

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Fremont)
Energy Center LLC for a Certificate of)
Environmental Compatibility and Public) Case No. 00-1527-EL-BGN
Need for a Merchant, Combined Cycle, 704)
MW Power Plant in Sandusky County, Ohio.)

ENTRY

The administrative law judge finds:

- (1) On August 21, 2000, Fremont Energy Center LLC (Fremont or applicant), filed a motion requesting the Ohio Power Siting Board (Board) to waive certain requirements applicable to its application for a certificate of environmental compatibility and public need for the construction of a 704-megawatt (MW) generating facility in Sandusky County, Ohio. Fremont seeks a waiver of the two-year filing requirement applicable to such a certificate application, pursuant to Section 4906.06(A), Revised Code. Fremont also seeks a waiver from the requirement for filing fully developed information for the alternative site, pursuant to Rules 4906-5-04, 4906-13-04, 4906-13-06, and 4906-13-07, Ohio Administrative Code (O.A.C.). Finally, Fremont requests a waiver of the requirements regarding the form and content of certain financial information, pursuant to Rule 4906-13-05, O.A.C.
- (2) In support of its first waiver request, Fremont states that it intends to begin construction of the facility in August 2001, with commercial operations to begin by June 2003. Fremont contends that the proposed plant will help to alleviate the escalating demand for electricity in Ohio. Fremont also states that it is developing merchant power plants throughout the country and it has already ordered generating equipment that can be delivered to the preferred site in time to place the plant in operation by June 2003. Fremont contends that its proposed construction and operation schedule would allow the proposed plant to be in operation prior to the summer peak electric demand.
- (3) Section 4906.06(A)(6), Revised Code, requires that the application be filed not less than two years nor more than five years prior to the planned date of commencement of construction. Section 4906.06(A), Revised Code, also permits the Board to grant waivers for the filing time requirements. Rule 4906-1-03, O.A.C., provides that, where good cause appears, the administrative law judge may permit departure from Chapters 4906-1 to 4906-15 of the O.A.C. With respect to

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the request for a waiver of the applicable filing time requirement, the administrative law judge finds that it is reasonable and should be granted.

- (4) In support of the second waiver request, Fremont states that the alternate site is located approximately one-half of a mile from the preferred site. Given this proximity, Fremont contends that most of the factors discussed with respect to the preferred site apply equally or at least to a significant extent to the alternate site. Thus, Fremont claims that much of this information regarding the alternate site would be redundant. As a result, Fremont requests a waiver of the requirement for fully developed information with respect to the following rules: Rules 4906-13-04(A)(1), (2), (3), (4)(a), (b), (5)(a), (b), and (c); 4906-13-04(B)(1), (2), (3), and (4); 4906-13-06(B)(1)(e) and (3)(b); 4906-13-7(A)(3), (4), (B), (C)(1)(a), (b), (d), (D), and (F), O.A.C.
- (5) Upon review, the administrative law judge concludes that, with the exception of the requirement to provide information under Rules 4906-13-04(B)(2) and (3), O.A.C., and Rule 4906-13-07(D) and (F), O.A.C., Fremont's second waiver request is reasonable and should be granted. For some of the filing requirements, the close proximity of the proposed and alternate sites will render the data applicable to both sites and further data does not appear necessary at this point. However, to waive all requested filing requirements would result in little information on the viability of the alternative site. Therefore, the administrative law judge concludes that some requests must be denied. Rule 4906-13-04(B)(2), O.A.C., requires that the applicant provide information on the layout of the proposed and existing facility. Rule 4906-13-04(B)(3), O.A.C., requires the applicant to provide information in as much detail as is available on all major proposed structures. This information is important to understand the viability of the alternative site. Rules 4906-13-07(D) and (F), O.A.C., require the applicant to provide information on the cultural and agricultural impacts of the project. A detailed map of the alternate site's cultural impact will be waived but the applicant will be required to provide, at a minimum, a preliminary field reconnaissance evaluation of the alternate site's cultural impact by a qualified specialist. The agricultural district impact will not be waived. The administrative law judge finds it appropriate that the applicant provide this information on the alternate site in its application.
- (6) Fremont also seeks a waiver of the requirement that financial data filed pursuant to Rules 4906-13-05(B)(1) and (3) and 4906-13-05(C)(1) and (3), O.A.C., be filed according to the Federal Energy Regulatory Commission (FERC) uniform system of

accounts (USOA) prescribed by this Commission for electric utility companies and that present worth and annualized cost calculations be filed. In support of this request for a waiver, applicant notes that it is not now, nor has it ever been, regulated by either the FERC or the Commission. Consequently, applicant states that it does not maintain its records according to the FERC USOA. According to applicant, it would be cost prohibitive for Fremont to alter its accounting system for the purpose of meeting this filing requirement. Fremont also states that paragraphs (B)(3) and (C)(3) of Rule 4906-13-05, O.A.C., require that present worth and annualized operation and maintenance costs be submitted as part of the application. Fremont contends that this requirement appears to be appropriate only for a regulated utility and not for a developer of a merchant power plant.

- (7) Based on the fact that Fremont is not an entity required to maintain its records in accordance with FERC's USOA, its records are not maintained so, and it would be cost-prohibitive to change its accounting system for purposes of meeting this filing requirement, the administrative law judge concludes that Fremont's third waiver request is reasonable and should be granted. However, the applicant shall provide sufficient financial information for an evaluation of the impact of the project on the community.
- (8) The administrative law judge notes that Fremont filed its application with the Board on September 29, 2000. In light of the fact that the administrative law judge has denied a portion of the waiver request, Fremont should evaluate what, if any, information was omitted from its filed application but now must be included. Fremont should supplement its application accordingly. Finally, the administrative law judge wishes to clarify that, although he is willing to grant waivers from the certain filing requirements at this point, this waiver ruling does not preclude the Board staff from requesting the waived information during its completeness review or through discovery in this proceeding.

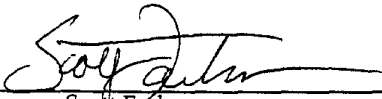
It is, therefore,

ORDERED, That Fremont's motion for waivers of the filing time requirement, the requirement for fully developed alternative site information, and the requirement for financial information be granted, in part, as set forth in Findings (3), (5), and (7). It is, further,

ORDERED, That, in light of this waiver ruling, Fremont supplement its filed application if necessary. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Scott Farkas
Administrative Law Judge

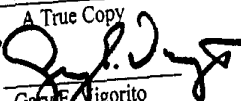
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DEC 12 2000

A True Copy


Gary E. Vigorito
Secretary

CASE NUMBER: 00-1527-EL-BGN
CASE DESCRIPTION: FREMONT ENERGY CENTER/SANDUSKY OH
DOCUMENT SIGNED ON: 12/12/2000
DATE OF SERVICE: 12/12/00

PARTIES SERVED

PARTIES OF RECORD

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