

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.)

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 December 7, 2015, SFE filed its application in the facility case (SFE Ex. 1). By letter dated February 5, 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.

In conjunction with its application filing in the facility case, SFE also filed a motion for waiver of four requirements of Ohio Adm.Code 4606-13. On March 23, 2016, Staff filed a notice stating it did not oppose the motion and the motion was granted by the ALJ on March 29, 2016.

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 joint stipulation (Stipulation) purporting to resolve all issues in the facility case (Jt. Ex. 1). The parties also filed a partial stipulation in the transmission case resolving most of the issues (Jt. Ex. 2). 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. Proposed Facility

SFE seeks certification to construct, own, and operate a power plant. As proposed in the application, the 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. The facility site is located on 86.5 acres in Yellow Creek Township, Columbiana County, Ohio. SFE is proposing to begin construction in January 2017 and commercial operation in January 2020. (SFE Ex. 1, p. 1-4.)

IV. 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 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.

V. 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 the project. Many individuals expressed support for the positive impact the project 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.) Two letters were filed in opposition to the facility, stating concerns about the effects of the project on coal-related jobs. Additionally, Congressman Tim Ryan filed a letter in support of the facility.

B. Staff Report

Pursuant to R.C. 4906.07(C), Staff completed an investigation into the application, including recommended finding 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)

For an electric generation facility, R.C. 4906.10(A)(1) is not applicable, as this statute only applies to an electric transmission line or a gas or natural gas transmission line. Accordingly, Staff recommends the Board find that R.C. 4906.10(A)(1) is not applicable to this electric generating facility (Staff Ex. 1 at 13).

(2) Nature of Probable Environmental Impact - R.C. 4906.10(A)(2) and Minimum Adverse Environmental Impact – 4906.10(A)(3)

Staff reviewed the environmental information contained in SFE's application and determined the nature of the probable impact to the environment. The facility would be located in a sparsely populated area in Yellow Creek Township, Columbiana County. In addition to Yellow Creek, there are five other townships within a five-mile radius; the combined population of the six townships was 8,426 in 2014. Most of the land around the site is agricultural, with a large amount of forest vegetation. Nothing that qualifies as a sensitive land use, besides one church, is within two miles of the plant. There are four homes within 2,000 feet of the site's boundaries, with the closest home more than 500 feet away from the facility's property line. (Staff Ex. 1 at 14.)

Economically, the plant is projected to have a positive impact. The facility's construction is expected to support 2,969 job-years, with approximately \$806 million spent on supplies and \$117 million on labor income. For operation and maintenance of the facility, approximately \$25 million would be spent annually. Though preliminary, SFE predicts tax revenues could increase up to one million dollars per year for the next 15 years. (Staff Ex. 1 at 14-15.)

To build the facility, SFE would need to clear 14 acres of forest and an additional 1.4 acres for the construction laydown site. This would not effect any ponds, wildlife areas, or nature preserves. There are 0.783 acres of wetlands within the project site that are of low quality due to farming activities. Further, there are three intermittent streams and three ephemeral streams on the site. Perched groundwater may be present at the site, which may result in additional drilling. Some water removal may also be necessary to ensure the stability of the foundation of the facility. Additionally, the bedrock at the facility site is shallow and may require blasting to remove rock for site preparation. (Staff Ex. 1 at 14-17.)

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. 1 at 17-18.)

Additionally, SFE conducted a Phase I archeology survey for the proposed site. While the study identified two cultural finds, neither possessed significant archaeological value. (Staff Ex. 1 at 14.)

SFE proposes to use an access road off of Hibbetts-Mill Road as the ingress and egress to the facility. The road would be upgraded to support construction activities. In general, the construction would result in short-term increases in traffic in the area. Once the facility is in operation, the traffic is not expected to impact local roadways. SFE would train local emergency response personnel to be familiar with the facility's emergency response system, including different potential emergencies, levels of response, and resources. (Staff Ex. 1 at 19.)

During construction, the activities would generate significant noise levels. However, the noises would be limited to daytime hours and occur away from most residential structures. For the facility, SFE conducted a noise study and stated all non-participating residences would be impacted with a noise level 45 decibel A-weighting or less. (Staff Ex. 1 at 19-20.)

SFE proposes to finance the construction costs of the facility at its own risk. In selecting the site, SFE evaluated the proximity to a high-voltage transmission system and the availability of gas transmission lines with sufficient capacity, pressure, and quality. In doing so, SFE identified Columbiana County as its preferred region. Applicant had a waiver of the requirement to conduct a site selection study that would evaluate all practicable sites. (Staff Ex. 1 at 22.)

Staff advises the Board find that the nature of the probable environmental impact has been determined for the proposed generation facility and, therefore, complies with the requirements set forth in R.C. 4906.10(A)(2). Staff further finds that the proposed facility represents the minimum adverse environmental impact and complies with R.C. 4906.10(A)(3). 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. 1 at 20-21, 23.)

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

The Staff Report avers that the facility will be capable of producing 1,105 MW and will interconnect to ATSI's Sammis-Highland 345-kV line through a three circuit-breaker ring bus. 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. 1 at 24-25.)

Therefore, 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. 1 at 25.)

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

According to the Staff Report, the project site is within an area classified as attainment for all National Ambient Air Quality Standards criteria air pollutants. SFE would minimize the impact on air quality by implementing new technology and incorporating air pollution controls. The main pollution control devices will be dry-low nitrogen burners in the gas turbines, selective catalytic reduction systems, and oxidation catalysts in the heat recovery steam generators. A continuous emission monitoring system will track all emissions from the facility once it is operating. SFE has filed for a permit-to-install application from the Ohio Environmental Protection Agency (EPA) and will comply with all permit requirements. Construction of the facility is not expected to have any significant adverse impacts on air quality. (Staff Ex. 1 at 26.)

Staff states the facility will use up to 7.6 millions of gallons per day of water for operation, which will be supplied by the Buckeye Water District water treatment facility. Buckeye Water District would also accept facility waste waters and arrange for its discharge. For stormwater discharges, SFE would obtain all necessary permits. A significant amount of water would not be required during the construction of the facility. (Staff Ex. 1 at 27.)

In its report, Staff notes SFE estimates the construction of the facility could generate 1,200 cubic yards of debris. All waste produced during construction and operation will be trucked off site in accordance with all regulatory requirements. SFE would have procedures to ensure hazardous wastes are separated from normal wastes and that there are plans for spill prevention, containment, and countermeasures. Staff states that SFE's solid waste disposal plans would comply with the solid waste disposal requirements set forth in R.C. 3734. (Staff Ex. 1 at 27.)

According to Staff, the height of the tallest anticipated above ground structures for the project are two stacks, approximately 180 feet tall. The Federal Aviation Administration (FAA) determined neither was a hazard. There are three airports within a ten mile radius of the site. The Ohio Department of Transportation (ODOT) issued a permit and found the construction exceeds obstruction standards but will not affect the safe and efficient use of the airports nor affect the safety of persons and property on the ground. (Staff Ex. 1 at 27-28.)

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. 1 at 28).

(5) 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 notes 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. 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. 1 at 29.)

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

Staff states that the proposed site is not classified as agricultural district property. According to Staff, the construction laydown area is currently used as a hayfield and could be returned to agricultural production when the project is complete. 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. 1 at 30.)

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

Staff avers that operating the facility would require the consumption of significant amounts of water, which would be obtained through the Buckeye Water District water treatment plant. In doing so, however, Staff notes SFE would use water conservation measures such as maximizing the cycles of concentration to reduce water intake requirements, a drift elimination system, and return of recovered boiler blowdown to the

cooling tower. Staff states that the construction of the facility would not require significant amounts of water. Therefore, 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. 1 at 31.)

(8) Staff's Recommendations

In addition to the findings Staff made in its report, Staff also recommends that 28 conditions be imposed if the Board issues a certificate for the proposed facility (Staff Ex. 1 at 33-37). Staff's recommended conditions are largely the same as the ones that the signatory parties agreed upon in their Stipulation, which 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. 1 at 10-13). 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 31 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) The facility shall be installed at the proposed site as presented in the application.
- (2) SFE shall utilize the equipment and construction practices as described in the application.
- (3) SFE shall implement the mitigation measures as described in the application.
- (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) With the exception of removal of trees, SFE shall not commence any construction of the facility until it has an Interconnection Service Agreement or Interim Interconnection Service Agreement with PJM, signed or filed unsigned with the Federal Energy Regulatory Commission. The Applicant shall docket in the case record a letter stating that the agreement has been signed or a copy of the signed Interconnection Service Agreement to Staff.

- (13) 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.
- (14) 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.
- (15) SFE shall flag all streams and wetlands within the facility site to assure avoidance of fill and accidental equipment crossing.
- (16) SFE shall adhere to seasonal cutting dates of October 1 to March 31 for the removal of trees.
- (17) Should site-specific conditions warrant blasting, SFE shall submit a blasting plan to Staff at least 30 days prior to blasting.
- (18) Prior to use of explosives, SFE shall obtain all required licenses and permits and submit them to Staff within seven days.
- (19) The blasting contractor shall utilize two blasting seismographs that measure ground vibrations and air blast for each blast.
- (20) At least 30 days prior to the initiation of blasting operations, SFE must notify all residents within 1,000 feet of the blasting site.
- (21) SFE shall complete a full detailed geotechnical explorations and evaluation to confirm there are no issues to preclude development of the facility.
- (22) SFE shall restrict public access to the facility with appropriately placed warning signs or other necessary measures.
- (23) Prior to commencement of construction activities that require transportations permits, SFE shall obtain all such permits.
- (24) 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.

- (25) SFE shall use inert gases or compressed air for all cleaning of pipes during construction.
- (26) At least 30 days prior to the preconstruction conference, SFE shall submit to Staff an emergency response plan. SFE shall coordinate with fire, safety, and emergency personnel during all stages of the project.
- (27) All applicable structure shall be lit in accordance with FAA regulations.
- (28) 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.
- (29) SFE shall not clear, undertake any construction activities in, or store any construction or operate equipment on FirstEnergy's existing right-of-way without FirstEnergy's prior authorization.
- (30) 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.
- (31) 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.

VI. CONCLUSION:

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 generation project is major capital investment into the community and is also a major infrastructure project. (June 29, 2016 Tr. at 17.)

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. While the Board acknowledges that the project was overwhelmingly endorsed at the public hearing, we also note others raised concerns in comments filed with the Board. We believe that the Staff Report evaluates and addresses the concerns raised in regards to the project site and its proximity to nearby residences, noise, water and wastewater, and site access and the Stipulation contains conditions that address such concerns. 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.

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 generation facility, as described in SFE's application filed on December 7, 2015, subject to the conditions set forth in the Stipulation and this Order. Accordingly, 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 electric generation facility 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 December 7, 2015, SFE filed its application for a certificate to construct an electric generation facility in Yellow Creek Township, Columbiana County, Ohio.
- (5) By letter dated February 5, 2016, the Board notified SFE that its application had been found to be sufficiently complete, pursuant to Ohio Adm.Code 4906-1, et seq.
- (6) 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.

- (7) With its application, SFE filed a motion for waivers of certain provisions of Ohio Adm.Code 4906-13. The motion for waivers was granted by Entry issued March 29, 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 generation project, all in favor of the facility.
- (13) On June 28, 2016, SFE, FirstEnergy, Yellow Creek, CCDD, and Staff filed a 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 generation facility 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. 4906.01(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 generation facility at the preferred site, subject to the conditions set forth in the Stipulation and this Order.

ORDER:

It is, therefore,

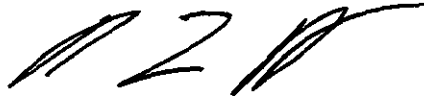
ORDERED, That the June 6, 2016 Entry be affirmed and the motions to intervene by OVJA and Kenneth Johnson be denied. It is, further,

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


ORDERED, That a certificate be issued to SFE for the construction, operation, and maintenance of the generation facility 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.

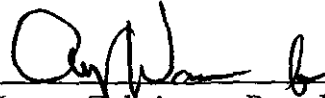
THE OHIO POWER SITING BOARD



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Public Utilities Commission of Ohio



David Goodman, Board Member
and Director of the Ohio
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Department of Natural Resources



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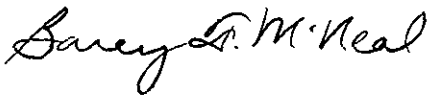


David Daniels, Board Member
and Director of the Ohio
Department of Agriculture

Jeffrey J. Lechak, Board Member
and Public Member

NW/vrm

Entered in the Journal
SEP 22 2016



Barcy F. McNeal
Secretary