

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of NRG Ohio       )  
Pipeline Company LLC for Approval of a Letter    )  
of Notification for the Avon Lake Gas Addition    )  
Project in Lorain County, Ohio.                    )

Case No. 14-1717-GA-BLN

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**MOTION TO EXTEND THE DURATION OF THE CERTIFICATE FOR  
THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A  
NATURAL GAS PIPELINE, METERING STATION, AND REGULATING STATION  
IN LORAIN COUNTY, OHIO**

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Now comes NRG Ohio Pipeline Company LLC (“NRG Pipeline” or “Company”) and, by its attorney, respectfully moves the Ohio Power Siting Board (“OPSB” or “Board”) for an Order extending the authorization of its Letter of Notification certificate for the construction of a natural gas pipeline, metering station, and regulating station in Lorain County, Ohio. The Company requests the extension of its certificate from June 4, 2018 to June 4, 2020 for good cause shown, as discussed in the memorandum in support attached hereto. The Company respectfully requests that the Board grant its motion by June 4, 2018.

Respectfully submitted on behalf of  
NRG OHIO PIPELINE COMPANY LLC



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Dylan F. Borchers (0090690)  
Devin D. Parram (0082507)  
E. Nicki Hewell (0095924)  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
Telephone: (614) 227-2300  
Facsimile: (614) 227-2390  
E-Mail: [dborchers@bricker.com](mailto:dborchers@bricker.com)  
[dparram@bricker.com](mailto:dparram@bricker.com)  
[nhewell@bricker.com](mailto:nhewell@bricker.com)

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On June 4, 2015, the Ohio Power Siting Board (“OPSB” or “Board”) issued an Opinion, Order, and Certificate (“Order”) in the above referenced case authorizing NRG Ohio Pipeline Company LLC (“NRG Pipeline” or “Company”) to construct, operate, and maintain approximately 20 miles of high pressure steel pipeline in Lorain County, Ohio (the “Project”). The primary purpose of the Project is to provide natural gas as a fuel source for the Avon Lake Power Plant.

On October 5, 2016, the Company filed a motion to extend its certificate from a two year period to a three year period to align the certificate’s expiration date with the Board’s revised rulemaking.<sup>1</sup> The Board granted the motion on March 2, 2017, and extended the Company’s certificate to June 4, 2018.

Since receiving the certificate, the Company has actively pursued the Project. Much of the development, engineering, and planning work for the Project is complete. The Project has acquired over two-thirds of the land necessary for the Project. This process of acquiring the

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<sup>1</sup> When the Board issued the Order approving the Company’s certificate, the Board’s rules governing accelerated applications provided that the certificate would expire in two years if continuous course of construction had not commenced in a two year period of time. *See* Ohio Administrative Code (“O.A.C.”) Rule 4906-5-02(4) (rescinded December 11, 2015). A subsequent rulemaking extended this period of time to three years, O.A.C. Rule 4906-6-12(B).

necessary land rights included the commencement of more than forty eminent domain cases, which was a significant investment by the Company.

Although the Company has worked to advance the Project, economic conditions outside of the Company's control have resulted in a delay to the Project. Specifically, the companies that own the Avon Lake Power Plant filed for bankruptcy in June 2017. The bankruptcy proceeding is ongoing and not expected to be final until later in 2018. As a result of the uncertainty related to the bankruptcy proceeding and the future ownership of the Avon Lake Power Plant, further development of the Project has been delayed.

Despite the recent delay to the Project, the Company continues to view the Project as a viable project to provide the ability for the Avon Lake Power Plant to use natural gas. For this reason, the Company seeks an extension of its certificate. As discussed in greater detail below, there is good cause for the Company's request and Board precedent supports an extension of the certificate.

## **II. ARGUMENT**

### **A. The Board has the authority to extend the duration of certificates for major utility facilities.**

The Board possesses the authority to grant the requested extension of the Company's certificate. The Board's rules for accelerated certificate applications are established under O.A.C. 4906-6. Under O.A.C. Rule 4906-6-01(B), the Board may, for good cause shown, waive any requirement of this chapter other than a requirement mandated by statute.<sup>2</sup> The Board is under no statutory or other constraint limiting its authority to grant the requested extension.

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<sup>2</sup> Identical provisions allowing the Board to waive, for good cause shown, are in the each of the other O.A.C. Chapters governing the OPSB, 4906-1 through 4906-7.

The Board's precedent clearly demonstrates its authority to extend the term of existing certificates.<sup>3</sup> Indeed, in many instances the Board has approved *multiple* requests for certificate extensions of *multiple* years, for a variety of reasons including changed economic conditions, construction delays, and litigation.<sup>4</sup>

**B. Board precedent establishes that changed economic circumstances and economic uncertainty constitute good cause to extend a certificate.**

The Company's request to extend the certificate is due to the current uncertainty caused by the ongoing bankruptcy affecting the Project's intended customer, the Avon Lake Power Plant. The Board has repeatedly granted motions to extend certificates of projects that have encountered changed economic circumstances and economic uncertainty. The Board recognizes that economic uncertainties are a reality in the energy development sector and that flexibility is required to sustain important energy infrastructure investments in Ohio.

For instance, the Board granted a certificate extension request by the developer of the FDS Co-Generation Facility after the project was delayed due to "[t]he widespread constriction in the U.S. (and world) economy and the financial markets from 2008-2010," which "adversely impacted the ability to secure construction financing. . . ."<sup>5</sup> In another case, the Board approved a 30-month certificate extension where "[t]he delay experienced to date in the development in the [project] is the result of market forces outside the control of [the developer] which caused a nearly complete withdrawal of investment for major capital projects, including new technology

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<sup>3</sup> See *In re Application of Summit Energy Storage*, Case No. 89-1302-EL-BGN, Entry (Nov. 23, 1998), granting a certificate extension for a period of two years; see also *In re Application of Norton Energy Storage, LLC*, Case No. 99-1626-EL-BGN, Entry (June 2, 2008), approving applicant's second thirty month certificate extension; *In re Application of Lawrence County Energy Center, LLC*, Case No. 01-369-EL-BGN, Entry (July 13, 2009), granting applicant's twelve month extension.

<sup>4</sup> *Id.*

<sup>5</sup> *In re Application of FDS Coke Plant, LLC*, Case No. 07-703-EL-BGN, Motion (Sept. 12, 2013) at 4-8.

opportunities, such as gasification technology.”<sup>6</sup> The Board also approved another 30-month extension for a project that experienced a “delay in construction . . . caused by financing problems related to economic conditions.”<sup>7</sup> In the case of the Black Fork Wind Project, the Board approved a two year extension because of ongoing litigation and “because of two prevailing factors in the Ohio energy market, namely: (a) the advent of increasing supplies of natural gas from shale; and (b) an overall lower demand for electricity due to a general economic meltdown.”<sup>8</sup>

In the Company’s case, recent economic uncertainty beyond the control of the Company has caused a delay to its Project. The Avon Lake Power Plant is owned by NRG Power Midwest LP (“NRG Power Midwest”), which is owned by GenOn Energy, Inc. (“GenOn”). GenOn is a subsidiary of NRG Energy, Inc. (“NRG”). However, GenOn is a separate Securities and Exchange Commission reporting entity and, leading up to the bankruptcy, had an independent management team.<sup>9</sup> The Project entity, NRG Pipeline, is wholly owned by NRG and not GenOn.

On June 14, 2017, GenOn and 61 of its affiliates, including NRG Power Midwest, filed for bankruptcy.<sup>10</sup> GenOn, NRG, and most holders of GenOn Notes (“GenOn Noteholders”) entered into a Restructuring Agreement, under which the parties agreed to the consensual restructuring of GenOn. Under this plan, the GenOn Noteholders will acquire the entire equity interests of the reorganized GenOn. NRG will no longer own any part of GenOn. GenOn’s

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<sup>6</sup> *In re Application of Lima Energy Company*, Case No. 00-513-EL-BGN, Motion (Feb. 6, 2012) at 3.

<sup>7</sup> *In the Matter of the Application of Norton Energy Storage, LLC for a Certificate of Environmental Compatibility and Public Need for an Electric Power Generating Facility in Norton, Ohio*, Case No. 99-1626-EL-BGN, Entry (March 20, 2006) at 1.

<sup>8</sup> *In re Application of Black Fork Wind Energy, LLC*, Case No. 10-2865-EL-BGN, Entry (March 24, 2016) at 2-3.

<sup>9</sup> GenOn owns or controls approximately 15,400 MWs of generation. NRG purchased GenOn in 2012.

<sup>10</sup> The matter is pending in the United States Bankruptcy Court for the Southern District of Texas, in Case No. 17-33695 (the “Bankruptcy Case”).

emergence from bankruptcy was initially scheduled for the fall of 2017. However, a subsequently filed supplement to the reorganization plan indicates that GenOn is likely to emerge from bankruptcy in the second half of 2018 but could emerge in 2019 if necessary for a sale process.<sup>11</sup> As part of the restructuring agreement, NRG is obligated to maintain the current development of the Project in order to “preserve [it] for the benefit of Avon Lake [Power Plant].”<sup>12</sup> In addition, GenOn has the option to acquire the Project and finish the Project after the completion of the bankruptcy proceedings.

Notably, the economic uncertainty caused by the GenOn bankruptcy proceedings has a more defined duration than that of a general economic downturn, which is often the basis for the economic uncertainty cited in other extension requests. Here, the requested extension is needed to allow for the completion of bankruptcy proceedings and the resumption of final development activities. As discussed below, the Company continued to make substantial investment in the Project from the time the Board granted the certificate until very recently. It is both reasonable and consistent with the Board’s precedent to grant the Company’s request for an extension.

**C. The Company has actively pursued the continued development of the Project and has made significant investment in the Project.**

The Company has actively pursued the Project since the Board granted the certificate. Much of the initial development, engineering, and planning work for the Project has been completed and the Company has continued working to refine these plans to accommodate landowner requests. In fact, the Company anticipates that it will soon file a set of minor

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<sup>11</sup> See Section 1.01 of the *Notice of Filing of Plan Supplement*, filed October 31, 2017 in the Bankruptcy Case, as well as subsequently filed amendments to the plan to allow for a sale process.

<sup>12</sup> *Id.*, at Annex I, Settlement Term Sheet, p. 1.

adjustments to the pipeline route to address landowner requests and accommodate existing utility easements and environmentally sensitive areas.<sup>13</sup>

Since the Board granted the Project certificate, the Company has invested significant resources in acquiring property through eminent domain and negotiations. The Company filed over forty eminent domain actions shortly after receiving its certificate and continued these efforts after the Board approved a one year certificate extension in March 2017. Only recently, due to the bankruptcy proceedings, did the Company suspend all pending eminent domain activities. While in bankruptcy, GenOn is only permitted to perform “ordinary course” activities, and acquiring ownership of and further development of the pipeline exceeds that scope. Nonetheless, the Company has now acquired property rights to over two-thirds of the pipeline route. After the emergence from bankruptcy, if GenOn repowers the Avon Lake Power Plant, then it is anticipated that the Project will resume pursuing easement acquisitions, including eminent domain proceedings if necessary.

**D. The Company’s request is reasonable because it would only lengthen the total duration of the certificate to five years, which is the default length of a standard certificate application.**

The Company’s request for a two year extension is similar in length to requests previously granted by the Board. For instance, the Board granted a three year extension to Buckeye Wind, LLC.<sup>14</sup> The Board also granted 30-month extensions to Lima Energy Company, Norton Energy Storage, and Summit Energy Storage.<sup>15</sup>

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<sup>13</sup> For example, one of the adjustments will reduce the width of the temporary workspace to allow for potential new home construction. Many of the adjustments to be filed will reduce impacts to the affected landowners or reduce impacts to environmental features.

<sup>14</sup> *In re Application of Buckeye Wind, LLC*, Case No. 08-666-EL-BGN (*Buckeye I*), Entry (Aug. 25, 2014).

<sup>15</sup> *In re Application of Lima Energy Company*, Case No. 00-513-EL-BGN, Entry (July 30, 2012); *In re Application of Summit Energy Storage*, Case No. 89-1302-EL-BGN, Entry (June 3, 1996); *In re Application of Norton Energy Storage, LLC*, Case No. 99-1626-EL-BGN (June 2, 2008).

It should be noted that the referenced extensions involved standard *five* year certificates. Thus, in those cases, the Board was extending a five year certificate by a year or two, and sometimes on multiple occasions. For example, the Black Fork Wind Farm certificate was twice extended for a total duration of eight years.<sup>16</sup>

The Company's request for a two year extension will only increase the total duration to five years, the same length as a certificate granted to a standard application. O.A.C. Rule 4906-3-13(C). Notably, the Board treated the Project application *as if it were a standard application*. Even though the initial application filed by the Company was a letter of notification, the Board decided "to consider [the Company's] letter of notification application as if it were a standard certificate application to construct a major utility facility. . . ."<sup>17</sup> Through this rigorous evaluation, the Board found that "the requirements for a letter of notification application . . . as well as the criteria found in R.C. 4906.10 for a standard certificate application, are satisfied for the construction, operation, and maintenance of the project."<sup>18</sup>

The Board reiterated this position when granting a one year certificate extension:

As we have previously stated, the Board has a longstanding practice of considering, pursuant to a proper motion, requests to extend the term of a certificate for a major utility facility. . . . In the present case, the Board determined, in light of a number of concerns raised by [opposing intervenors], as well as other issues raised in the proceeding, that it was appropriate to consider NRG Pipeline's letter of notification application as if it were a standard certificate application to construct a major utility facility. . . . We also found that the project constitutes a major utility facility as defined in R.C. 4906.01(B)(1)(c). . . . Consistent with our practice of granting, for good cause shown, extensions of a certificate to construct a major utility facility, we find that it is appropriate to grant NRG Pipeline's requested extension for the reasons noted above.<sup>19</sup>

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<sup>16</sup> *In re Application of Black Fork Wind Energy, LLC*, Case No. 10-2865-EL-BGN (*Black Fork Wind*), Entry (Mar. 24, 2016) and *In re Application of Black Fork Wind Energy, LLC*, Case No. 17-1148-EL-BGA (*Black Fork Wind*), Entry (Dec. 7, 2017).

<sup>17</sup> Opinion, Order and Certificate, Case No. 14-1717-GA-BLN (June 4, 2015) at 8.

<sup>18</sup> *Id.* at 26.

<sup>19</sup> Entry, Case No. 14-1717-GA-BLN (March 2, 2017) at 17.



Extending the certificate an additional two years, to a total duration of five years, would be consistent with the Board's treatment of the Project application as a standard certificate application. As noted by the Board, the application was vigorously litigated and examined under criteria found in R.C. 4906.10 for a standard certificate application. It is therefore reasonable to extend the Project certificate to the length of a standard certificate.

### **III. CONCLUSION**

For these reasons, NRG Pipeline respectfully requests that the Board or administrative law judge grant NRG's motion to extend the term of its certificate from June 4, 2018 to June 4, 2020.

Respectfully submitted on behalf of  
NRG OHIO PIPELINE COMPANY LLC



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Dylan F. Borchers (0090690)  
Devin D. Parram (0082507)  
E. Nicki Hewell (0095924)  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, OH 43215-4291  
Telephone: (614) 227-2300  
Facsimile: (614) 227-2390  
E-Mail: [dborchers@bricker.com](mailto:dborchers@bricker.com)  
[dparram@bricker.com](mailto:dparram@bricker.com)  
[nhewell@bricker.com](mailto:nhewell@bricker.com)

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Motion was served electronically upon the parties listed below this 5<sup>th</sup> day of March 2018.



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Dylan F. Borchers

Robert J. Schmidt, Jr.  
L. Bradfield Hughes  
Porter Wright Morris & Arthur, LLP  
41 South High Street  
Columbus, OH 43215  
[rschmidt@porterwright.com](mailto:rschmidt@porterwright.com)

Anne Rericha  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
[arericha@firstenergycorp.com](mailto:arericha@firstenergycorp.com)

Michael Braunstein  
Goldman & Braunstein, LLP  
500 South Front Street, Suite 1200  
Columbus, OH 43215  
[Braunstein@GBlegal.net](mailto:Braunstein@GBlegal.net)  
[Stahler@GBlegal.net](mailto:Stahler@GBlegal.net)

John Jones  
Assistant Section Chief  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, OH 43215  
[John.jones@ohioattorneygeneral.gov](mailto:John.jones@ohioattorneygeneral.gov)

Sarah Anderson  
Assistant Attorney General  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, OH 43215  
[sarah.anderson@ohioattorneygeneral.gov](mailto:sarah.anderson@ohioattorneygeneral.gov)

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 14-1717-GA-BLN**

Summary: Motion to Extend The Duration of The Certificate for The Construction, Operation and Maintenance of a Natural Gas Pipeline, Metering Station, and Regulating Station electronically filed by Teresa Orahoad on behalf of Dylan F. Borchers