extent of the person’s interest; [t]he extent to which the person’s interest is represented by existing parties; [t]he person’s potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and [w]hether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.” O.A.C. 4906-2-12(B)(1)(a)-(d). See also *In the Matter of the Application of Clean Energy Future—Lordstown, LLC*, No. 14-2322-EL-BGN, slip op. at 2, ¶5 (Ohio Power Siting Bd. July 28, 2015). Because the Proposed Intervenors have satisfied these conditions for intervention, the Board, for good case shown, should reverse the decision of the ALJ and grant the Petition to Intervene.

B. OJVA And Kenneth Johnson Have Direct and Substantial Interests at Stake in These Proceedings.

As noted above, the ALJ essentially denied Proposed Intervenors Petition in these consolidated cases after concluded that “[l]iving in the county of a proposed project is not enough on its own to warrant intervention.” *In the Matter of the Application of South Field*

Energy LLC, Nos. 15-1716-EL-BGN & 15-1717-EL-BTX at 5, ¶15 (June 6, 2016). In doing so, the ALJ disregarded the Proposed Intervenors' direct and substantial interests in these proceedings and ignored prior decisions granting intervention to parties similar to OVJA. Given the significant nature of their interests, and prior Board precedent, the Board should reverse the ALJ's Entry and grant the Proposed Intervenors' Petition to Intervene.

1. Nature of Proposed Intervenors' Interests.

As previously noted, OVJA's members, and particularly those in and around Columbiana County, will be significantly impacted by the Facility and Transmission Line. OVJA's membership, and especially those residing in Columbiana County, including Mr. Johnson, will be impacted by the predicted environmental impacts of the proposed Facility, particularly air pollutant emissions that will be dispersed over a wide-ranging geographical region, both in Columbiana County and nearby areas in other counties in Ohio and in West Virginia. Moreover, because OVJA's members, including Mr. Johnson, reside in areas that will be served with electrical power generated from the Facility, there is a real and significant risk that these members will be harmed by an overreliance on a single-fuel-source of electricity generation.

Contrary to the ALJ's conclusion that the Proposed Intervenor's interests are "generic and lack specificity," their interests are precisely those that the Board is commanded to consider in determining whether to issue a certificate. R.C. 4906.10(A) provides, in pertinent part, as follows:

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) That 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, that *the 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 that *the facility will serve the interests of electric system economy and reliability*;

(5) That *the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34, and 4561.32 of the Revised Code.* * * *

(6) That *the facility will serve the public interest, convenience, and necessity*;

(7) In addition to the provisions contained in divisions (A)(1) to (6) of this section and rules adopted under those divisions, what its impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929. of the Revised Code that is located within the site and alternative site of the proposed major utility facility. * * *

(8) That *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.

(emphasis added).

Thus, the General Assembly has expressly directed the Board to consider “the nature of the probable environmental impact,” R.C. 4906.10(A)(2), whether the Facility “represents the minimum adverse environmental impact, R.C. 4906.10(A)(3), and whether the Facility will comply with, *inter alia*, “Chapters 3704. [Air Pollution Control], 3734. [Solid and Hazardous Wastes], and 6111. [Water Pollution Control] of the Revised Code and all rules and standards adopted under those chapters and under section[] 1501.33 [Applying for Permit for Major Increase in Withdrawal of Waters of State],” R.C. 4906.10(A)(5). These, in turn, require the Board to consider the Facility’s compliance with state and federal environmental regulations,

such as the New Source Performance Standards for greenhouse gases, 40 CFR Part 60, Subpart TTTT, and state Maximum Available Control Technology regulations, O.A.C. 3745-31-28.

The Board must also consider whether the Facility “incorporates maximum feasible water conservation practices.” R.C. 4906.10(A)(8). The Applicant proposes to take from .9 to 7.6 mgd of water from the Buckeye Water District for the Facility’s cooling tower and on-site water requirements, Application at 6, 9, ensuring that the Facility will be a major user of the area’s water supply, impacting, all of the area’s users of water. Yet, there is no basis to ensure that such a supply of water is reliably available over the operational life of the facility or that this use is consistent with maximum feasible water conservation practices. See R.C. 4906.10(A)(8).

These environmental issues—*which directly impact Mr. Johnson and OVJA’s members in Columbiana County, and which the General Assembly requires the Board to consider*—are, therefore, highly relevant in these cases. The proposed Facility is a 1,100 MW natural gas-fired combined cycle, dual fuel, electric generating facility. It will not only be a “major utility facility” under R.C. 4906.01(B), but also will be a new “major stationary source” subject to review under the Federal Prevention of Significant Deterioration Program under 40 CFR 52.21 and Ohio regulations. The proposed Facility will emit significant amounts of virtually all regulated air pollutants, including CO, SO₂, NO_x, particulates (PM, PM₁₀ and PM_{2.5}), VOCs, greenhouse gases (CO₂ and CO_{2e}), and Hazardous Air Pollutants, most notably formaldehyde. The Facility is subject to full PSD review, including Best Available Control Technology, ambient air quality, and air quality modeling.

Moreover, the pollutant dispersion area “footprint” of the proposed Facility will cover not just Columbiana County (and OVJA’s 18 members residing there), but also significant parts of Ohio outside Columbiana County and parts of West Virginia, where the bulk of OVJA’s

members reside. All residents within this area, not just those who own property within the proposed Facility's real property footprint or adjacent thereto, will be affected by the Facility's emission of air pollutants and discharge of pollutants into area waters, which will impact wetlands, rivers, and other protected water bodies. In addition, the Facility will be a major user of the area's water supply, and its operation and construction will impact wildlife habitats, conservation, and recreation areas, all of which must be considered by the Board. See *In the Matter of the Application of Buckeye Wind LLC*, No. 13-360-EL-BGA, slip op. at 5-6, ¶¶12-14 (Ohio Power Siting Bd. Nov. 21, 2013) (granting motion of proposed intervenors who claimed that the wind project would have "potential impacts" on "their residences, *land, roads, and community*") (emphasis added).

Finally, the Board is expressly required by statute to consider whether the 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 whether "the facility will serve the interests of electric system economy and reliability." R.C. 4906.10(A)(4). The ALJ dismissed OVJA's interests in this regard as "objections with natural gas generation generally [that] do have have a direct nexus to this proposed facility and transmission line." *In the Matter of the Application of South Field Energy LLC*, Nos. 15-1716-EL-BGN & 15-1717-EL-BTX at 4, ¶14 (June 6, 2016). But again, these are the very interests the Board is commanded to consider.

As noted above, the proposed Facility is but one of a number of proposed large gas-fired electric generation facilities in Ohio and West Virginia. The proliferation of such competing facilities—facilities that rely on natural gas as a single source of fuel—presents substantial issues as to whether such single-fuel-source electricity generation can and will adequately and reliably serve Ohio's future electricity demand in an unpredictable energy environment. Due to the

current price depression of natural gas resulting from a transitory excess in supply, there is a real danger of an unbalanced short-term commitment to natural gas electricity generation, resulting in the certification and construction of such facilities in numbers that are detrimental to the long-term interests of Ohio consumers for affordable and reliable electricity—in contravention of the “public need.” Thus, significant issues are raised by the current applications for certification to build the Facility and the Transmission Line, including: fluctuating capacity values, uncertainties concerning future fuel supplies and prices, environmental compliance, energy resource costs, capital and operating costs, compatibility with regional grids, and the long-term reliability of electricity generation and delivery. All of these variables can significantly impact the electric rates paid by residents of the Ohio Valley. In short, there is a significant question as to whether the construction of the proposed Facility and Transmission Line will serve the interests of electric system economy and reliability. All of these issues are relevant to this Board’s review of the Application, and indeed, are policy decisions that the General Assembly has committed to this Board’s sound judgment to implement in the best interest of all Ohio electric consumers pursuant to R.C. 4906.10(A)(4) & (6). And, these are the precise interests—interests that are not “generic,” but rather are quite specific—at stake for Mr. Johnson, OVJA, and all of OVJA’s Columbiana County members.

2. Board Precedent Supports OVJA’s and Mr. Johnson’s Intervention

OVJA’s and Mr. Johnson’s interests in this case are very similar to the interests of other public interest organizations that the Board has allowed to intervene in its proceedings. The Board has often granted intervention in wind farm cases to the Ohio Farm Bureau Federation, which describes itself as a statewide non-profit organization with resident, farm, and small business members in each of the state’s counties, which members “have an interest in effective

wind energy development, wind leasing agreements, and assurances that project construction activities adhere to applicable soil and water conservation and air quality standards, as well as other environmental considerations.” *In the Matter of the Application of 6011 Greenwich Windpark, LLC*, No. 13-990-EL-BGN, slip op. at 1-2, ¶¶3-4 (Ohio Power Siting Bd. March 10, 2014) (emphasis added). The Board has repeatedly permitted the Federation to intervene *without identifying its individual members and without describing the specific interests that will be affected by the proposed facilities*, which the ALJ in this case now concludes is necessary.

Similarly, the Board allowed intervention to three “citizens groups”—the National Resources Defense Council, the Ohio Environmental Council, and the Sierra Club—in a case involving a proposed Meigs County coal-fired power plant. The Board allowed the groups to intervene after finding that their “*members who reside in Meigs County . . . would be directly affected by the proposed facility*,” *In the Matter of the Application of American Municipal Power—Ohio, Inc.*, No. 06-1358-EL-BGN, slip op. at 3 (Ohio Power Siting Bd. Dec. 4, 2007) (emphasis added), because they “would be adversely impacted by air and water pollution from the facility, the mining and transport of coal for the plant and the disposal of waste from the plant” and would “be adversely impacted by the global warming that would be exacerbated by the proposed facility.” *Id.*, slip op. at 1, ¶4. See also *In the Matter of the Application of Columbia Gas of Ohio, Inc.*, No. 11-3534-GA-BTX, slip op. at 2-3, ¶¶8-11 (Ohio Power Siting Bd. Dec. 21, 2011) (granting motion to intervene of Sierra Club which claimed that “its local members have a longstanding relationship with the Wetlands Park [beneath which the proposed pipeline would run] and wish to preserve the Wetlands Park from potential harm presented by

the pipeline”).² These are the exact interests Proposed Intervenors seek to advance herein, *i.e.*, the adverse impacts of legally “significant” air and water pollution caused by this specific proposed Facility, that the ALJ herein now finds are “generic and lack specificity.” The ALJ’s decision is simply not consistent with prior decisions allowing intervention in proceedings before this Board.

C. Proposed Intervenors’ Interests Are Not Now Represented in These Proceedings.

As discussed above, OJVA’s and Mr. Johnson’s interests are directly and substantially implicated in these proceedings. Their interests, however, are not now adequately represented by the other participants herein. To the contrary, none of the parties granted intervention thus far has expressed any desire to present evidence that can, in the slightest way, be considered contrary to the Applicant’s interest in proceeding with the construction and operation of the proposed Facility and Transmission Line. What the Applicant ultimately hopes to achieve—and what the ALJ decision denying Proposed Intervenors’ Petition contributes to—is the development of a record in these proceedings that is completely devoid of any evidence contrary to the Applicant’s narrow pecuniary self-interest, thereby removing any impediment (no matter how legitimate) to this Board’s quick approval of its Applications. Prohibiting the intervention

²Before the ALJ, the Applicant asserted that only groups with “established environmental interests”—such as the Sierra Club and the Natural Resource Defense Council—are eligible to intervene to protect those interests. See Response to Petition to Intervene at 9. This position finds no support in the Board’s precedent and would effectively preclude any relatively new public interest organization—like OVJA, which was recently formed to protect such interests in a discrete region or localized area—from intervening in proceedings before the Board. See *In the Matter of the Application of Buckeye Wind LLC*, No. 08-666-EL-BGN, slip op. at 2-3, ¶6 (Ohio Power Siting Bd. July 31, 2009) (grating motion to intervene of a nonprofit organization “formed to address issues related to the placement of wind turbines in” the county because it had “a direct and substantial interest in [the] matter, in light of the potential visual, aesthetic, safety, and nuisance impact the proposed project may have on its members’ real property and the community”); *In the Matter of the Application of Champaign Wind, LLC*, No. 12-160-EL-BGN, slip op. 3-6, ¶¶19-23, 25 (Ohio Power Siting Bd. Aug. 2, 2012).

of OVJA and Mr. Johnson will preclude creation of the required full and complete record necessary for the Board to make informed, legitimate determinations.

D. Intervention Will Contribute to the Just and Expeditious Resolution of These Cases and Will Not Delay These Proceedings.

Proposed Intervenor's participation will contribute to a just and expeditious resolution of these cases without causing delay or prejudicing any of the parties herein. Assuring that all evidence—both favorable and unfavorable to the certification of the proposed Facility and Transmission Line—is presented to the Board will necessarily contribute to a just resolution of these consolidated cases.

Moreover, although not a basis for the ALJ's denial of the Proposed Intervenor's intervention, the Applicant asserted before the ALJ that OVJA's and Mr. Johnson's intervention will cause unnecessary delay in these proceedings. This contention amounted to nothing more than pure conjecture and speculation and is without merit. The Proposed Intervenor's have agreed to abide by all Board deadlines. They will present their information and evidence in a clear and succinct matter. The Proposed Intervenor's participation will not, therefore, cause any undue delay.

III. CONCLUSION

For the foregoing reasons, Proposed Intervenor respectfully urge this Board to reverse the Entry of the ALJ denying their Petition to Intervene, to grant that Petition, and to allow Proposed Intervenor to participate in all future proceedings in these cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below via electronic mail this 9th day of June, 2016.

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BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of South)
Field Energy LLC for a Certificate of)
Environmental Compatibility and Public) Case No. 15-1716-EL-BGN
Need to Construct an Electric Generation)
Facility in Columbiana County.)

In the Matter of the Application of South)
Field Energy LLC for a Certificate of) Case No. 15-1717-EL-BTX
Environmental Compatibility and Public)
Need for a Transmission Line in)
Columbiana County.)

ENTRY

The administrative law judge finds:

- (1) South Field Energy LLC (SFE) is a corporation and a person under R.C. 4906.01(A). Pursuant to R.C. 4906.04, before construction can begin on any major utility facility within the state of Ohio, a certificate of environmental compatibility and public need must be obtained from the Ohio Power Siting Board (Board).
- (2) On January 15, 2016, SFE filed an application with the Board seeking approval for the construction of a natural gas electric generation facility, docketed in Case No. 15-1716-EL-BGN (facility case). The proposed facility is 1,100 megawatt (MW) combined-cycle electric generating facility powered by natural gas with the capability to fire ultra-low sulfur distillate as back-up. It will be located in Columbiana County, Ohio and generate electricity for delivery and sale on the interstate transmission grid.
- (3) In conjunction with the generation facility, SFE also filed an application to build a 345 kilovolt (kV) transmission line and an associated switching station, docketed in Case No. 15-1717-EL-BTX (transmission case). The purpose of the line will be to connect the generation facility to an existing circuit.

The proposed line will also be located in Columbiana County and will be approximately three miles in length.

- (4) By Entry on March 29, 2016, the facility case and the transmission case were consolidated for the purposes of the public notices, the public hearings, and the evidentiary hearings. The Entry also set a procedural schedule, establishing May 12, 2016, as the deadline to file petitions to intervene.
- (5) Pursuant to R.C. 4906.08, and in accordance with Ohio Adm.Code 4906-2-12, the Board or administrative law judge (ALJ) shall grant a motion to intervene for good cause shown.

American Transmission Systems, Inc. and Ohio Edison

- (6) On February 17, 2016, American Transmission Systems, Inc. (ATSI) and Ohio Edison (collectively, FirstEnergy) filed motions to intervene in both the facility case and the transmission case. FirstEnergy asserts that the proposed generation facility site is on property that contains three active ATSI transmission line circuits. Further, FirstEnergy states SFE intends to connect the facility to the ATSI transmission system. FirstEnergy also notes that SFE plans on building a switching substation adjacent to ATSI's existing 345 kilovolt (kV) transmission line and anticipates transferring ownership and operation of the switchyard to FirstEnergy upon completion and testing.
- (7) SFE responded to FirstEnergy's motion on March 3, 2016, requesting that FirstEnergy only be granted limited intervention. In the facility case, SFE requests that FirstEnergy's participation be limited to construction and safety issues that directly relate to the three active ATSI transmission lines on the facility property. Regarding the transmission case, SFE asserts FirstEnergy's involvement should be restricted to its interests in its existing transmission circuit.
- (8) The ALJ finds that FirstEnergy's request is reasonable and, for good cause shown, should be granted. Upon review, FirstEnergy meets the requirements for intervention set forth

in R.C. 4906.08 and Ohio Adm.Code 4906-2-12 and, accordingly, should be granted intervention in this case.

Kenneth Johnson and the Ohio Valley Jobs Alliance

- (9) On March 4, 2016, Kenneth Johnson and the Ohio Valley Jobs Alliance (OVJA) filed joint motions to intervene in both the facility and transmission cases. Mr. Johnson asserts he is a life-long resident of Columbiana County and the director of OVJA. OVJA states it is a public interest group with over 400 members whose mission is to promote and protect jobs in the Ohio Valley region, including Columbiana County. Mr. Johnson and OVJA assert the construction of the facility and its integration into the PJM grid present substantial problems for the preservation of affordable, reliable, safe, and secure supplies of electricity for OVJA members, including Mr. Johnson. OVJA contends there are numerous other natural gas-based facilities currently being built in Ohio and West Virginia and it has concerns regarding over-reliance on single fuel source electricity generation. Further, According to OVJA, the proposed facility will impact air quality, protected water bodies, wildlife, and regional infrastructure.
- (10) On March 21, 2016, SFE filed responses to Mr. Johnson's and OVJA's motions to intervene. As to OVJA's motion, SFE requests that it be denied. SFE states OVJA is not registered to do business in Ohio and did not identify how any of its members are directly affected by the proceedings. SFE avers that while OVJA stated its members would be detrimentally affected by the facility, it did not describe how with any specificity. Further, SFE states that OVJA's concerns regarding grid reliability, energy policy, and financing support are misplaced issues that are not relevant to the pending applications. According to SFE, OVJA's reasons for intervening are vague and disingenuous. Thus, SFE contends that OVJA lacks good cause to intervene in these proceedings.
- (11) Regarding Mr. Johnson's request for intervention, SFE asserts it also should be denied. SFE avers that Mr. Johnson does not make any claim to be personally affected by the construction of the facility or the transmission line. According to SFE, living in Columbiana County is not sufficient cause to

warrant intervention. Further, SFE states Mr. Johnson has not identified any real interests that will be affected by the applications. Because of this, SFE asserts good cause does not exist for Mr. Johnson to intervene in the proceedings.

- (12) A joint reply to SFE's response was filed by OVJA and Mr. Johnson on March 28, 2016. OVJA asserts it has 242 total members, 18 of which reside in Columbiana County, including Mr. Johnson. Its members in Columbiana County will be directly affected by the air emissions from the facility and its members outside of the county will be served by the electrical power the facility generates. OVJA avers its interests are similar to the interests of other public interest groups that have been permitted to intervene in Board proceedings. According to OVJA, it has an interest in ensuring the Board has a full, complete, and accurate record, consistent with the factors enumerated in R.C. 4906.10(A).
- (13) On March 29, 2016, SFE filed a motion for leave to file a surreply to OVJA's reply. SFE avers OVJA presented new evidence and allegations in its reply brief to which SFE is entitled to respond. OVJA filed a memorandum in opposition to the motion on March 31, 2016, and SFE replied on April 4, 2016. Upon review, SFE's motion is denied.
- (14) Upon review, the ALJ finds good cause does not exist to grant OVJA's request to intervene, and that the motion should be denied. Although OVJA states it has 18 members residing in Columbiana County, it has not sufficiently demonstrated how the interests of its members would be directly impacted by the construction of the facility or the transmission line. OVJA's stated concerns regarding geographic impacts and effects on infrastructure are generic and lack specificity. In addition, OVJA's issues regarding reliability and Ohio's reliance on single fuel source electric generation appear to be objections with natural gas generation generally and do not have a direct nexus to this proposed facility and transmission line. Further, as to OVJA's interest in ensuring the Board has a full, complete, and accurate record and that the project is compliant with various environmental standards, the ALJ notes that Board staff, pursuant to R.C. 4906.07(C), is required to complete a comprehensive investigation, while working with various

state and federal agencies, as to whether the proposed plans are in compliance with the factors outlined in R.C. 4906.10(A). Pursuant to R.C. 4906.08 and Ohio Adm.Code 4906-2-12, for the foregoing reasons, OVJA's motion to intervene is denied.

- (15) Similarly, Mr. Johnson's motion to intervene should also be denied. Living in the county of a proposed project is not enough on its own to warrant intervention. *See In re Black Fork Wind LLC*, Case No. 09-546, Entry (Mar. 2, 2010) at 5. Besides espousing the same interests as OVJA in their joint motion and living in Columbiana County, Mr. Johnson does not claim any specific interest that would be directly affected by the project. Accordingly, good cause does not exist for Mr. Johnson to intervene, and, in accordance with R.C. 4906.08 and Ohio Adm.Code 4906-2-12, his motion should be denied.

Columbiana County Development Department and Yellow Creek Township

- (16) On May 12, 2016, Columbiana County Development Department (CCDD) filed a motion to intervene. CCDD asserts it is a government agency tasked with representing the economic interests of Columbiana County. According to CCDD, the proposed project would affect CCDD's plans for land use and economic development in the county.
- (17) On May 12, 2016, Yellow Creek Township (Yellow Creek) filed a motion to intervene in the proceedings. Yellow Creek states that the project site is located on approximately 150 acres within its borders. Yellow Creek contends the project will directly affect the health, safety, and welfare of its population and will also impact its geography and roadways.
- (18) SFE filed a response on May 14, 2016, stating that it does not oppose the motions of either CCDD or Yellow Creek.
- (19) Upon review, the ALJ finds that the motions to intervene filed by CCDD and Yellow Creek meet the requirements for intervention set forth in R.C. 4906.08 and Ohio Adm.Code 4906-2-12, and the motions to intervene are unopposed. Accordingly, the ALJ finds that CCDD and Yellow Creek should be granted intervention in this case.

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It is, therefore,

ORDERED, That the motions to intervene by FirstEnergy, CCDD, and Yellow Creek be granted. It is, further,

ORDERED, That the motions to intervene by OVJA and Kenneth Johnson be denied. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

THE OHIO POWER SITING BOARD

/s/ Nick J. Walstra

By: Nick J. Walstra
Administrative Law Judge

JRJ/dah

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Case No(s). 15-1716-EL-BGN, 15-1717-EL-BTX

Summary: Administrative Law Judge Entry ordering the motions to intervene by FirstEnergy, CCDD, and Yellow Creek be granted; and that the motions to intervene by OVJA and Kenneth Johnson be denied - electronically filed by Debra Hight on behalf of Nick J. Walstra, Administrative Law Judge.

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in

Case No(s). 15-1716-EL-BGN, 15-1717-EL-BTX

Summary: Notice Notice of Interlocutory Appeal to Board and Application for Review
electronically filed by John F Stock on behalf of Johnson, Kenneth and Ohio Valley Jobs
Alliance