

**BEFORE THE  
OHIO POWER SITING BOARD**

In the Matter Of The Application Of Clean	)	
Energy Future-Trumbull, LLC For A	)	
Certificate Of Environmental Compatibility	)	Case No. 16-2444-EL-BGN
And Public Need For An Electric Generating	)	
Facility In Lordstown, Ohio, Trumbull	)	
County	)	
	)	
	)	
In The Matter Of The Application Of Clean	)	
Energy-Trumbull, LLC Application For An	)	
Amendment To The Certificate Of	)	Case No. 22-223-EL-BGA
Environmental Compatibility And Public	)	
Need	)	
	)	
	)	
In The Matter Of The Application Of Clean	)	
Energy-Trumbull, LLC For A Second	)	
Amendment To The Certificate Of	)	Case No. 22-1175-EL-BGA
Environmental Compatibility And Public	)	
Need	)	

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**THE VILLAGE OF LORDSTOWN’S REPLY TO TEC’S COMBINED  
MEMORANDUM CONTRA**

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Now comes the Village of Lordstown (“VOL”), by and through counsel, and respectively submits this Reply to TEC’s Combined Memorandum Contra the Village of Lordstown’s Motion to Consolidate and Motion for Continuance.

TEC’s argument that these cases should not be consolidated because they are separate and distinct is baseless. This involves a zoning dispute, common to all three (3) cases, between the same parties, over the construction of the TEC power generating facility on a residentially-zoned (R-1) parcel. VOL’s Objection to TEC’s Application for a Second Amendment to its Certificate, filed in Case No. 22-1175-EL-BGA, is based on TEC’s failure to operate in compliance with the

zoning requirements set forth by this Board in that Certificate, which is also the impetus of VOL's Complaint filed in Case No. 16-2444-EL-BGN. VOL's Objection and Complaint are premised on nearly identical factual and legal issues that involve the same arguments, witnesses, and evidence. Even TEC acknowledges, in its Memorandum Contra, the common underlying issues between the Objection and Complaint: "Its motion was nearly identical to the Complaint it had filed challenging the underlying Certificate." (Combined Memorandum Contra, at \*2).

TEC argues that the Objection and Complaint are separate and distinct because, in the Complaint, VOL is "challenging the validity of the underlying Certificate". *Id.* at \*2. That is not accurate. In its Complaint (and Objection), VOL is challenging TEC's failure to comply with the Certificate based on the aforementioned zoning issue and several other recent actions taken by TEC.

TEC also asserts that VOL is attempting "to re-litigate issues that were already determined in the Certificate case". *Id.* at \*3. That is not true. As more fully discussed in both VOL's Objection and the Complaint, the parties' zoning dispute only arose within the past several months when TEC decided to forge ahead and begin construction of the facility without the proper zoning permits. This occurred in Spring 2023. There was nothing to litigate prior to that time.

Moreover, TEC argues that no continuance of the August 28, 2023 hearing should be granted because "[T]here is no hearing scheduled with respect to the Complaint case. The Board has not yet ruled whether there are reasonable grounds to investigate the VOL's allegations of noncompliance." *Id.* at \*3. While true, TEC misses the point. VOL's Motion to Consolidate and Motion for a Continuance are separate and not contingent upon each other. VOL is requesting a continuance of the August 28, 2023 hearing until the Board is able to properly review these cases

and issue a ruling on the pending Motion to Consolidate. If the Board decides not to consolidate these cases or hold a hearing on the Complaint, the Objection hearing could still proceed in the same manner (just at a later date if the continuance is granted). However, if the Board finds reasonable grounds to conduct an investigation and hold a hearing on the Complaint, the Board and the parties will greatly benefit from being able to conduct these hearings in a single streamlined manner, rather than holding two (2) duplicative hearings covering the same witnesses, evidence, and legal issues.

Lastly, a brief continuance of the August 28, 2023 hearing date will have no significant impact or delay on this project. The Application for a Second Amendment has been pending since December 2022, and the original certificate was issued in October 2017. TEC did not begin construction until 2023 after the grant of a one-year extension of the Certificate. The requested sixty (60)-day continuance is relatively minor given the above-mentioned timeframes, and TEC fails to articulate any specific harm that such a continuance would cause.

Respectfully submitted,

/s/ Matthew M. Ries

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served on this 17th day of August 2023 by electronic mail, upon the persons listed below.

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**Case No(s). 22-0223-EL-BGA, 16-2444-EL-BGN, 22-1175-EL-BGA**

Summary: Reply THE VILLAGE OF LORDSTOWN'S REPLY TO TEC'S  
COMBINED MEMORANDUM CONTRA electronically filed by John R. Martynyszyn  
on behalf of The Village of Lordstown.