

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. 15-1717-EL-BTX
Need for a Transmission Line in)
Columbiana County.)

OPINION, ORDER, AND CERTIFICATE

The Ohio Power Siting Board (Board), coming now to consider the above-entitled matter, having appointed an administrative law judge (ALJ) to conduct a public hearing, having reviewed all of the evidence presented, and being otherwise fully advised, hereby issues its Opinion, Order, and Certificate in this case.

APPEARANCES:

Michael J. Settineri and Scott M. Guttman, Vorys, Sater, Seymour, & Pease, LLP, 52 East Gay Street, Columbus, Ohio 43215 on behalf of South Field Energy, LLC.

Christopher Miller, Ice Miller, LLP, 250 West Street, Suite 700, Columbus, Ohio 43215, and Greg Hanahan, GAH Associates, LLC, 13900 State Route 725, Germantown, Ohio 45327, on behalf of Yellow Creek Township.

Robert J. Schmidt, Porter, Wright, Morris & Arthur, LLP, 41 South High Street, Columbus, Ohio 43215 on behalf of American Transmission Systems, Inc. and the Ohio Edison Company.

Mike DeWine, Ohio Attorney General, by John Jones and Robert Eubanks, Assistant Attorneys General, Public Utilities Section, 30 East Broad Street, 16th Floor, Columbus, Ohio 43215, on behalf of the Staff of the Ohio Power Siting Board.

OPINION:

I. Summary of the Proceeding

All proceedings before the Board are conducted according to the provisions of R.C. 4906 and Ohio Adm.Code 4906.

On October 5, 2015, South Field Energy (SFE or Applicant) filed a preapplication letter of notification that it would be filing an application to construct a natural gas electric generation facility in Yellow Creek Township, Columbiana County, docketed in Case No. 15-1716-EL-BGN (facility case). In conjunction with the generation facility, SFE also filed a preapplication letter of notification to build a 345 kilovolt (kV) transmission line, switchyard, and facilities, docketed in Case No. 15-1717-EL-BTX (transmission case). On October 13, 2015, SFE filed proof of publication of notice of the public informational meeting for both cases held on October 26, 2015, in Wellsville, Ohio.

On October 19, 2015, SFE filed a motion for waiver of two requirements of Ohio Adm.Code 4606-5-04(A), regarding the analysis of the alternative routes for the transmission line. Staff filed notice that it did not oppose the motion on November 5, 2015; thereafter, the ALJ granted the motion on December 1, 2016.

On January 15, 2016, SFE filed its application in the transmission case (SFE. Ex. 2). By letter dated March 7, 2016, the Board notified SFE that its application was found to comply with the filing requirements contained in Ohio Adm.Code 4906-5-05. On March 14, 2016, SFE filed proof of service of the application upon local public officials, as required under Ohio Adm.Code 4906-5-06 and 4906-5-07.

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. Further, the ALJ scheduled a local public hearing for June 6, 2016, at Wellsville High School, in Wellsville, Ohio, and an evidentiary hearing for June 21, 2016, at the offices of the Board, in Columbus, Ohio. The Entry also directed SFE to publish notice of the application and hearings, as required by Ohio Adm.Code 4906-5-08, and directed that petitions to intervene by interested persons be filed by May 12, 2016, or within 30 days following publication of the notice required by Ohio Adm.Code 4906-5-08, whichever was later.

Timely motions to intervene were filed by American Transmission Systems, Inc. (ATSI) and the Ohio Edison Company (collectively, FirstEnergy), Columbiana County Development Department (CCDD), Yellow Creek Township (Yellow Creek), and, jointly, by Kenneth Johnson and the Ohio Valley Jobs Alliance (OVJA). By Entry on June 6, 2016, the ALJ granted the motions to intervene of FirstEnergy, CCDD, and Yellow Creek. Further, for lack of good cause shown, the motions to intervene of Mr. Johnson and OVJA were denied.

On May 20, 2016, Staff filed its reports of investigation of both the facility project (Staff Ex. 1) and the transmission project (Staff Ex. 2) (Staff Reports).

The local public hearing was held, as scheduled, on June 6, 2016. Proof of publication of notice of the public hearing was filed on June 3, 2016. At the local public hearing, 19 individuals offered substantive testimony regarding both proposals. All of the individuals that testified spoke in favor of the projects.

The evidentiary hearing began on June 21, 2016. At that time, Staff requested a continuance of the hearing, stating it needed more time to review proposed stipulations. The ALJ continued the hearing until June 29, 2016. (June 21, 2016 Tr. at 5, 7.)

On June 28, 2016, SFE, FirstEnergy, Yellow Creek, CCDD, and Staff filed a partial stipulation in the transmission case purporting to resolve a majority of the issues in the case (Jt. Ex. 2). The parties also filed a joint stipulation purporting to resolve all issues in the facility case (Jt. Ex. 1). The evidentiary hearing reconvened on June 29, 2016. At the hearing, Staff submitted the direct testimony of James O'Dell (Staff Ex. 3); FirstEnergy submitted the direct testimony of William Beach (FirstEnergy Ex. 1); and SFE submitted the direct testimonies of Lynn Gresock (SFE Ex. 7) and Jonathan Winslow (SFE Ex. 6). Additionally, at the hearing, Mr. Winslow testified in support of the stipulations.

II. Interlocutory Appeal

By Entry on June 6, 2016, as noted above, the ALJ granted the motions to intervene of FirstEnergy, CCDD, and Yellow Creek. Further, for lack of good cause shown, the motions to intervene of Mr. Johnson and OVJA were denied.

In denying the motion of OVJA, the ALJ reasoned that the group did not adequately demonstrate how the projects would directly impact the interest of its members. Further, the ALJ found OVJA's concerns about reliability and natural gas generation plants to be generic and not specifically related to impacts of the current projects.

For similar reasons, the ALJ also denied Mr. Johnson's motion to intervene. In doing so, the ALJ stated that Mr. Johnson, despite living in Columbiana County, did not claim any specific interest that the project would affect.

Ohio Adm.Code 4906-2-29(A)(2) provides that any party who is adversely affected may take an immediate interlocutory appeal to the Board from any ruling that denies a motion to intervene.

On June 9, 2016, Mr. Johnson and OVJA filed a joint notice of interlocutory appeal and application for review. OVJA avers that the environmental impacts of the facility, particularly air emissions and water usage, will severely affect its members, including Mr. Johnson, who reside in Columbiana County and other nearby counties in Ohio and West

Virginia. OVJA and Mr. Johnson also contend increased reliance on natural gas generation could affect Ohio consumers' interests in affordable and reliable electricity. According to OVJA, other, similar public interest groups have been permitted to intervene in Board proceedings. Therefore, OVJA and Mr. Johnson request the Board reverse the ALJ's decision to deny intervention.

SFE filed a memorandum contra to OVJA's notice of appeal on June 15, 2016. SFE states OVJA's interest in the reliability and affordability of electricity is overbroad and unsupported. According to SFE, concerns about an over-reliance on natural gas and long-term energy costs are policy questions that are improper before the Board. Regarding OVJA's environmental concerns, SFE contends they are unsupported and disingenuous. Specifically, SFE asserts OVJA's interests are related to job promotion and coal-fired generation, not environmental issues. Further, SFE avers OVJA does not explain with any specificity how its members will be affected by the project. Additionally, SFE contends that OVJA's interest in the proceedings as Columbiana County citizens in ensuring the Board has a full review is generic, improper, and unnecessary. SFE asserts CCDD and Yellow Creek are better suited to represent the local citizens and the local economy. Further, according to SFE, Staff does a thorough investigation and report in order for the Board to make an informed decision. Thus, SFE states the ALJ properly denied OVJA's motion and the decision should be affirmed.

SFE also filed a memorandum contra to Mr. Johnson's notice of appeal. SFE avers that Mr. Johnson's intervention should be denied for many of the same reasons as OVJA, as summarized above. Additionally, SFE contends that Mr. Johnson has not demonstrated how he will be directly affected by the project and thus does not have a legitimate interest to warrant intervention. Although he lives in Columbiana County, SFE states Mr. Johnson does not make any specific claims about how the project will impact his well-being.

Upon review, the Board affirms the June 6, 2016 ALJ Entry denying intervention to OVJA and Kenneth Johnson. We affirm that OVJA has not adequately demonstrated how its interests would be impacted by the proposed projects. OVJA's environmental concerns about air pollution and water usage lack specificity as to how it will directly affect its members. The concerns, as they relate to its members, are generic and do not coalesce with the group's stated mission of "support(ing) good paying jobs in the Ohio Valley." (OVJA Mar. 28, 2016 Reply Mem. at 3.) Further, OVJA's general concerns as citizens and ratepayers are better represented by the intervening local governments representing their citizens, CCDD and Yellow Creek. OVJA's belief that there is "no basis" (OVJA Appl. for Review at 8) to ensure compliance with R.C. 4906.10(A)(8) is without merit, as Board's Staff completes a thorough investigation, as statutorily required, of each enumerated factor in R.C. 4906.10(A). We further note that OVJA's issues regarding Ohio's reliance on natural gas are overly broad and misplaced. Those concerns are policy questions and not relevant to these specific proceedings regarding the environmental compatibility of a

specific plant and transmission line. Accordingly, we find the June 6, 2016 ALJ Entry should be affirmed and deny OVJA's motion to intervene.

As OVJA and Mr. Johnson filed jointly, for the same reasons as above we affirm the decision to deny Mr. Johnson intervention. Though Mr. Johnson asserts lifetime residency in Columbiana County, his claimed interests in the project are not any different than other members of OVJA. He does not make any specific claim as to how the project will directly affect him, his property, or his employment. As the Board has previously found, living in the county of a proposed project is not enough on its own to warrant intervention. *In re Black Fork Wind LLC*, Case No. 09-546-EL-BGN, Entry (Mar. 2, 2010) at 5. Thus, we affirm the June 6, 2016 ALJ Entry.

III. Motion for Protective Order

On January 15, 2016, with its application, SFE filed a motion for protective order to maintain the confidentiality of financial data regarding the development, construction and operation of the proposed transmission line and estimated tax revenues subject to negotiations with local authorities. SFE asserts that the financial information has independent economic value to SFE and to others, which it states it takes reasonable efforts, under the circumstances, to maintain the secrecy of the information. Further, SFE contends that revealing the information would provide its competitors with a competitive advantage and prejudice SFE in negotiations. On that basis, SFE argues that the information meets the definition of a trade secret under R.C. 1333.61 to 1333.69. SFE requests that the confidentiality of the information be maintained, in accordance with Ohio Adm.Code 4906-2-21(D).

Ohio Adm.Code 4906-2-21(D) provides that, upon motion of any party or person filing a document with the Board's docketing division relative to a case before the Board, the Board may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information.

Upon review of the information covered by SFE's motion for protective order, as well as the assertions of SFE in its memorandum, the Board finds that the information filed under seal contains financial information. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the Board finds that the information covered by the motion contains trade secret information. Its release is, therefore, prohibited under state law. The Board finds that nondisclosure of this information is not inconsistent with the purposes of R.C.

¹ See *State ex. rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

Title 49. Therefore, we find that SFE's motion for protective order regarding pages 43 and 47 of the application filed on January 15, 2016, should be granted.

Ohio Adm.Code 4906-2-21(F), provides that, unless otherwise ordered, protective orders automatically expire after 24 months. Therefore, confidential treatment shall be afforded in this case for a period of 24 months. Until then, the docketing division should maintain, under seal, the information filed confidentially in these dockets. If SFE wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Board may release this information without prior notice.

IV. Project Description

SFE seeks certification to construct, own, and operate a 3.9-mile long 345 kV transmission line. Additionally, SFE seeks certification to construct an accompanying electric switchyard, with the anticipation that ownership and operation would transfer to ATSI. The line would run from the proposed generation facility to the switchyard, thus connecting the facility to the electric grid. As proposed in the application, the transmission line and switchyard would be placed in service in December 2018.

The switchyard would be located on a 38-acre parcel of land in Madison Township and have a footprint of roughly 3.5 acres. The switchyard would have a 345 kV ring bus interconnection substation with a loop connection to ATSI's Highland-Sammis 345 kV line.

For the transmission line, SFE's application offers a preferred route and an alternate route. For a majority of each route, the two options share a path, only diverging for less than a mile of the 3.9-mile length of the line. (SFE Ex. 2, p. 1-4.)

V. Certification Criteria

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 natural gas transmission line.
- (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 that such facilities will serve the interests of electric system economy and reliability.
- (5) The facility will comply with R.C. 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. 929 that is located within the site and alternative site of the proposed major facility.
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

VI. Summary of the Evidence

The Board will review the evidence presented with regard to each of the eight criteria by which we are required to evaluate this application. Any evidence not specifically addressed herein has nevertheless been considered and weighed by the Board in reaching its final determination.

A. Local Public Hearing

As stated previously, at the local public hearing held on June 6, 2016, 19 people provided substantive testimony. Everyone testified in support of both the transmission project and the facility project. Many individuals expressed support for the positive impact the projects would have on the local economy through job creation and taxes. Individuals spoke on behalf of local schools, government, businesses, and trade unions. (Local Pub. Hearing Tr. at 7-45.) Wayne Smith, who owns property on the alternate route, filed a letter in support of SFE's ability to use either route.

B. Staff Report

Pursuant to R.C. 4906.07(C), Staff completed an investigation into the application, including recommended findings regarding R.C. 4906.10(A). The report was filed May 20, 2016 and admitted into evidence during the evidentiary hearing on June 29, 2016. A summary of Staff's findings are below.

(1) Basis of Need - R.C. 4906.10(A)(1)

Staff states the proposed purpose of the line and switchyard is to deliver energy from the proposed generation facility to the electric grid. By connecting from the generation facility, to the switchyard, to ATSI's 345 kV-line, the generation facility would be able to reach the local and regional electric grid. Staff asserts the purpose of the line is not to relieve congestion or improve the electric grid; however, without the line the generation facility will not be able to reach the electric power grid. (Staff Ex. 2 at 17.)

Therefore, Staff recommends the Board find that SFE has demonstrated the basis of need for the project and complies with the requirements specified in R.C. 4906.10(A)(1), provided that any certificate issued by the Board includes the conditions specified in the Staff Report. (Staff Ex. 2 at 17.)

(2) Nature of Probable Environmental Impact - R.C. 4906.10(A)(2)

Staff reviewed the environmental information contained in SFE's application and determined the nature of the project's probable impact to the environment. The line would be located in a sparsely populated area, with 41 residential structures in the preferred route's study area and 31 in the study area of the alternate route. Three homes are within 150 feet of the preferred route. Most of the land around the site is agricultural, with a large amount of forest vegetation. Most of both routes are in the natural gas pipeline corridor, which reduces overall project impacts. (Staff Ex. 2 at 18-19.)

Nothing that qualifies as a sensitive land use is within the study area. Staff asserts SFE completed archaeological and architectural surveys for the switchyard site and both transmission line routes. The survey found no archeological resources within the boundaries of the switchyard and no architectural impacts along either route. The project is projected to have a positive economical impact, as local taxing units such as the Wellsville School District would benefit from the increase in tax revenues. (Staff Ex. 2 at 18-19.)

Ecologically, Staff contends SFE is committed to using avoidance and mitigation measures to minimize any impacts from construction. There are 25 streams in the area,

11 of which occur along the shared route or the switchyard site. SFE would use existing farm roads to access either side of most streams and would site poles outside of waterbodies. A culvert would be installed for the one stream where construction equipment would cross, resulting in three feet of impact. There are over 20 wetlands identified in the project area. SFE would avoid or minimize any filling. Selective clearing of woody vegetation would be necessary in some wetland areas, for safety reasons. SFE avers it would comply with all necessary permits. (Staff Ex. 2 at 19-20.)

The project is within range of the Indiana bat, a federally endangered species, and the northern long-eared bat, a federally threatened species. Both species could be negatively impacted as a result of tree clearing associated with construction and maintenance of the project. In order to reduce negative impacts, the Staff and the Ohio Department of Natural Resources recommend the Applicant be required to adhere to seasonal cutting dates for the clearing of trees that exhibit suitable bat summer habitat, such as roosting and maternity roost trees. (Staff Ex. 2 at 21-23.)

Construction is not expected to significantly impact roads and traffic. There will be a short-term increase in traffic during construction, and some traffic management may be necessary at road crossings. The project does not cross any highways or railroads. Gravel access roads would be constructed in various areas to allow for construction, operations, and maintenance. (Staff Ex. 2 at 23-24.)

Staff advises the Board find that the nature of the probable environmental impact has been determined for the proposed project and, therefore, complies with the requirements set forth in R.C. 4906.10(A)(2). However, Staff further recommends that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 2 at 24.)

(3) Minimum Adverse Environmental Impact -
4906.10(A)(3)

In assessing whether the facility represents the minimum adverse environmental impact, Staff notes SFE studied various routing locations. Staff also notes that SFE has a waiver from the requirement that no more than 20 percent of the preferred route and the alternate route be in common. Staff asserts that both the preferred route and the alternate route are viable and have similar environmental impacts. However, Staff avers that the preferred route covers less agricultural district land. (Staff Ex. 2 at 25.)

Staff further finds that the preferred route represents the minimum adverse environmental impact and therefore complies with R.C. 4906.10(A)(3) (Staff Ex. 2 at 26).

(4) Electric Power Grid – R.C. 4906.10(A)(4)

The Staff Report states, to analyze the impact on the electric power grid, SFE submitted a generation interconnection request to PJM Interconnection, LLC (PJM), the regional transmission organization responsible for planning upgrades and administering the generation queue for the transmission system in Ohio. PJM completed a system impact study (SIS) in September 2015. As part of the SIS, PJM identified 18 circuit breakers that would be overloaded and thus need to be replaced. The SIS otherwise did not find any problems. (Staff Ex. 2 at 27-28.)

Accordingly, Staff recommends the Board find that the proposed facility is consistent with the regional plans for expansion of the electric power grid of electric systems serving the state and interconnected utility systems, and that the facility would serve the interests of electric system economy and reliability. Further, Staff believes the facility complies with the requirements specified in R.C. 4906.10(A)(4), provided that any certificate issued by the Board includes the conditions specified in the Staff Report. (Staff Ex. 2 at 28.)

(5) Air, Water, Solid Waste, and Aviation – R.C.
4906.10(A)(5)

Staff notes the facility must comply with Ohio law regarding air and water pollution control, waste disposal, and air navigation. For this facility, Staff states no air quality permits are required, although fugitive dust suppression techniques may be necessary. Staff also asserts the facility will not require the use of significant amounts of water for construction or operation. For streams and wetlands, SFE will take all precautions and acquire all necessary permits. Staff states SFE will properly dispose of all solid wastes. The tallest anticipated structure with the project is the 170-foot transmission towers; Staff avers SFE will consult with the Federal Aviation Administration (FAA) and the Ohio Department of Transportation (ODOT) to determine if any notices are required, as there are three airports within ten miles. (Staff Ex. 2 at 29-30.)

Staff, therefore, concludes that the facility will comply with the requirements contained in R.C. 4906.10(A)(5), provided the proposed facility includes the conditions provided in the Staff Report (Staff Ex. 2 at 30).

(6) Public Interest, Convenience, and Necessity – R.C.
4906.10(A)(6)

Staff states the construction and operation of the facility will be in compliance with all safety regulation and industry standards. Staff avers SFE has worked with the

community in developing the project, having held informational meetings and meetings with local public officials. According to Staff, SFE plans on continuing to engage with the public before, during, and after construction of the facility. (Staff Ex. 2 at 31.)

In regards to electromagnetic fields (EMF), Staff explains that laboratory studies have failed to establish a strong correlation between exposure to EMFs and effects on human health. Notwithstanding this fact, due to the concerns regarding the potential impacts that EMFs may have on human health, Staff states SFE was required to compute the EMF associated with the new circuits and the magnetic field output was less than 125 milligauss at the center of the right-of-way and less than 20 milligauss at the edge of the right-of-way, 75 feet from the centerline. Staff points out that nominal EMF levels will be further reduced, since daily current load levels would normally operate below the maximum load conditions. Further, Staff highlights that electric fields are easily shielded by physical structures such as walls, foliage, or earthen berms. (Staff Ex. 2 at 31-32.)

Therefore, Staff recommends that the Board find that the proposed facility would serve the public interest, convenience, and necessity, and complies with the requirements set forth in R.C. 4906.10(A)(6), provided the proposed facility includes the conditions set forth in the Staff Report. (Staff Ex. 2 at 31-32.)

(7) Agricultural Districts and Agricultural Lands - R.C.
4906.10(A)(7)

Staff states that the project is not expected to have significant impacts to agricultural district land. Staff notes the preferred route crosses approximately six acres of agricultural district land, whereas the alternate route cross 21 acres. Pole placement is the only expected permanent impact to agricultural lands. Construction may result in some temporary impacts to farmland; however, after construction has concluded, farm production could resume. Staff, therefore, recommends the Board find that the impact of the proposed project on the viability of existing agricultural land in an agricultural district has been determined, as required under R.C. 4906.10(A)(7), provided the certificate issued by the Board for the proposed facility include the conditions specified in Staff Report. (Staff Ex. 2 at 33.)

(8) Water Conservation Practice - R.C. 4906.10(A)(8)

Staff avers the facility will not require the use of water for operation. Thus, Staff recommends the Board find the facility incorporates maximum feasible water conservation practices and complies with requirements in R.C. 4906.10(A)(8). (Staff Ex. 2 at 34.)

(9) Staff's Recommendations

In addition to the findings Staff made in its report, Staff also recommends that 26 conditions be imposed if the Board issues a certificate for the proposed facility. While most of the conditions are largely the same as the ones that the signatory parties agreed upon in their Stipulation, Staff's first condition is that the transmission line be installed on SFE's preferred route, as presented in its application. (Staff Ex. 2 at 35-38.) Discussion on the route selection and the conditions of the Stipulation are detailed below.

C. Stipulation

In the Stipulation, the parties stipulate and recommend to the Board that adequate evidence has been provided to demonstrate that construction of the proposed facility meets the statutory criteria of R.C. 4906.10(A)(1) through (8) (Jt. Ex. 2 at 10-14). As part of the Stipulation, the parties recommend the Board issue a certificate for the preferred site, as described in the application, subject to the 29 conditions set forth in the Stipulation. The following is a summary of the conditions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation. The stipulating parties agree that:

- (1) Subject to the Board agreeing with SFE or Staff on the route selection, the facility shall be installed at one of the routes presented in the application.
- (2) SFE shall utilize the equipment and construction practices as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
- (3) SFE shall implement the mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
- (4) SFE shall conduct a preconstruction conference prior to the start of any construction activities. Staff, SFE, and representatives of the prime contractor and all subcontractors for the project shall attend the preconstruction conference.
- (5) At least 30 days prior to the preconstruction conference, SFE shall have in place a complaint resolution procedure to address potential public grievances resulting from project construction and operation.

- (6) At least 30 days prior to the preconstruction conference, SFE shall submit to Staff one set of detailed engineering drawing of the final project design, including the facility, temporary and permanent access roads, any crane routes, construction staging areas, and any other associated facilities and access point. The final project layout shall be provided in hard copy and as geographically-referenced electronic data.
- (7) If SFE makes any changes to the project layout after submitting the final engineering drawings, SFE shall provide those changes to Staff.
- (8) Within 60 days after the commencement of commercial operation, SFE shall submit to Staff a copy of the as-built engineering drawings of the entire facility.
- (9) Prior to the commencement of construction activities that require permits or authorizations by federal or state laws and regulations, SFE shall obtain and comply with such permits or authorizations. SFE shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by SFE. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the applicable preconstruction conference.
- (10) The certificate shall become invalid if SFE has not commenced a continuous course of construction of the proposed facility within five years of the date of the journalization of the certificate.
- (11) As the information becomes known, SFE shall document in the case record the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
- (12) Prior to commencement of construction, SFE shall develop a public information program that informs affected owners of the nature of the project, specific contact information of relevant applicant personnel, the proposed timeframe for construction, and a schedule of restoration activities. SFE shall give notification to affected property owners at least 30 days prior to work on the affected property.

- (13) SFE shall avoid any damage to field tile drainage systems and soils resulting from construction, operation, and/or maintenance of the facility in agricultural areas.
- (14) SFE shall survey the planned locations of new pole structures for archeological resources that may be eligible for inclusion in the National Register of Historic Places.
- (15) SFE shall adhere to seasonal cutting dates of October 1 to March 31 for the removal of trees.
- (16) Should site-specific conditions warrant blasting, SFE shall submit a blasting plan to Staff at least 30 days prior to blasting.
- (17) Prior to use of explosives, SFE shall obtain all required licenses and permits and submit them to Staff within seven days.
- (18) The blasting contractor shall utilize two blasting seismographs that measure ground vibrations and air blast for each blast.
- (19) At least 30 days prior to the initiation of blasting operations, SFE must notify all residents within 1,000 feet of the blasting site.
- (20) SFE shall complete a full detailed geotechnical explorations and evaluation to confirm there are no issues to preclude development of the facility.
- (21) SFE shall restrict public access to the facility with appropriately placed warning signs or other necessary measures.
- (22) Prior to commencement of construction activities that require transportations permits, SFE shall obtain all such permits.
- (23) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. (or dusk when sunset occurs after 7:00 p.m.). Impact pile driving, hoe ram, and blasting operations shall be limited to the hours between 10:00 a.m. and 5:00 p.m.
- (24) SFE must meet all recommended FAA and ODOT requirements in constructing objects that may affect navigable airspace.
- (25) All applicable structure shall be lit in accordance with FAA regulations.

- (26) Within 30 days of construction completion, SFE shall file the as-built transmission structure coordinates and heights with the ODOT Office of Aviation and the FAA.
- (27) SFE will construct and transfer ownership of the switchyard to ATSI in accordance with applicable PJM requirements, as well as associated agreements between SFE, ATSI, and PJM. Upon completion of the switchyard, and after ATSI's acceptance, SFE and ATSI shall file a joint notice with the Board, in which ATSI will accept and agree to comply with all conditions in the Board's certificate.
- (28) SFE shall repair damage to government-maintained roads and bridges caused by construction activity. If county or township roads are utilized for the construction of this project, SFE shall enter into a road use agreement with the appropriate local authority.
- (29) For informational purposes, SFE will notify Yellow Creek and CCDD as to: any preconstruction conference with Staff; the location and availability of the final engineering layout drawings; and any blasting operations. SFE will also provide Yellow Creek and CCDD with copies of the traffic plan and the blasting plan.

D. Preferred route and alternate route

Unresolved by the Stipulation is SFE's request to have the flexibility to use either the preferred route or the alternate route for the transmission line. In the Staff Report, one of Staff's recommended conditions is for the facility to be built on SFE's preferred route, as described in its application (Staff Ex. 2 at 35). SFE witness Winslow requests that the condition be revised so that SFE can use either the preferred route or the alternate route. According to Mr. Winslow, both routes are currently viable; however, based on the recent interactions and non-financial demands of one of the landowners on the preferred route, SFE has concerns about its continued viability. Thus, Mr. Winslow requests for SFE to be able to choose either route and it will notify the Board at least 120 days prior to construction which route it will use. Mr. Winslow points out that the routes are predominantly the same, only differing for less than mile. (SFE Ex. 6 at 14-16.) In his testimony, Mr. Winslow states SFE is going through the process to obtain over a billion dollars in financing. If SFE is not given the flexibility for both routes, and the preferred route becomes unviable, applying for an amendment could cause an unnecessary delay in financing and the beginning of construction. (June 29, 2016 Tr. at 15-16.) In its closing, SFE states that because the routes are so similar and only differ by less than a mile, its

request is based on a unique set of facts and will not set an unfavorable precedent. Further, while the alternative route goes through more agricultural district land than the preferred route, that land is owned by one property owner, who has stated his approval of the project. (June 29, 2016 Tr. at 20-22; SFE Ex. 5.) Yellow Creek states it supports SFE's request (June 29, 2016 Tr. at 23).

Staff witness James O'Dell reiterates Staff's position in its report that the transmission line should be constructed on the preferred route. Mr. O'Dell avers that while both routes are viable the alternative route is likely to present a greater degree of potential adverse impact to agricultural district land, as discussed in the Staff Report (Staff Ex. 2 at 26, 33). Further, Mr. O'Dell states Staff has never recommended an applicant have discretion to choose between multiple routes (Staff Ex. 3 at 4-5). Staff contends that permitting SFE to have the option to choose a route, post-certificate, is a dangerous precedent that could have adverse impacts on future cases. While both routes are viable, Staff states the preferred route has the least adverse environmental impact, as determined by Staff, and was SFE's favored path in its application. Therefore, Staff recommends that only the preferred route be approved by the Board. (June 29, 2016 Tr. at 23-25.)

CONCLUSION:

Based upon the record in this proceeding, the Board finds that all of the criteria established in R.C. 4906 are satisfied for the construction, operation, and maintenance of the transmission line and substation, as described in SFE's application filed on January 15, 2016, subject to the conditions set forth in the Stipulation and this Order. Further, the Board finds that the transmission line should be installed on SFE's preferred route, as described in its application.

In deciding that the transmission line should be constructed on the preferred route, the Board finds that this route has the least adverse environment impact and notes that this was the route favored by SFE in its application. While both routes appear viable and only differ by less than a mile, we find that it is not pragmatic to issue certificates for multiple routes. In comparing the two routes, the preferred route crosses less agricultural district land and represents the minimum adverse environmental impact. Therefore, we find SFE should install the transmission line on the preferred route, as proposed in its application.

As to the Stipulation, Ohio Adm.Code 4906-7-09 authorizes parties to Board proceedings to enter into stipulations concerning issues of fact. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-7-09(C), the terms of such an agreement are accorded substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Board proceedings. *See, e.g., In re*

Northwest Ohio Wind Energy, LLC, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re Rolling Hills Generating, LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014). The ultimate issue for the Board's consideration is whether the stipulation, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

In the Stipulation, SFE, FirstEnergy, Yellow Creek, CCDD, and Staff agree that the Stipulation results from discussion between the parties who acknowledge that this agreement is amply supported by the record and, thus, is entitled to careful consideration by the Board (Joint Ex. 1 at 4). SFE witness Winslow contends that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Mr. Winslow explains that the parties engaged in open negotiation discussions, where each of the parties was represented by counsel and each party's position was taken into consideration. (June 29, 2016 Tr. at 16-17.)

The Board finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The Board notes that all the parties to the proceeding are signatories of the Stipulation. We further recognize that the counsel for each of the parties has participated in several other Board proceedings and is, therefore, familiar with Board proceedings and certificate requirements. Consequently, the Board finds that, based upon the record, the first prong is satisfied.

The parties further claim that the Stipulation, as a package, benefits the public interest. Mr. Winslow testified that the SFE transmission project, combined with the generation project, is a major capital investment into the community and is also a major infrastructure project (June 29, 2016 Tr. at 17). Mr. Winslow avers that the construction on both projects will create an annual average of 550 new jobs and, once in operation, 25-30 new full-time jobs. He also states the projects will have a positive impact on state and local governments. (SFE Ex. 2 at 6-7.)

Upon review, the Board finds that, as a package, the Stipulation benefits the public interest by resolving the issues raised in this matter without resulting in litigation. The Stipulation reflects consideration of Staff's recommendations and conditions, and also addresses the concerns of the intervening parties. The Board acknowledges that the project was overwhelmingly endorsed at the public hearing. We find that, based on the evidence of record, the proposed project will generate clean electric energy, increase tax revenue for schools and local government, create construction and manufacturing jobs, and assist economic development efforts in Yellow Creek Township, Columbiana County, and the surrounding communities.

SFE witness Winslow states that the Stipulation does not violate any important regulatory principle or practice (June 29, 2016 Tr. at 17). The Board agrees and finds that the Stipulation does not violate any important regulatory principle or practice. Moreover, the conditions contained within the Stipulation adequately address all statutory requirements for such projects.

Accordingly, the Board finds that all of the criteria established in R.C. 4906 are satisfied for the construction, operation, and maintenance of the transmission line and switchyard, as described in SFE's application filed on January 15, 2016, subject to the conditions set forth in the Stipulation and this Order. Thus, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to SFE in accordance with R.C. 4906.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) SFE is a person under R.C. 4906.01(A) and is licensed to do business in the state of Ohio.
- (2) The proposed transmission line is a major utility facility, as defined in R.C. 4906.01(B).
- (3) On October 5, 2015, SFE filed its preapplication notice of a public information meeting. On October 13, 2015, SFE filed proof of publication of the notice of the public information meeting, held on October 8, 2015.
- (4) On October 19, 2015, SFE filed a motion for waivers of certain provisions of Ohio Adm.Code 4906-5-04. By Entry issued December 1, 2015, the motion for waivers was granted.
- (5) On January 15, 2016, SFE filed its application for a certificate to construct a transmission line in Columbiana County, Ohio.

- (6) By letter dated March 7, 2016, the Board notified SFE that its application had been found to be sufficiently complete, pursuant to Ohio Adm.Code 4906-1, et seq.
- (7) SFE served copies of the application upon local government officials and libraries and filed its certificate of service of the accepted and complete application, in accordance with Ohio Adm.Code 4906-5-06 and 4906-5-07 on March 14, 2016.
- (8) By Entry issued March 29, 2016, a local public hearing was scheduled for June 6, 2016, in Wellsville, Ohio and the evidentiary hearing was scheduled to commence on June 21, 2016, at the offices of the Board, in Columbus, Ohio.
- (9) Motions to intervene filed by FirstEnergy, Yellow Creek, and CCDD were granted by Entry issued March 29, 2016.
- (10) On May 20, 2016, Staff filed its Staff Report.
- (11) On April 22, 2016, in accordance with Ohio Adm.Code 4906-5-08(C), SFE filed its first proof of publication of the notice of the application and the hearings. On June 3, 2016, SFE filed its second proof of publication.
- (12) A local public hearing was held on June 6, 2016, at 6:00 p.m., at Wellsville High School, Wellsville, Ohio. At the local public hearing, 19 individuals offered testimony on the proposed transmission project, all in favor of the facility.
- (13) On June 28, 2016, SFE, FE, Yellow Creek, CCDD, and Staff filed a partial stipulation.
- (14) The evidentiary hearing originally convened on June 21, 2016, at the offices of the Board, in Columbus, Ohio. The hearing was continued until June 29, 2016. At the hearing, a witness from SFE offered testimony in support of the Stipulation.
- (15) Adequate data on the proposed transmission line and switchyard has been provided to make the applicable determinations required by R.C. 4906.10(A). The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

- (16) The record establishes that the application satisfies the requirements set forth in R.C. 4906.10(A).
- (17) The Stipulation satisfies the criteria established by the Board for review and consideration of stipulations.
- (18) Based on the record, the Board should approve the application and issue a certificate, pursuant to R.C. 4906, for the construction, operation, and maintenance of the transmission line at the preferred route, as well as the switchyard, subject to the conditions set forth in the Stipulation and this Order.

ORDER:

It is, therefore,

ORDERED, That the June 6, 2016 Entry be affirmed and the motions to intervene by OVJA and Kenneth Johnson be denied. It is, further,

ORDERED, That the motion for protective order to seal portions of the record in these matters be granted. It is, further,

ORDERED, That the docketing division maintain under seal the information which was filed under seal in this docket on January 15, 2016, for a period of 24 months. It is, further,

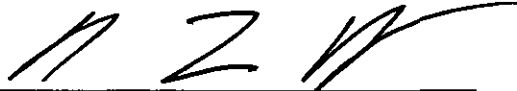
ORDERED, That the Stipulation be approved and adopted. It is, further,

ORDERED, That the transmission line be installed at the preferred site, as described in the application. It is, further,

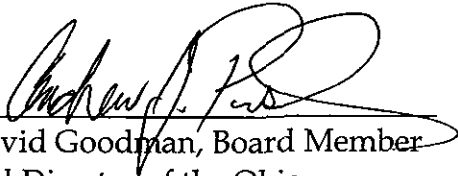
ORDERED, That a certificate be issued to SFE for the construction, operation, and maintenance of the transmission line and switchyard at the proposed site subject to the conditions set forth in the Stipulation and this Order. It is, further,

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

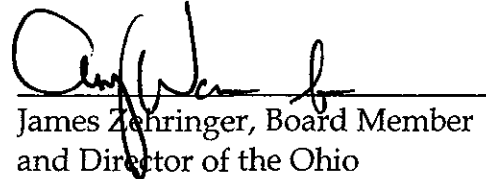
THE OHIO POWER SITING BOARD



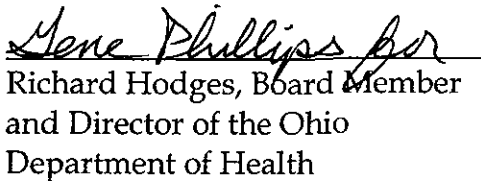
Asim Z. Haque, Chairman
Public Utilities Commission of Ohio



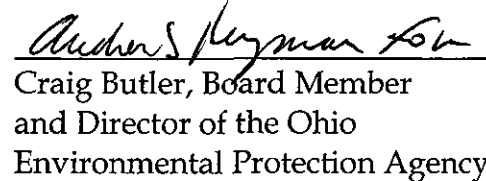
David Goodman, Board Member
and Director of the Ohio
Development Services Agency



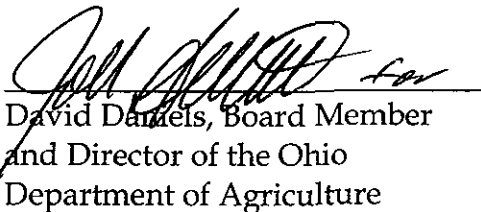
James Zehringer, Board Member
and Director of the Ohio
Department of Natural Resources



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



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



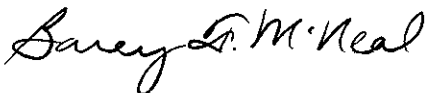
David Daniels, Board Member
and Director of the Ohio
Department of Agriculture



Jeffrey J. Lechak, Board Member
and Public Member

NW/vrm

Entered in the Journal
SEP 22 2016
SEP 22 2016



Barcy F. McNeal
Secretary