

THE OHIO POWER SITING BOARD

**IN THE MATTER OF THE APPLICATION OF
HARRISON POWER, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR AN
ELECTRIC GENERATING FACILITY IN
HARRISON COUNTY, OHIO.**

CASE NO. 17-1189-EL-BGN

OPINION, ORDER, AND CERTIFICATE

Entered in the Journal on June 21, 2018

I. SUMMARY

{¶ 1} The Ohio Power Siting Board approves and adopts the stipulation and recommendation between Harrison Power, LLC, the Board Staff, and the Community Improvement Corporation of Harrison County, and directs that a certificate be issued to Harrison Power, LLC for the construction, operation, and maintenance of a 1,050 megawatt electric generation facility in Harrison County, Ohio.

II. PROCEDURAL BACKGROUND

{¶ 2} All proceedings before the Ohio Power Siting Board (Board) are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 3} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. In seeking a certificate, applicants must comply with the filing requirements outlined in R.C. 4906.06, as well as Ohio Adm.Code Chapters 4906-4 and 4906-2.

{¶ 4} On May 3, 2017, Harrison Power, LLC (Harrison Power or Applicant) filed a pre-application notification letter notifying the Board of a public information meeting to discuss the project with interested persons and landowners on May 18, 2017, at the Wallace Lodge in Sally Buffalo Park in the village of Cadiz, Ohio. On July 19, 2017, Applicant filed

a second pre-application letter notifying the Board of a second public informational meeting on July 27, 2017, at the Puskarich Public Library in the village of Cadiz.

{¶ 5} On September 29, 2017, Harrison Power filed an application with the Board for approval to construct a new 1,050 megawatt (MW) natural gas-fired electric generation facility in the Harrison County Industrial Park in the village of Cadiz, Harrison County.

{¶ 6} In addition to filing its application, Harrison Power also filed a motion seeking waivers from certain provisions of the Board's rule requirements, contending that good cause exists for granting its request. Specifically, Harrison Power requested waivers, in part, from Ohio Adm.Code 4906-4-04(A)(2)(map that depicts the boundary of the study area and the general sites which were evaluated in the site selection process), Ohio Adm.Code 4906-4-05(B)(2) (submission of a System Impact Study [SIS]), Ohio Adm.Code 4906-4-07(B)(3)(b) (requiring a specific mapping scale), and Ohio Adm.Code 4906-4-08(A)(5)(c) (geological test boring plans).

{¶ 7} On November 14, 2017, the Board Staff (Staff) filed a letter responding to Applicant's request for waivers. Staff did not object to the requested waivers as qualified below, but reserves the right to require information from the Applicant in areas covered by the requested waivers if Staff determines it to be necessary during the course of the investigation. The first qualification is that Staff does not object to a delayed submittal of the SIS provided that it receives the SIS no less than 15 days prior to the Staff report of investigation filing deadline in this matter. The second qualification is that Staff will withhold an objection to the Applicant's request to postpone the submittal of the plans for geological test borings so long as Applicant's time of submittal is modified so that Staff receives the results at least 30 days prior to the commencement of construction.

{¶ 8} Pursuant to the Entry of November 20, 2017, the motion for a waiver was granted subject to the qualifications set forth by Staff.

{¶ 9} By letter filed on November 27, 2017, the Board notified Harrison Power that its application was sufficiently complete to permit Staff to commence a review and investigation of the application. The letter directed Applicant, pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. Further, the letter directed Harrison Power, pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12, to submit the application fee.

{¶ 10} On February 20, 2018, Harrison Power filed a notice stating that the project footprint was being modified by relocating the original construction parking and a temporary construction laydown area. The Applicant explains that the two areas are currently owned or will be purchased pursuant to options by the Community Improvement Corporation of Harrison County (CICHC), the same owner of the previous footprint area.

{¶ 11} On January 4, 2018, Harrison Power filed proof that it served the accepted, complete application on local public officials and libraries, in accordance with Ohio Adm.Code 4906-3-07 and also proof that it had submitted its application fee.

{¶ 12} By Entry issued January 25, 2018, the administrative law judge (ALJ) established the effective date of the application as January 19, 2018. The Entry also scheduled a local public hearing for April 5, 2018, at the Puskarich Public Library in Cadiz, Ohio. Harrison Power was directed to publish notice of the hearings in accordance with Ohio Adm.Code 4906-3-09. Petitions to intervene were to be filed up to 30 days following publication of notice.

{¶ 13} An evidentiary hearing was originally scheduled for April 16, 2018, at the offices of the Public Utilities Commission of Ohio (Commission) in Columbus, Ohio. The hearing was rescheduled three times and was eventually held at the Commission's offices on May 31, 2018.

{¶ 14} On December 27, 2017, the Ohio Valley Jobs Alliance, Inc. (OVJA) filed a motion to intervene in this matter. OVJA represented that it “is a public interest organization whose mission is to promote and protect jobs in the Ohio Valley region and to protect the related interests of its members and residents in the Ohio Valley.”

{¶ 15} On March 7, 2018, Hess Ohio Developments, LLC (Hess Ohio) and CNX Gas Company LLC (CNX) jointly filed a motion seeking intervention in this proceeding. In support of their request, Hess Ohio and CNX stated that they have a real and substantial interest in this proceeding inasmuch as the footprint of the proposed facility affects preexisting and planned oil and gas wells, leasehold interests, drilling units, roads, surface use agreements, access easements, and right-of-way interests.

{¶ 16} On March 16, 2018, CICHG filed a motion to intervene in this matter. In support of its request, the entity represented that it is uniquely situated to be informed of the possible impacts that Harrison Power may have in Harrison County.

{¶ 17} By Entry issued March 30, 2018, the ALJ granted the motions to intervene of Hess/CNX and CICHG and denied OVJA’s motion to intervene.

{¶ 18} On March 21, 2018, pursuant to R.C. 4906.07(C), Staff filed a report of its investigation (Staff Report).

{¶ 19} The local public hearing was held on April 5, 2018, in the village of Cadiz, Ohio

{¶ 20} On April 30, 2018, Harrison Power filed the testimony of Ankit Chadha, Stephen Goff, and Jill Vovaris in support of its application. On May 25, 2018, Harrison Power, the CICHG, and Staff filed a Joint Stipulation and Recommendation (Stipulation) that resolved all issues. On the same day, Hess and CNX filed a letter in the docket indicating that they do not oppose the issuance of a certificate for this project.

{¶ 21} The ALJ presided over an adjudicatory hearing on May 31, 2018. At the hearing, the parties presented the Stipulation. Harrison Power presented the testimony of Stephen Goff to support the Stipulation. Staff presented the testimony of Jon C. Pawley in support of the Staff Report.

III. MOTION FOR PROTECTIVE ORDER

{¶ 22} On September 29, 2017, Harrison Power filed a motion for a protective order to maintain as confidential portions of its application which is filed under seal. The information that Harrison Power seeks to protect is the financial data appearing on pages 15-19 of the application. The information includes the estimated capital and intangible costs; the estimated annual operation and maintenance expenses and estimated operation and maintenance expense comparisons; the estimated lost energy revenues due to delays; the estimated payments in lieu of property taxes; the acquisition costs of certain property; the estimated cost of upgrading a water system; and the economic impact of the construction of the project.

{¶ 23} In support of its motion, Harrison Power contends that all of the information has independent economic value to the Applicant and that publicly providing this information to others could provide its competitors with a competitive advantage and prejudice Harrison Power in its project development discussions. Harrison Power claims that the information that it seeks to keep confidential meets the Ohio Supreme Court's six-factor test¹ to qualify as trade secret information. Further, Harrison Power submits that all of the information is the subject of reasonable efforts to maintain its secrecy.

{¶ 24} Ohio law defines a trade secret as "information that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons

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

who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D).

{¶ 25} The Board has examined the information filed under seal, as well as the assertions set forth in the Applicant’s memorandum in support of a protective order. 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 in *The Plain Dealer* at 524-525, the Board finds that the motion should be granted. Specifically, the Board finds that the financial data on pages 15-19 of the application should be afforded protective treatment consistent with Ohio Adm. Code 4906-2-21(D).

{¶ 26} Ohio Adm.Code 4906-2-21(F) provides that, “[u]nless otherwise ordered, any order prohibiting public disclosure pursuant to this rule shall automatically expire twenty-four months after the date of its issuance, and such information may then be included in the public record of the proceeding.” The information protected by this order shall remain under seal for a period ending 24 months from the date of this Entry.

{¶ 27} Ohio Adm.Code 4906-2-21(F), requires a party wishing to extend a protective order to 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 Docketing Division may release the information without prior notice to the Applicant.

IV. REQUEST FOR WAIVER

{¶ 28} On March 28, 2018, Harrison Power filed a “Corrected Notice of Compliance and Request for Waiver.” In its filing, Harrison Power notes that its February 5, 2018 notice to landowners and public officials complied with Ohio Adm.Code 4906-3-09(A)(1), however, the February 5, 2018 filing with the Board failed to include a copy of the initial public notices. Specifically, Harrison Power explains that this omission was inadvertent

oversight. Because more than 14 days elapsed since the initial public notices were sent, the Applicant seeks a waiver of the 14-day requirement in Ohio Adm.Code 4906-3-10(A).

{¶ 29} Harrison Power's motion for a waiver is reasonable and should be granted.

V. PROJECT DESCRIPTION

{¶ 30} This project involves the construction and operation of a new, natural gas fired combined-cycle power plant with a capacity of 1,050 MW electric generation facility. The project will be located on a 102-acre parcel of land east of Highway 22 and adjacent to Industrial Park Road, located in the Harrison County Industrial Park within the village of Cadiz.

VI. CERTIFICATION CRITERIA

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

- (1) The basis of the need for the facility if the facility is an electric transmission line or gas pipeline;
- (2) The nature of the probable environmental impact.
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations.
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that

the facility will serve the interests of electric system economy and reliability.

- (5) The facility will comply with R.C. chapters 3704, 3734, and 6111 and all rules and standards adopted under those chapters and under R.C. 1501.33, 1501.34, and 4561.32.
- (6) The facility will serve the public interest, convenience, and necessity.
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternative site of the proposed major utility facility.
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

VII. SUMMARY OF THE EVIDENCE

{¶ 32} 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

{¶ 33} Five individuals testified at the local public hearing held on April 5, 2018, in the village of Cadiz, Ohio. While there were no specific objections to the proposed generation facility, some witnesses expressed concern about noise levels.

B. Staff Report

{¶ 34} Pursuant to R.C. 4906.07(C), Staff completed an investigation into the application, including recommended findings regarding R.C. 4906.10(A). A summary of Staff's findings are below.

1. BASIS OF NEED

{¶ 35} R.C. 4906.10(A)(1) specifies that, if the proposed facility is an electric transmission line or a gas pipeline, the need for the proposed project must be demonstrated.

{¶ 36} Staff recommends that the Board find that the basis of need as specified under R.C. 4906.10(A)(1) is not applicable because the project is neither an electric transmission line nor a gas pipeline (Staff Ex. 1 at 11).

2. NATURE OF PROBABLE ENVIRONMENTAL IMPACT

{¶ 37} Pursuant to R.C. 4906.10(A)(2), the Board must determine the nature of the probable environmental impact of the proposed facility. As part of its investigation, Staff reviewed the nature of the probable environmental impact of the proposed project.

{¶ 38} The following is a summary of the findings of the Staff Report regarding the nature of the probable environmental impact of the project.

a. Socioeconomic Impacts

{¶ 39} The Applicant proposes to construct the project on a 102-acre parcel that it has under option for purchase from CICHG. The proposed project location is within an industrial park setting and most of the surrounding land is owned by CICHG and is primarily designated for manufacturing use. The proposed project would occupy approximately 30 acres and would include power generating equipment, an on-site switchyard, and other ancillary facilities. Temporary construction parking and laydown areas would be situated on the parcel. Other portions of the parcel could potentially be used

for storm water management, pending approval by the U.S. Corps of Engineers and the Ohio Environmental Protection Agency (Ohio EPA). (Staff Ex. 1 at 12; Applicant Ex. 4 at 2.)

{¶ 40} Approximately 80 percent of the land uses within one mile of the facility site is vegetated or water land use, and was previously mined. The facility site and laydown area are located within an area of Cadiz designated for industrial development and no agricultural land is located within the boundaries of the proposed facility site or laydown areas. Residential land is located north and east of the proposed facility site, while commercial and industrial property exists to the northwest. There are no structures within a 1,000-foot buffer of the project or its access road. (Staff Ex. 1 at 12-13.)

{¶ 41} The closest recreational use is Sally Buffalo Park, a public park and facility located 0.75 mile north of the project. None of the recreational areas identified within the 5-mile radius would be negatively impacted by the proposed facility, and recreational land use would not be altered as a result of the construction or operation of the proposed facility. (Staff Ex. 1 at 12-13.)

{¶ 42} Currently, the nearest school is Harrison Central Junior/Senior High School, located approximately 1.75 miles from the project. There is a planned new 190,000 square foot elementary school that will be located approximately 1.1 miles from the project site. (Staff Ex. 1 at 12-13.)

{¶ 43} The Applicant's cultural resources consultant performed an archeological and historical/architectural literature review and determined that the project would not involve or impact any significant cultural resources or landmarks, and that no further cultural resource management work was considered necessary. No previously recorded archeological or historical resources are located at or near the project site. The Ohio Historic Preservation Office (OHPO) confirmed that the project would not affect historic properties listed on or eligible for the National Register of Historic Places. (Staff Ex. 1 at 13.)

{¶ 44} Due to existing viewshed impacts and topography, visual impacts to scenic rivers, scenic routes or byways, and registered landmarks of historic, religious, archeological, scenic, natural, or other cultural significance within five miles of the project area would be minimal. The facility would be visible from Sally Buffalo Park and nearby ball fields. No tree clearing or landscape alterations would further impact visibility. Facility lighting and paint colors would be selected and designed to minimize visual impact. (Staff Ex. 1 at 13.)

{¶ 45} FTI Consulting, Inc., an independent economic consulting firm, analyzed the direct and indirect economic impacts of the construction and operation of the project in eastern Ohio (encompassing a local region of 26 counties including Harrison County) and the rest of Ohio. According to Staff, it appears that the economic data submitted in the application meets the requirements set forth in Ohio Adm.Code 4906-4-06. (Staff Ex. 1 at 13.)

{¶ 46} The submitted data reflects that the project capital expenditures will be approximately \$900 million, which includes land acquisition, site preparation, building materials, power generation and transmission equipment, professional services, and construction labor. It is estimated that during construction from 2018 to 2020, the project will contribute \$210 million towards Ohio's gross domestic product (GPD). In terms of jobs, the analysis estimated that during construction, the project would create 805 sustained jobs throughout the state with 727 of the jobs located in eastern Ohio, up to 500 of which will be construction jobs, with a total payroll during the construction period of over \$111 million. The remainder of created jobs will be located elsewhere in the state. Upon commencement of operations in early 2021, it is estimated that the project's operations will contribute \$65 million towards Ohio's GDP with 252 jobs throughout the state of Ohio, including 223 jobs located in eastern Ohio. This figure includes direct employment of approximately 30 full-time workers at the plant, additional employment by businesses providing goods and services to the plant, and employment generated from employees of the plant and its suppliers who spend money in the Ohio economy. An analysis reflects \$172 million in

statewide labor income during construction, including \$153 million in eastern Ohio. Following construction, statewide labor income from the project will be \$17 million with \$15 million in eastern Ohio. (Application, Appendix D at 2-4; Applicant; Applicant Ex. 4 at 5.)

{¶ 47} During the construction phase, the project will generate \$14.29 million in state and local tax revenues for eastern Ohio's municipalities and counties, and \$1.70 million for the remainder of the state. This money will likely be utilized towards enhancing public services. Once operational, the project will generate an estimated \$173 million of additional state and local tax revenues per year, including \$1.50 million in eastern Ohio and \$0.24 million in the remainder of the state. (Application, Appendix D at 3.)

{¶ 48} While the Applicant has stated that it intends to complete construction in 2020 and commence operations by early 2021, Staff notes that the Applicant has indicated that delays in permitting could jeopardize its ability to participate in the 2021/2022 PJM Interconnection, LLC (PJM) Reliability Pricing Model (RPM) Base Residual Auction and delay the facilities projected in-service date (Staff Ex. 1 at 13.).

b. Ecological Impacts

{¶ 49} Harrison County is located within the unglaciated Allegheny Plateau Region. Sedimentary rocks that outcrop in the county belong to the Pennsylvanian and Permian Systems. Bedrock and exposed strata consist of sandstone, limestone, shale, and coal. (Staff Ex. 1 at 14.)

{¶ 50} Coal mining has been an important aspect to the local economy and there are many abandoned and active coal mines within the proposed project area. Although the Applicant plans to perform more research and subsurface drilling prior to construction, past/present coal mining activity should not result in finding the proposed site unsuitable for construction. (Staff Ex. 1 at 14.)

{¶ 51} The Applicant identified the soils in the project area. Based on this analysis it was determined that approximately 63 percent is Morrison channery silty clay loam, 0 to 8

percent slopes and 34 percent is Morrison channery silty clay loam, 8 to 25 percent slopes. Both soil units are well drained and do not have a propensity to flood or pond. The project site is overall flat lying. The Applicant will conduct a geotechnical drilling investigation prior to construction in order obtain further site specific detailed information and engineering properties of the soils for construction design purposes. The Applicant finds that the mapped units in the project area are suitable for construction and Staff does not find any issues regarding these soil types that would prevent or restrict construction of this facility. (Staff Ex. 1 at 14.)

{¶ 52} There are three ephemeral streams in the project area. No in water work is proposed and no impacts to streams are anticipated. Seven wetlands, totaling 0.72 acre, have been delineated in the project area. No category 3 wetlands were delineated. Three wetlands, totaling 0.13 acre, would be filled as a result of the project. Other wetlands in the project area would be fenced off and protected from construction impacts. Specifics as to how wetlands will be further protected using erosion and sedimentation controls will be outlined in the Applicant's Storm Water Pollution Prevention Plan (SWPPP). The project area does not overlap any 100-year floodplain. (Staff Ex. 1 at 14-15.)

{¶ 53} The project area is located on reclaimed coal strip mine land, and consists of grassland previously used for grazing. No tree clearing will be required and herbicide use is not expected. No impacts to rare or sensitive vegetation communities will occur. (Staff Ex. 1 at 15.)

{¶ 54} Harrison Power requested information from the Ohio Department of Natural Resources (ODNR) and the U.S. Fish and Wildlife Service (USFWS) regarding state- and federally-listed threatened and endangered plant and animal species. Staff gathered additional information through field assessments and review of published ecological information. (Staff Ex. 1 at 15.)

{¶ 55} The project area is located within the range of the state and federal endangered Indiana bat and the federal threatened northern long-eared bat. These are tree roosting species. These species should not be impacted due to the fact that no tree clearing is proposed. (Staff Ex. 1 at 15.)

{¶ 56} The project area is also located within the range of the state endangered black bear. Due to the mobility of this species, the project is not likely to have an adverse impact. (Staff Ex. 1 at 15.)

{¶ 57} The project is also in the range of the state endangered upland sandpiper. To avoid impacts to this species, Staff recommends that construction in areas of potential habitat be avoided during the species' nesting period of April 15 through July 31, unless the ODNR orders otherwise. (Staff Ex. 1 at 15.)

c. Public Services, Facilities, and Safety

{¶ 58} There will be an increase in traffic on routes leading to the project area due to the delivery of equipment and materials. As a result, traffic management during the construction phase may be necessary in the immediate vicinity of the project area to ensure safe and efficient maintenance of existing traffic patterns and usage. The Applicant has committed to coordinating with local officials to minimize traffic impacts. The Applicant predicts that traffic impacts will be minimal when the facility becomes operational. Potential emergency service requirements will be coordinated with local officials. (Staff Ex. 1 at 16.)

{¶ 59} All project components will be delivered by rail and truck. Rail transportation will be utilized for the delivery of larger equipment. Staff recommends that the Applicant develop a final transportation management plan that would include a road use agreement. Any damaged public roads and bridges would be repaired promptly by the Applicant under the guidance of the appropriate regulatory agency. Any temporary improvements

would be removed unless the appropriate regulatory agency requests that they remain in place. (Staff Ex. 1 at 16.)

{¶ 60} Construction-related noise will occur from site clearing and grading, placement of major structural concrete foundations, erection of structural steel, installation of mechanical and electrical equipment, and commissioning and testing of equipment. The Applicant expects that construction activities will generate a significant amount of noise during the final 4 to 6 months of construction. However, construction noise will be temporary, intermittent, limited to daytime hours, and will occur away from residential structures. For additional mitigation, the Applicant will, when possible, utilize electrical equipment instead of diesel engines and hydraulic equipment instead of pneumatic tools. The Applicant will also schedule noise-generating activities during the day, when the ambient background level is higher. The Applicant has committed to actively communicate with residents in the area in order to learn about any noise complaints and to inform the community of unavoidable loud noise events. (Staff Ex. 1 at 16.)

{¶ 61} Additionally, the Applicant conducted a background ambient noise level study to understand the existing noise levels near the proposed facility. The study included short-term measurements at eight monitoring locations. According to Staff, with the Applicant's adherence to the design goal and use of noise mitigation detailed in the application, the project will be expected to have minimal adverse impacts on the adjacent community. In order to minimize adverse impacts associated with increased noise levels, Staff recommends that the Applicant use the mitigation measures that were included in its noise model, or similar measures with equal or better performance and include procedures in its complaint resolution process for resolving noise complaints. (Staff Ex. 1 at 16-17.)

{¶ 62} Based on its investigation in this case, Staff recommends that the Board find that the Applicant has determined the nature of the probable environmental impact for the proposed facility, and, therefore, complies with the requirements specified in R.C.

4906.10(A)(2), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 17.)

3. MINIMUM ADVERSE ENVIRONMENTAL IMPACT

{¶ 63} Pursuant to R.C. 4906.10(A)(3), the proposed facility must represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, along with other pertinent considerations.

{¶ 64} Harrison Power determined that the best location for a power production facility would be in northeast Ohio. The Applicant reached this determination based on its consideration of various factors, including: underutilized electricity infrastructure; nearby access to competitive Utica Shale production; plentiful water supplies; road and rail transportation capabilities; and, history of proven skilled labor force. Additionally, members of the Applicant's development team have experience with the requirements and capabilities of the region from previously developing power plants for industrial users in northeast Ohio. Based on its review of the potential locations, the Applicant determined that the Harrison County Industrial Park was the optimal location for the facility inasmuch as it is relatively flat and has access for workers and heavy haul equipment. (Staff Ex. 1 at 18.)

{¶ 65} The proposed project layout is based on consideration of an existing pond on site, gas line easements, and undermining of coal by the prior owner. The selected layout avoids the pond and lies to the east of the gas line easements. The project layout also avoids placing heavy equipment over the undermined area. (Staff Ex. 1 at 18.)

{¶ 66} The Applicant has sited and designed the proposed plant in a manner that will minimize potential impacts. The facility will be located on approximately 102 acres on Industrial Park Road in the Harrison County Industrial Park in the village of Cadiz. Pastureland accounts for all of the land that will be impacted by the proposed facility. This

land was previously utilized for surface mining activities. The land area is currently owned or will be purchased pursuant to options by the CICHC. The immediate surrounding area is either open pasture or utility use, with adjacent industrial facilities. (Staff Ex. 1 at 18; Applicant Ex. 4 at 2; Feb. 20, 2018 Notice Regarding Modification of Project Footprint.)

{¶ 67} According to the Ohio Historic Preservation Office, this project will not affect historic properties listed on or eligible for the National Register of Historic Places and no further cultural resources work is needed for the project. Further, based on the review conducted by the Applicant's cultural resource consultant, no previously recorded cultural resources were identified at the project site and relatively few recorded cultural resources are nearby. (Staff Ex. 1 at 18.)

{¶ 68} The proposed facility will have an overall positive impact on the local economy due to the increase in construction spending, wages, purchasing of goods and services, and annual tax revenues (Staff Report at 18).

{¶ 69} Construction of the proposed facility will not directly impact any streams and will not require work in the mapped 100-year floodplain. In order to minimize impacts to wetlands, a Nationwide Permit 39 has been completed and submitted to the United States Army Corps of Engineers. Additionally, the Applicant has committed to marking and fencing off wetlands on the periphery of the project site as an avoidance measure. (Staff Ex. 1 at 19.)

{¶ 70} Impacts to any state and federal listed species can be avoided by following seasonal restrictions for construction in certain habitat types as detailed by the USFWS and the ODNR (Staff Ex. 1 at 19).

{¶ 71} Although noise impacts are expected during the construction and operation of the facility, the adverse impacts from construction noise will be temporary and intermittent. Further, construction noise will occur away from residential structures, and

will be limited to daytime working hours. The Applicant will adhere to noise migration measures as detailed in the noise model. (Staff Ex. 1 at 19.)

{¶ 72} The Federal Aviation Administration (FAA) has issued a Notice of Presumed Hazard to air navigation for the Harrison County Airport due to the fact that the stacks for the power plant, as well as the cranes used for construction have the potential to interfere with airspace navigation. Staff is recommending certain conditions to ensure minimal impact to airspace and air traffic patterns in the vicinity of the proposed power plant. (Staff Ex. 1 at 19.)

{¶ 73} There will be a temporary increase in truck traffic on local, state, and county roads during the construction period due to the delivery of equipment and materials. The utilization of a local rail spur will minimize impacts to local roads. A final delivery route plan from the rail spur to the plant site will be developed through discussions with local officials. (Staff Ex. 1 at 19.)

{¶ 74} The visual impacts will be most prominent for landowners in the immediate vicinity of the infrastructure itself. Through measures committed to by the Applicant to address lighting and paint colors, as well as by Staff's recommended landscape and aesthetics plan, visual impacts will be minimized. (Staff Ex. 1 at 19.)

{¶ 75} Staff concludes that the proposed project would result in both temporary and permanent impacts to the project area and surrounding areas. Because of the low potential to impact land use, cultural resources, surface water resources, wildlife, and Staff's recommended conditions to mitigate these impacts, Staff concludes that the project represents the minimum adverse environmental impact. (Staff Ex. 1 at 19.)

{¶ 76} Staff recommends that the Board find the proposed facility represents minimum adverse environmental impact and that the project complies with the requirements specified in R.C. 4906.10(A)(3), provided that any certificate issued by the

Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 19.)

4. ELECTRIC POWER GRID

{¶ 77} Pursuant to R.C. 4906.10(A)(4), the Board must determine that the proposed electric facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the facility will serve the interests of electric system economy and reliability.

{¶ 78} The North American Electric Reliability Corporation (NERC) is responsible for the development and enforcement of the federal government's approved reliability standards, which are applicable to all owners, operators, and users of the bulk power system (BPS). As an owner, operator, and/or user of the BPS, the Applicant is subject to compliance with various NERC reliability standards. NERC reliability standards are included as part of the system evaluations conducted by PJM. (Staff Ex. 1 at 23.)

{¶ 79} PJM is the regional transmission organization charged with planning for upgrades and administering the generation queue for the regional transmission system in Ohio. PJM reviews applications for expansions and upgrades of the PJM transmission system to ensure compliance with reliability criteria. Harrison Power submitted an application to PJM on October 25, 2016. PJM released its System Impact Study in March 2018. PJM analyzed the bulk electric system with the proposed facility interconnected to the to the bulk power system via AEP Ohio Transmission Company's Nottingham 138 kV substation. A 2020 summer peak power flow model was used to evaluate the regional reliability impacts. The study revealed an overload on American Transmission Systems, Inc. (ATSI) Nottingham-Yager 138 kV Transmission Line during a multiple contingency event. To mitigate the overload, ATSI would be required to reconductor the current 477 Aluminum Conductor Steel Reinforced AC wire to a 795 ACSR wire. PJM did not identify any problems when it studied overloading where the proposed facility may affect earlier

projects in the PJM queue. In addition, no potential violations were found during the short circuit analysis. (Staff Ex. 1 at 20-21.)

{¶ 80} Staff recommends that the Board find that the proposed facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving Ohio and interconnected utility systems, and that the facility would serve the interests of electric system economy and reliability. Therefore, Staff recommends that the Board find that the facility complies with the requirements specified in R.C. 4906.10(A)(4), provided that any certificate issued by the Board for the proposed facility includes the conditions specified in the Staff Report. (Staff Ex. 1 at 21.)

5. AIR, WATER, SOLID WASTE, AND AVIATION

{¶ 81} Pursuant to R.C. 4906.10(A)(5), the facility must comply with Ohio law regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous wastes, and air navigation.

{¶ 82} The proposed project site is within an area classified as attainment for all National Ambient Air Quality Standards criteria air pollutants. Operational impacts on air quality would be minimized through the use of new gas turbine technology, and incorporating air pollution controls that satisfy Best Available Control Technology. An Air Quality Impact Assessment was conducted and determined that all studied pollutants would remain below significant impact levels. The primary air pollution controls proposed for the facility included dry low nitrogen oxide burners in the gas turbines, selective catalytic reduction systems, good combustion practices, high quality gas fuel, and oxidation catalysts. The air permit to install application for the project was submitted to the Ohio EPA in February 2017. The Applicant will be required to apply for a Title V air operating permit within 12 months of the initial startup. Additionally, the Applicant will need to submit a Title IV Acid Rain Program permit application for emissions of sulfur dioxide and nitrogen oxide. The Title IV permit must be submitted at least 24 months prior to beginning operation. (Staff Ex. 1 at 23-24.)

{¶ 83} While the construction of the facility would not require the use of significant amounts of water, the operation of the facility will have such a requirement. The project is planning to obtain potable water through the village of Cadiz. (Staff Ex. 1 at 24.)

{¶ 84} Air cooling technology will be employed as a heat sink for each unit's steam cycle and associated closed cooling water loops. Under normal operating conditions, a minimal amount of water will be needed to replenish the cooling systems due to steam cycle blowdown and operational leakage. At times, extra water will be required to operate evaporative coolers at the inlet of each gas turbine. (Staff Ex. 1 at 24.)

{¶ 85} The Applicant filed for a permit coverage under the Ohio EPA's National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharge associated with industrial activities on September 15, 2017. The Applicant will submit a SWPPP with the Ohio EPA as part of the NPDES permit. (Staff Ex. 1 at 24.)

{¶ 86} Storm water flows from the developed site would be controlled through the use of a detention pond, an oil/water separator, a common collection sump, and other best management practices. The preliminary design reflects discharge of clean storm water runoff from the storm water collection pond into Sally Buffalo Creek and through a bioswale channel outletting off site. (Staff Ex. 1 at 24.)

{¶ 87} Wastewater from the facility will be collected in a wastewater collection tank before discharge into a storm water collection pond and then to the outfall interconnection with Sally Buffalo Creek. Sanitary wastewater will be collected in an on-site lift station and discharged to the village of Cadiz sewer system. Wastewater quality testing will be conducted on site to monitor compliance with the facility's discharge requirements. (Staff Ex. 1 at 24.)

{¶ 88} The Applicant estimates that approximately 1,200 cubic yards of construction debris could be generated from the construction of the proposed facility. Solid waste generated from the construction activities will include packing materials, office waste, scrap

lumber, metals, cables, glass, cardboard containers, and other miscellaneous debris. Solid waste that can be neither recycled nor reused would be stored in on-site containers for disposal. The Applicant will develop procedures to ensure that potentially hazardous wastes are separated from normal waste. The Applicant will have a Spill Prevention, Containment, and Countermeasure Plan in place and will follow manufacturers' recommendations for any spill cleanup. (Staff Ex. 1 at 24-25.)

{¶ 89} Staff opines that the Applicant's solid waste disposal plans comply with solid waste disposal requirements in R.C. Chapter 3734, and the rules and laws adopted under this chapter (Staff Ex. 1 at 25).

{¶ 90} The tallest above-ground permanent structures will be the heat recovery steam generator stacks that are 165 feet tall. The specific height of the construction cranes to be utilized will be higher than the 165-foot height of the stacks. A separate temporary construction permit will need to be obtained from the FAA relative to the crane work. The Applicant is also working with the FAA and the Harrison County Airport Authority on an air traffic pattern change in order to receive a favorable determination from the FAA. Additionally, Staff found that there are 7 other public-use airports between 8 and 23 miles of the proposed power plant. The closest heliports are located from 2 to 3 miles from the project site and appear to be associated with the R&F Coal Company and Harrison Community Hospital. Neither of these public use airports or private heliports pose any air navigation concerns with the proposed facility. (Staff Ex. 1 at 25.)

{¶ 91} Staff recommends that the Board find that the proposed facility complies with the requirements specified in R.C. 4906.10(A)(5), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report (Staff Ex. 1 at 26).

6. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 92} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity.

{¶ 93} The Applicant will limit public access to the facility by installing a security fence around the project site with card-activated gates and operator-controlled access. Additionally, there will be 24-hour per day manned security control at the power block access point. (Staff Ex. 1 at 27.) The project will be constructed, operated, and maintained in accordance with applicable safety and environmental regulations, including Occupational Safety and Health Administration requirements, and industry standards. This includes the commitment to the containment of an on-site accidental chemical spill. (Staff Ex. 1 at 27.)

{¶ 94} In order to operate the natural gas interconnection and associated equipment safely and reliably, the equipment should be built, operated, and maintained to meet the requirements in Title 49 CFR parts 191 and 192, the Federal Minimum Pipeline Standards; part 199 and part 40, the Drug and Alcohol Regulations; R.C. 4905.90 through 4905.96, Natural Gas Pipeline Safety Standards; and Ohio Adm.Code 4901:1-16, Gas Pipeline Safety. The Applicant intends to comply with these gas pipeline safety regulations. (Staff Ex. 1 at 27.)

{¶ 95} A complete fire protection/detection system will be provided for the facility. It will be designed and installed in accordance with the local fire department, National Fire Protection Association standards, and the insurer's recommendations. It will include a fixed water fire suppression system, fire hose stations, hydrants, portable fire extinguishers, and detection and control systems. The Applicant has committed to collaborate with local emergency responders to develop an emergency response plan that will address different potential emergencies, levels of response, and personnel and equipment resources. (Staff Ex. 1 at 27.)

{¶ 96} The Applicant is considering a connection to the existing MarkWest natural gas processing plant, which is adjacent to the facility site, via a Republic Partners gas pipeline. The Applicant is also considering a second gas interconnection option to supply the facility. For this purpose, a separate application in Case No. 18-73-GA-BLN, *In re the Letter Notification Application of Harrison Pipeline Company LLC for the Harrison Power Plant Natural Gas Feed Project*, has been filed with the Board to construct a natural gas pipeline that will connect the power plant to the Republic Partners nearby pipeline. There are a number of gas processing plants in the area. Therefore, in the event that the MarkWest Cadiz natural gas processing plant is unavailable, the proposed facility will have continued access to other nearby gas processing plants. (Staff Ex. 1 at 27-28.)

{¶ 97} The Applicant intends to install a fuel gas filter/scrubber and gas heating /liquids removal system to improve overall plant efficiency. The Applicant will contract to ensure gas transportation service to the facility. The transportation service will be long-term, year round service to ensure uninterrupted supply of gas to the project. (Staff Ex. 1 at 28.)

{¶ 98} The Applicant hosted a public informational open house for this project on May 18, 2017, and July 27, 2017.

{¶ 99} The Applicant served copies of the complete application on officials representing Harrison County, CICHG, the Harrison Soil and Water Conservation District, the Harrison County Regional County Regional Planning Commission, Cadiz Township, and the village of Cadiz. The Applicant also sent a copy of the complete application to the Puskarich Public Library. (Staff Ex. 1 at 28.)

{¶ 100} During the construction and operation of the facility, the Applicant will use a comment form to gather any comments, issues, or concerns related to the facility. While the Applicant intends to notify affected property owners and tenants by mail at least

seven days prior to the start of construction, Staff recommends that the Applicant provide at least 30 days notice prior to the start of construction. (Staff Ex. 1 at 28.)

{¶ 101} The Applicant will carry liability, property, and casualty insurance for the project site. Project-related deliveries and vehicles will have appropriate insurance coverage. (Staff Ex. 1 at 29.)

{¶ 102} Staff recommends that the Board find that the proposed facility will serve the public interest, convenience, and necessity, and, therefore, complies with the requirements specified in R.C. 4906.10(A)(6), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 29.)

7. AGRICULTURAL DISTRICTS

{¶ 103} Pursuant to R.C. 4906.10(A)(7), the Board must determine the facility's impact on the agricultural viability of any land in an existing agricultural district within the project area of the proposed facility. Agricultural district land is exempt from sewer, water, or electrical service tax assessments.

{¶ 104} No agricultural district lands were identified in the project area. Therefore, no agricultural district land will be disturbed in association with the construction of the proposed facility. No impacts to field operations, irrigation, or field drainage systems associated with the agricultural district lands would occur as a result of the construction, operation, or maintenance of the proposed facility. The project is located on reclaimed strip mined land, previously used for grazing, but not agricultural row-crop land. (Staff Ex. 1 at 30.)

{¶ 105} Staff recommends that the Board find that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined, and, therefore, complies with the requirements specified in R.C. 4906.10(A)(7),

provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 30.)

8. WATER CONSERVATION PRACTICE

{¶ 106} Pursuant to R.C. 4906.10(A)(8), the proposed facility must incorporate maximum feasible water conservation practices, considering available technology and the nature and economics of the various alternatives.

{¶ 107} While construction of the proposed facility would not require the use of significant amounts of water, operation of the proposed facility would require the use of a significant amount of water, approximately 88,000 gallons per day on average. The water will be obtained through the village of Cadiz water treatment plant and used for process water, fire protection, and sanitary uses. Consequently, the requirements under R.C. 1501.33 and 1501.34 are not applicable. (Staff Ex. 1 at 31.)

{¶ 108} The proposed facility design incorporates significant water conservation measures. Specifically, the facility will use air-cooling, rather than a conventional wet cooling system. Additionally, an air-cooled fin fan cooler will do cooling for each unit's auxiliary equipment.

{¶ 109} Staff recommends that the Board find that the proposed facility would incorporate maximum feasible water conservation practices, and, therefore, complies with the requirements specified in R.C. 4906.10(A)(8). Staff further recommends that any certificate issued by the Board for the certification of the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 31.)

9. RECOMMENDATIONS

{¶ 110} In addition to making various findings throughout its report, Staff recommended that 23 conditions be made part of any certificate issued by the Board for the proposed facility (Staff Ex. 1 at 33-36). While there are modifications to some language in

the Staff Report, the vast majority of the recommended conditions found within the Staff Report were adopted and re-enumerated in the parties' May 25, 2018 Stipulation. The conditions are discussed below.

VIII. STIPULATION AND CONDITIONS

{¶ 111} At the May 31, 2018 adjudicatory hearing, counsel for the Applicant presented a Stipulation entered into by Harrison Power, the CICHG, and Staff that resolves all issues (Joint Ex. 1). The Stipulation provides that the parties agree that the Board should issue a Certificate of Environmental Compatibility and Public Need, as requested by Harrison Power, subject to certain conditions.

{¶ 112} 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 as follows:

- (1) The facility shall be installed at the Applicant's proposed site as presented in the application and as modified and/or clarified by supplemental filing, replies to data requests, and the recommendations in the Staff Report.
- (2) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, representatives of the prime contractor, and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review.

The Applicant may conduct separate preconstruction meetings for each stage of construction.

- (3) At least 30 days before the preconstruction conference, the Applicant shall submit to Staff for review to ensure compliance with this condition, one set of detailed engineering drawings 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 points, so that Staff can determine that the final project design is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically-referenced electronic data. The final design shall include all conditions of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate.
- (4) If the Applicant makes any changes to the project layout after the submission of final engineering drawings, the Applicant shall provide all such changes to Staff in hard copy and as geographically-referenced electronic data. All changes will be subject to Staff review to ensure compliance with all conditions of the certificate, prior to construction in those areas.
- (5) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it from submitting a

copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.

- (6) Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (7) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.
- (8) As the information becomes known, the Applicant shall docket 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.
- (9) With the exception of minor geotechnical work including borings, the Applicant shall not commence any construction

of the facility until it has a signed Interconnection Service Agreement with PJM, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed generating facility into the regional transmission system reliably and safely. 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.

- (10) At least 30 days prior to the preconstruction conference, the Applicant shall provide to Staff a copy of its public information program that informs affected property owners and tenants of the nature of the project, specific contact information of Applicant personnel who are familiar with the project, the complaint resolution process, the proposed timeframe for project construction, and a schedule for restoration activities. The Applicant shall give notification of planned construction to affected property owners and tenants at least seven days prior to commencement of construction.
- (11) During the construction and operation of the project, the Applicant shall submit a complaint summary report in the case record by the fifteenth day of January, April, July, and October of each year. The report should include a list of all complaints received through its complaint resolution process, a description of the actions taken to resolve each complaint, and a status update if the complaint has yet to be resolved.
- (12) Prior to the commencement of installation of facility components requiring lighting, the Applicant shall prepare a

landscape and lighting plan that addresses the aesthetic and lighting impacts of the facility on nearby residences, including lighting locations. The Applicant shall provide the plan to Staff for review and confirmation that it complies with this condition.

- (13) The Applicant shall contact Staff, the ODNR, and the USFWS within 24 hours if state or federal threatened or endangered species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and the ODNR in coordination with the USFWS. Nothing in this condition shall preclude agencies having jurisdiction over the facility with respect to threatened or endangered species from exercising their legal authority consistent with law.
- (14) Construction in upland sandpiper preferred nesting habitat types shall be avoided during the species' nesting period of April 15 through July 31, unless coordination with the ODNR allows a different course of action.
- (15) The Applicant must comply with fugitive dust rules by the use of water spray or other appropriate dust suppressant measures whenever necessary.
- (16) The Applicant shall meet all recommended and prescribed FAA and Ohio Department of Transportation (ODOT) Office of Aviation requirements to construct an object that may

affect navigable airspace. This includes submitting coordinates and heights for all structures that penetrate the notification slope of any public use airport or that exceed 199 feet above ground level for ODOT Office of Aviation and FAA review prior to construction, and the non-penetration of any FAA Part 77 surfaces.

- (17) At least 10 days prior to the preconstruction conference, the Applicant shall file in this docket a copy of the FAA Determination of No Hazard letter for the two heat recovery steam generator stacks and proof of a resolution from the Harrison County Airport authority authorizing a traffic pattern change from runway 13 at the airport, a copy of the request to the FAA for the pattern change, and documentation from the FAA indicating acceptance of the pattern change.
- (18) All applicable structures, including construction equipment shall be lit in accordance with FAA circular 70/7460-1 K Changes 2, Obstruction Lighting; or as other otherwise prescribed by the FAA.
- (19) Within 30 days of construction completion, the Applicant shall file the as-built HRSG stacks or electrical support structure coordinates and heights with the FAA and the Harrison County Airport.
- (20) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road

closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, the ODOT, local law enforcement, and health and safety officials. The Applicant shall detail this coordination as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition.

- (21) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving and hoe ram operations, if required, shall be limited to the hours between 9:00 a.m. to 5:00 p.m., Monday through Friday and blasting operations, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction activities.
- (22) In order to minimize adverse impacts associated with increased noise levels, the Applicant shall use the mitigation measures included in the mitigated model or similar measures selected by the Applicant including, but not limited to, project cooperation agreements.

- (23) At least 30 days before the preconstruction conference, the Applicant shall submit to Staff for review and confirmation that it complies with this condition an emergency response plan to be used during construction. This plan shall be developed in consultation with the fire department(s) having jurisdiction over the area. The Applicant shall coordinate with fire, safety, and emergency personnel during all stages of the project.

(Jt. Ex. 1 at 4-7.)

IX. CONCLUSION

{¶ 113} Ohio Adm.Code 4906-2-24 authorizes parties to Board proceedings to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-2-24(D), 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 agreement, 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?

{¶ 114} Harrison Power witness Stephen Goff testified that the Stipulation meets the criteria for Board approval of stipulations. The witness testified that the Stipulation is the result of serious negotiations among capable, knowledgeable parties and that it will benefit the public interest. In support of his position, witness Goff submits that during negotiations the signatory parties agreed to modify some the conditions that Staff initially proposed in the Staff Report. (Applicant Ex. 7 at 2.) He states that the proposed facility is a major infrastructure project that benefits the community. Specifically, he notes that the proposed facility will help meet energy demand in the region by providing additional base load and peaking capacity, especially in light of the of the retirement of aging generation capacity. It will also benefit the local economy through the additional jobs, economic stimulus, and tax revenue. Further, he points out that the Stipulation requires the Applicant to take steps and meet certain requirements during the construction and operation in order to minimize any impact of the proposed facility. (Applicant Ex. 7 at 2.) Witness Goff opines that the Stipulation does not violate any important regulatory principle or practice (Applicant Ex. 7 at 3).

{¶ 115} Upon review, the Board finds that, as a package, the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The Board also finds that the public interest is served by resolving the issues raised in this matter without litigation. The Board recognizes that the proposed electric generation facility will provide a clean, sustainable source of electricity that will improve the quality and reliability of electric service in the area. Additionally, the project will have a positive effect on the Ohio economy through the creation of jobs and addition of municipal, county, and state revenues. (Applicant Ex. 1, Appendix D at 2-4.) The Board finds that the Stipulation does not violate

any important regulatory principle or practice. Based upon the record in these proceedings, the Board finds that all of the criteria established in accordance with R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the facility as described in the application filed in this case, 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 Harrison Power in accordance with R.C. Chapter 4906.

X. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 116} Harrison Power is a person under R.C. 4906.01(A) and is licensed to do business in the state of Ohio.

{¶ 117} The proposed electric generation facility is a major utility facility, as defined in R.C. 4906.01(B).

{¶ 118} On May 3, 2017, Harrison Power filed a pre-application notification letter regarding its proposed project.

{¶ 119} On May 31, 2017, in accordance with Ohio Adm.Code 4906-3-03, Harrison Power filed proof that legal notice was published in the *Harrison News-Herald*, a newspaper of general circulation in Harrison County, regarding the public informational meeting on its application.

{¶ 120} The Applicant held a public information meetings to discuss the project with interested persons and landowners on May 18, 2017, and July 19, 2017.

{¶ 121} On September 29, 2017, Harrison Power filed an application to construct and operate a new 1,050 MW natural gas-fired electric generation facility.

{¶ 122} By letter filed November 27, 2017, the Board notified Harrison Power that its application had been found to be sufficiently complete pursuant to Ohio Adm.Code 4906-1, et seq.

{¶ 123} In a filing docketed on January 4, 2018, the Applicant certified that on that date it served copies of the accepted and complete application upon government officials and libraries in accordance with Ohio Adm.Code 4906-3-07.

{¶ 124} On January 25, 2018, the ALJ issued a procedural Entry that scheduled a local public hearing for April 5, 2018, at the Puskarich Public Library in Cadiz, Ohio, an adjudicatory hearing for April 16, 2018, at the offices of the Commission, and found the effective date of the filing of the application to be January 19, 2018. The adjudicatory hearing was rescheduled three time and was ultimately held on May 31, 2018. The Entry also set a deadline for intervention.

{¶ 125} On December 27, 2017, OVJA filed a motion to intervene in this proceeding, accompanied by a memorandum in support.

{¶ 126} On March 7, 2018, Hess Ohio and CNX jointly filed a motion seeking intervention.

{¶ 127} On March 16, 2018, CICHC filed a motion seeking intervention.

{¶ 128} On March 30, 2018, the ALJ denied OVJA's motion to intervene and granted intervention to Hess Ohio/CNX and CICHC.

{¶ 129} On March 21, 2018, Staff filed a Report of Investigation of the project proposed in the application.

{¶ 130} In compliance with Ohio Adm.Code 4906-3-09, on March 28, 2018, Harrison Power filed proof of publication showing that notice was published in the *Harrison News-Herald*, on March 17, 2018, and the *Free Press Standard* on March 22, 2018.

{¶ 131} A local public hearing was held on April 5, 2018, in Cadiz, Ohio. Five witnesses testified at the local public hearing.

{¶ 132} On April 30, 2018, Harrison Power filed the testimony of its three witnesses.

{¶ 133} On May 25, 2018, Harrison Power, CICHG, and Staff filed a Stipulation resolving the issues in this proceeding.

{¶ 134} An adjudicatory hearing was held on May 31, 2018. A witness for Harrison Power offered testimony in support of the Stipulation.

{¶ 135} Adequate data on the proposed generation facility has been provided to make the applicable determination required by R.C. 4906.10(A). The record evidence in these matters provides sufficient factual data to enable the Board to make an informed decision.

{¶ 136} The Stipulation satisfies the criteria established by the Board for review and consideration of stipulations.

{¶ 137} Based on the record, the Board finds that Harrison Power's application should be approved and a certificate should be issued, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the electric generation facility, subject to the conditions set forth in the Stipulation and this Order.

XI. ORDER

{¶ 138} It is, therefore,

{¶ 139} ORDERED, That the Stipulation be approved and adopted. It is, further,

{¶ 140} ORDERED, That a certificate be issued to Harrison Power for the construction, operation, and maintenance of the electric generation facility, subject to the conditions set forth in the Stipulation and this Order. It is, further,

{¶ 141} ORDERED, That the motion for protective order filed by Harrison Power be granted. It is, further,

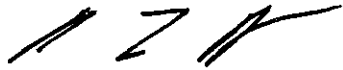
{¶ 142} ORDERED, That the Commission's Docketing Division maintain, under seal, the financial information contained on pages 15-19 of the application. It is, further,

{¶ 143} ORDERED, That this protective order shall be effective for a period of 24 months of this Order. It is, further,

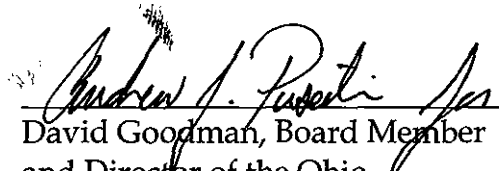
{¶ 144} ORDERED, That the request for waiver be granted. It is, further,

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

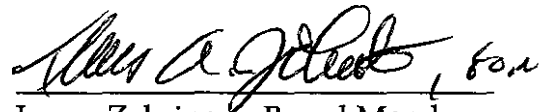
THE OHIO POWER SITING BOARD



Asim Z. Haque, Chairman
Public Utilities Commission of Ohio



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



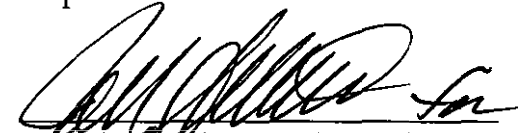
James Zehringer, Board Member
and Director of the Ohio
Department of Natural Resources



Lance Himes, Board Member
and Director of the Ohio
Department of Health



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



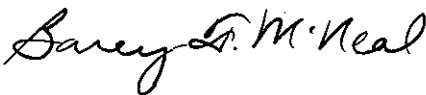
David Daniels, Board Member
and Director of the Ohio
Department of Agriculture

Gregory Murphy, Board Member
and Public Member

JSA/mef

Entered in the Journal

JUN 21 2018



Barcy F. McNeal
Secretary