

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Troy )  
Energy LLC for a Certificate of Environ- )  
mental Compatibility and Public Need ) Case No. 99-999-EL-BGN  
to Construct a Merchant Power Plant )  
in Wood County, Ohio. )

OPINION, ORDER, AND CERTIFICATE

The Ohio Power Siting Board (Board), coming now to consider the above-entitled matter, having appointed its administrative law judge to conduct a public hearing, having reviewed the public statements submitted to the Board, having reviewed the report of investigation and the stipulation of the parties, and being otherwise fully advised, hereby waives the necessity for an administrative law judge's report and issues its Opinion, Order, and Certificate in this case as required by Section 4906.10, Revised Code.

APPEARANCES:

Ms. Sally W. Bloomfield and Julia L. Dorrian, Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215-4291, on behalf of Troy Energy LLC.

Ms. Betty D. Montgomery, Attorney General, by Duane W. Luckey, Section Chief, and Jodi J. Bair, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215-3793 and by Margaret A. Malone and Michael E. Idzkowski, Assistant Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 3215-3428, on behalf of the staff of the Board.

Mr. Michael R. Beiting, FirstEnergy Corp., 76 South Main Street, Akron, Ohio 44308, on behalf of American Transmission Systems Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company.

OPINION:

All proceedings before the Board are conducted in accordance with the provisions of Chapter 4906, Revised Code, and Chapter 4906, Ohio Administrative Code (O.A.C.). In anticipation of an upcoming certificate application, Troy Energy LLC (Troy) filed a motion for waivers of several filing requirements on September 22, 1999. Troy's waiver requests were granted in part and denied in part on October 8, 1999. On October 28, 1999, Troy filed an application for a certificate of environmental compatibility and public need with the Board. Troy seeks a certificate to construct a 600-megawatt electric generating station in Wood County. Troy is a Delaware corporation formed through a joint venture of subsidiaries of Dominion Resources Inc. and CNG Power Company.

Since the filing of the instant application, Dominion Resources Inc. and CNĠ Power Company's parent (Consolidated Natural Gas Company) have completed a merger under which the merged entity (the ultimate parent of Troy) is the largest fully integrated natural gas and electric power company in the United States. Troy constitutes a "person" within the definition of Section 4906.01(A), Revised Code.

On December 27, 1999, the Board notified Troy that its application for the project had been certified as complete, whereupon copies of the application were served upon local government officials and certain public agencies. Pursuant to Rule 4906-5-05, O.A.C., Troy filed proof of service of the certified application on December 30, 1999 (Company Ex. 2).

In substantial compliance with Rule 4906-5-08, O.A.C., public notice was published in The Sentinel-Tribune (Company Ex. 3). The staff of the Board (staff) conducted an investigation concerning the environmental and social impacts of the proposed project and filed its report of investigation with the Board on March 8, 2000 (Staff Ex. 1). On March 7, 2000, FirstEnergy Corp. (on behalf of American Transmission Systems Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company)<sup>1</sup> filed a motion to intervene in this proceeding.

A public hearing was held on March 23, 2000, in Luckey, Ohio. Several persons from the public appeared in order to give testimony regarding this matter. The adjudicatory hearing was held in Columbus, Ohio on March 24, 2000. During the hearing, the administrative law judge orally granted FirstEnergy's motion to intervene. In addition, at that time, the parties admitted a joint stipulation of findings, conclusions, and recommendations (Jt. Ex. 1) which, if adopted, would resolve all matters at issue.

#### I. Proposed Facility

Troy has applied for certification to construct an electric generating plant in Wood County, Ohio. The project would involve the construction of a 600-megawatt electric peaking facility (Tr. II, 7). The facility would be used to meet forecasted capacity shortages within the East Central Area Reliability Council (ECAR) region. The facility will consist of four simple-cycle combustion turbines, each capable of generating 150 megawatts (*Id.*). The units will use natural gas as the primary fuel supply, with fuel oil as the back-up fuel (*Id.*). The preferred and alternate sites are located approximately two miles northeast of Luckey, Ohio, on 40 acres within the existing 500-acre Lemoyne Industrial Park. The land is currently owned by an affiliate of Troy.

It is estimated that, subject to permit levels, the facility will operate 1,000 to 2,000 hours per year (Tr. II, 9). The electricity generated will be distributed via a new electric

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<sup>1</sup> American Transmission Systems Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company shall be jointly referenced in this decision as "FirstEnergy".

transmission line that will be connected with FirstEnergy's Lemoyne Substation adjacent to the industrial park. The new electric transmission line will be approximately 2,400 feet long. The natural gas supply will be provided via a 4,500-foot long extension of an existing gas pipeline located in the industrial park. The gas pipeline extension and new electric transmission line are both subject to the Board's jurisdiction and will be considered in future filings (*Id.* at 7-8). Troy projects that the construction will commence mid-2001 and the facility could be in-service by June 2002 (*Id.* at 9).

The primary focus in this proceeding has been on the preferred site for the facility. Neither the staff, nor Troy, nor FirstEnergy supports the use of the alternate site. Therefore, the Board will apply the criteria established in Section 4906.10(A), Revised Code, to the preferred site of the proposed facility.

## II. Certification Criteria and Staff Findings

Pursuant to Section 4906.10(A), Revised Code, 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:

- (1) the basis of the need for the facility;<sup>2</sup>
- (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, such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, and that the facility will serve the interests of electric system economy and reliability;
- (5) the facility will comply with Chapters 3704, 3734, and 6111, Revised Code, all rules and standards under those chapters, and under Sections 1501.33, 1501.34, and 4561.32, Revised Code;
- (6) the facility will serve the public interest, convenience, and necessity;

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<sup>2</sup> Since the proposed facility constitutes a "major utility facility", as defined in Section 4906.01(B)(1), Revised Code, the board is required to presume the need for the facility as that need is stated in the application. Section 4906.10(A)(1), Revised Code.

- (7) the probable impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929, Revised Code, that is located within the preferred site and alternative site of the proposed major facility; and
- (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.

The application addresses each of the criteria set forth above, as does the staff's report of investigation. The statutory criteria will be discussed below.

A. Basis of Need

In the staff's report of investigation, the staff determined that there exists a need for additional capacity in the Ohio region (Staff Report at 12). The staff noted that such need for capacity and energy from the proposed facility did not constitute that a need exists for any specific Ohio utility (*Id.*). However, the staff agreed with Troy that new and proposed environmental regulations might reduce the availability of coal-fired electric generation facilities within ECAR (*Id.*). Moreover, the staff indicated that the new capacity could ameliorate price increases in the competitive wholesale market (*Id.*). The staff recommended that the Board find that the basis of need for the facility has been demonstrated (Staff Report at 12).

B. Nature of Probable Environmental Impact and Minimum Adverse Environmental Impact

Sections 4906.10(A)(2) and (3), Revised Code, require the Board to determine the nature of the probable environmental impact and whether the proposed facility represents the minimum adverse environmental impact, considering the state of available technology, the nature and economics of the various alternatives, and other pertinent considerations. After reviewing the company's application and conducting its investigation, the staff found the following:

- (1) The project involves the construction of a 600-megawatt peaking facility consisting of four simple-cycle combustion turbines. The gas turbines are GE Frame-7FA, each capable of generating a nominal 150 megawatts. The turbines are equipped with advanced dry-low nitrogen-oxide combustors to control nitrogen-oxide emission levels.

- (2) Four 18-kilovolt to 345-kilovolt step-up transformers, oil-filled, will be installed for each combustion turbine generator.
- (3) Natural gas will be the primary fuel, supplied via a new 20-inch pipeline to be installed concurrently with this project. The pipeline would be approximately 1,000 feet longer for the alternate site than the preferred site. Fuel oil will be used as back-up fuel. Two 2.25-million gallon fuel tanks will be erected, surrounded by a dike.
- (4) Demineralized water is required when firing on fuel oil. Two 2.25-million gallon water tanks will be constructed.
- (5) The site selection study included a review of potential sites located in several states. Some of the sites defined in this study are being considered for future projects. The preferred location for this project is within a designated 500-acre industrial park, owned by The East Ohio Gas Company. Both the preferred and alternate sites are located within the industrial park and both are approximately 40 acres in size, although only 27 acres will be fenced.
- (6) The underlying geology of the area encompassing the preferred site is considered suitable for the development of this project. No geological constraints are anticipated for the construction and operation of the facility.
- (7) Both sites are principally used for agriculture, hence there will be little vegetative waste removed from either site. The project installation will result in the permanent conversion of 27 acres of farmland to nonagricultural use.
- (8) Potential construction emissions include volatile organic compounds, sulfur dioxide, carbon monoxide, nitrogen oxides (NOx), and particulate matter. These emissions are not expected to cause any significant environmental impacts. Fugitive dust emission will vary depending on daily activities and will be controlled by watering the unpaved traffic areas.
- (9) Troy submitted an application for a permit to install an air pollutant source for the preferred site to the Ohio Environmental Protection Agency (Ohio EPA).

- (10) Each combustion turbine generator will be equipped with advanced dry-low NOx combustors, which is the best available control technology accepted by the United States Environmental Protection Agency, to reduce NOx emissions to nine parts per million volume dry (ppmvd) while burning natural gas, and will inject demineralized water into the turbines for the same purpose, reducing NOx emissions to 42 ppmvd, while burning fuel oil.
- (11) The turbine units will be enclosed in an insulated (sound dampening) enclosure to reduce operational noise levels. This, combined with the existing background conditions and the distance to the nearest residence (2,150 feet), should result in only a negligible increase in noise levels as a result of the proposed project. Noise levels will unavoidably increase during construction, but this will be a short-term impact, and somewhat ameliorated by the distance of the preferred site from the nearest residence.
- (12) Troy will contract for process and potable water from the Wood County Regional Water and Sewer District. Water for NOx control, required while burning fuel oil, will be processed by a portable demineralizer system and stored in above-ground tanks.
- (13) An oil water separator will be provided to process any contaminated service water. Clean water from the oil water separator will be discharged to the storm water system, while waste oils, equipment wash solutions, and demineralizer regeneration waste will be collected, removed, and disposed of by a qualified contractor.
- (14) Pre-engineered metal service buildings will be erected to serve as warehouse, maintenance shop, and administrative area, including restrooms. Upon obtaining permits, sanitary wastewater will be discharged to an on-site septic system.
- (15) Storm water runoff will be managed through a national pollutant discharge elimination system (NPDES) permit during construction, using best management practices. In addition, a construction spill prevention control and countermeasure plan will be developed, submitted, and implemented by the engineering contractor.

- (16) Neither site will have a significant impact on existing environmentally sensitive habitats. There are no known rare or endangered species, existing or proposed nature preserves, scenic rivers, unique ecological sites, champion trees, or special wildlife areas nearby. A narrow band of scrub/shrub wetland associated with a small drainage ditch is located near the northern boundary of the preferred site (and the southern boundary of the alternate site). Both sites have areas of upland forest located just to the west, while a small section of wetland forest can be found near the northwest corner of the preferred site in proximity to the previously identified drainage ditch. None of these areas will be directly impacted by project construction. Additional measures to protect these areas have been proposed by Troy, including: avoiding soil excavation or soil placement within 50 feet of a wetland boundary, installation of appropriate sediment and erosion controls to limit silt-laden discharge to wetland areas, and prohibiting the cutting or removal of any wetland area vegetation. Troy will construct drainage swales to convey storm water to existing wetlands in order to minimize damage to the wetland vegetation.
- (17) The electric transmission line interconnection to the Lemoyne Substation will occur in previously disturbed agricultural areas and, thus, should have little impact on important ecological resources. The proposed gas pipeline route, south from the preferred or alternate site to the natural gas supply line could adversely affect Toussant Creek and some woodland areas along the alignment. It should be possible to avoid these impacts using special construction techniques (i.e., boring) and some minor re-routing. This will be evaluated as part of a separate filing.
- (18) Neither the preferred nor the alternate site will have a significant impact on existing recreational areas. There are no recreational areas within one mile of either site.
- (19) A Phase I cultural resource survey was performed at the preferred site. While a number of known archaeological and historical sites are present within a five-mile radius, no sites or artifacts of archaeological or historical significance were found at the preferred location. Similar surveys of the gas supply corridor and the electric transmission corridor will be undertaken as part of their separate filings. Ohio's

Historic Preservation Office concurs with Troy's archaeological study that no additional fieldwork is necessary within the construction footprint of the preferred site. The study also identifies two architectural properties along Garling Road that warrant further study. Troy is preparing additional information regarding these properties for submission to Ohio's Historic Preservation Office.

- (20) Troy estimates that capital and intangible costs for this project will total nearly \$213 million. The cost per kilowatt is \$310, with the industry average for this type of facility being in the range of \$300 to \$000 per kilowatt.

(Staff Report at 13-17).

The staff concluded that adequate data has been provided to determine the nature of the probable environmental impact for the facility and to determine that the minimum adverse environmental impact considering the available technology and the nature and economics of various alternatives, and other pertinent considerations, as required by Sections 4906.10(A)(2) and 4906.10(A)(3), Revised Code (*Id.* at 15 and 17).

C. Compliance with Chapters 3704, 3734, and 6111, Revised Code

Section 4906.10(A)(5), Revised Code, requires that the Board find that the proposed facility will comply with Chapters 3704, 3734, and 6111, Revised Code, concerning air and water permits and solid waste disposal, and all rules and standards adopted thereunder, and under Sections 1501.33, 1501.34, and 4561.32, Revised Code. The staff has found that air quality permits are under review by the Ohio EPA (Staff Report at 19).

Further, the staff concluded that, as for water, the process water will be collected and disposed of off-site by a qualified contractor and, therefore, there will be no impact to surface water as a result of any wastewater discharge (Staff Report at 19). All sanitary wastewater will be treated by an on-site septic system (*Id.*). Troy plans to remove all solid waste generated from construction through the use of a licensed contractor, who will move the solid waste to an approved landfill (*Id.*). The staff recommended that the Board find that a determination of compliance with Chapters 3704, 3734, and 6111, Revised Code, cannot be made at this time because all required permits have not yet been issued. Further, the staff recommended that the Board find that the proposed facility will comply with Section 4561.32, Revised Code (*Id.*).

D. Consideration of Sections 4906.10(A)(4), (6), and (7), Revised Code

Under Section 4906.10(A)(4), Revised Code, the Board must determine whether the proposed 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 whether such facility will serve the interests of electric system economy and reliability. The staff found that Section 4906.10(A)(4), Revised Code, is not applicable to the certification of the proposed facility (Staff Report at 18).

Section 4906.10(A)(6), Revised Code, requires that the Board find that the proposed facility will serve the public interest, convenience, and necessity. The staff stated that Ohio, and the remaining ECAR region, is in need of additional generation capacity (Staff Report at 20). In the staff's view, the presence of the new peaking facility will help stabilize the supply situation and help ensure regional reliability (*Id.*). The staff agrees with Troy that the operational noise of the proposed facility will have no significant impact on the surrounding community (*Id.* at 13). In addition, the staff noted that electric and magnetic fields generated by the plant will increase, but there are no residences, except near the substation. Thus, the level of electric and magnetic fields would, at most, increase slightly near this residence (*Id.*).

Moreover, the staff noted that, to deliver the output of the facility to a specific point, Dominion Energy must make a transition service request in accordance with FirstEnergy's Open Access Transmission Tariff (Staff Report at 20-21). The staff pointed out that the system impact study indicated that the delivery of Troy's generation to the Lemoyne Substation is feasible, with no grid instability conditions resulting from the proposed facility (*Id.* at 21). However, the staff noted that the study did not address integration of the transmission capability to other transmission companies to deliver the output to specific points of receipt (*Id.*). Nevertheless, the staff recommended that the Board find that the proposed facility will serve the public interest, convenience, and necessity (*Id.*).

Section 4906.10(A)(7), Revised Code, requires the Board to determine the impact on existing agricultural districts established under Chapter 929, Revised Code, that are within the site of the proposed facility. The staff found no agricultural districts within the boundaries of either the preferred or alternate sites of the proposed facility (Staff Report at 22). The staff explained that, the two sites are currently being used for agricultural purposes, but the entire 500-acre parcel is zoned as an industrial park (*Id.*). Therefore, the staff recommended to the Board that the impact of the facility on the viability of existing agricultural districts has been determined (*Id.*).

#### E. Water Conservation Practices

Section 4906.10(A)(8), Revised Code, requires the Board to determine if the facility incorporates maximum, feasible water conservation practices. The staff found that small amounts of water would be needed for sanitary purposes and for periodic equipment cleaning (Staff Report at 23). When firing on fuel oil, demineralized water (at the rate of 1,000 gallons per minute) will be required for controlling NOx emissions. The potable and process water will be obtained from the Wood County Regional Water

and Sewer District (*Id.*). The staff, therefore, recommended that the Board find that the proposed facility will comply with Section 4906.10(A)(8), Revised Code (*Id.*).

### III. Testimony

As indicated earlier, several members of the public appeared to give testimony regarding this application. Six individuals stated that they support the proposed facility (Tr. I, 4, 5, 10-11, 15-17, 20-21). One person noted that he believes the facility will not displace any residents (since the involved property is already owned by an affiliate of Troy) and there will be a sizeable "buffer" between the proposed facility and nearby residents (*Id.* at 4). He also noted that an investment in the community would be beneficial (*Id.* at 5). A realtor indicated that she believes the project will benefit the community without greatly impacting the schools or safety departments (*Id.* at 5-7). One of the township trustees indicated his support as well (*Id.* at 10). He further stated that, in the long run, this project would benefit the area by increasing tax receipts, which fund public safety services (*Id.* at 9-10).<sup>3</sup> Another gentleman indicated that he favors the sizeable investment in the area because it will be a "boost" for the school district and employment (*Id.* at 15-16). Two individuals indicated that the proposed facility is one of the most environmentally friendly projects and, as such, will not adversely impact the existing farm community (*Id.* at 17, 20-21).

One individual indicated that she is not certain that she supports or opposes the project (Tr. I, 24). She will reside across the street from the proposed facility (*Id.*). She stated that she would prefer this facility as opposed to another less attractive facility (*Id.*).

Three people testified in opposition to the project. The first person stated that she is concerned that there is no established plan for handling fuel oil explosions or fires (Tr. I, 7-8). In particular, she noted that the local fire department is not trained or equipped to handle such a situation and the community should not be burdened in funding such education and equipment, simply because the company decides to locate the proposed facility in the area (*Id.*). The second person who opposes the project had several areas of concern. She believes that the proposed project will devalue the property in the area, affect the public safety, worsen traffic and the roadways in an already dangerous area, and damage the environment with potential water runoffs (*Id.* at 11-13, 18-19). She further expressed skepticism for the alleged small increase in noise and smells in the area (*Id.* at 13). This citizen is dismayed with the tax abatement granted and the lack of a commitment to extend a nearby sewer line along with the water line extension (*Id.* at 13-15). The third person to testify in opposition of the proposed facility stated that she worries about a fuel oil spill and its affects on nearby well water (*Id.*

<sup>3</sup> In the near future, the Troy Township tax receipts will not be affected by this project because a tax abatement has been preliminarily granted (Tr. I, at 10; Tr. II, 15). In lieu of taxes, the company will donate monies directly to the school districts (Tr. II, 15-16). Under this arrangement, the school districts still maintain other state funding (which would be forfeited if there is an increase in tax monies from this project) and also receive the donated monies (*Id.*).

at 22-23). Additionally, she questioned the alleged negligible effect the plant will have on the area's noise level (*Id.*).

The project manager, Mr. McKinley, also testified. He clarified that the facility plans to use water from the Wood County Water and Sewer District after the company pays for a one and one-half mile extension of the nearby water line (Tr. II, 10-11).<sup>4</sup> Contract negotiations for the water line extension are taking place at the present time, but an agreement has not been reached (*Id.* at 19). The water will be used for cooling inlet air, used in combination with fuel oil, and for drinking water/restrooms (*Id.* at 10). Mr. McKinley further noted that the deposits remaining after the water is demineralized, as well as the residual water, will be removed by truck and not remain at the facility (*Id.* at 10-11). Mr. McKinley also noted that the company is planning to employ a significant portion of the construction workers, including the engineering and procurement contractor, from the local area (*Id.* at 12). Next, Mr. McKinley stated that trucks and trains will deliver the facility parts, with most of the heavier traffic associated with constructing the project taking place in the first six months of construction (*Id.* at 12-13).

Mr. McKinley also explained what fire protection systems will be installed at the facility. He indicated that there will be automatic protection systems for the combustion turbines (by a carbon monoxide system), water systems (for the transformers and office areas), and possibly firewalls for the transformers (Tr. II, 14). Additionally, he explained that there will be an extensive detection system to provide early warning of fires (*Id.*). Mr. McKinley noted that the employees will be trained on these protection systems and the company plans to make the local fire company aware of them as well, so that they can provide support when necessary (*Id.* at 14-15). He noted that the local fire department would probably need special training related to at least two of the facility's systems and the company anticipates having to provide that training (*Id.* at 17). Finally, Mr. McKinley noted that one of the safety measures required for fuel oil storage is the construction of a dike around the storage tanks and the company plans to comply with that requirement (*Id.* at 18).

#### IV. Stipulation

As noted earlier, the applicant, staff, and FirstEnergy filed a stipulation. The parties agree that the record in this proceeding contains adequate probative evidence for the Board to find that all criteria of Section 4906.10(A), Revised Code, have been satisfied and for the Board to issue a certificate for the proposed facility (Jt. Ex. 1, at 6-8). Also, the parties agree that the proposed project is a "major utility facility", as defined by Section 4906.01(B)(3), Revised Code (*Id.* at 6, 8).

The parties agree specifically that adequate data has been provided to determine:

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<sup>4</sup> The company will pay for the entire cost associated with the water line extension. Nearby residents will be permitted to tap in and, in such an event, will not have to contribute to the extension's costs (Tr. II, at 11, 19).

- (1) The basis of need, as required by Section 4906.10(A)(1), Revised Code;
- (2) The nature of the probable environmental impact, as required by Section 4906.10(A)(2), Revised Code;
- (3) The facility represents the minimum adverse environmental impact, as required by Section 4906.10(A)(3), Revised Code;
- (4) The proposed facility will meet the requirements of Section 4906.10(A)(4), Revised Code;
- (5) The facility will comply with Chapters 3704, 3734, and 6111, Revised Code, and all regulations thereunder, as required by Section 4906.10(A)(5), Revised Code;
- (6) The proposed facility will serve the public interest, convenience, and necessity, as required by Section 4906.10(A)(6), Revised Code;
- (7) The proposed facility meets the requirements of Section 4906.10(A)(7), Revised Code; and
- (8) The proposed project will comply with Section 4906.10(A)(8), Revised Code.

(Jt. Ex. 1, at 7-8).

Troy, FirstEnergy, and the staff have agreed that a certificate of environmental compatibility and public need for the proposed project at the preferred site should be issued to Troy (Jt. Ex. 1, at 9). However, they agree that the certificate should be conditioned as follows:

- (1) The facility be installed following Troy's preferred site plan as described in the application filed on October 28, 1999, and as further supplemented by subsequent filings.
- (2) Troy shall utilize the equipment described in the application in Section 4906-13-02(B).
- (3) Troy shall utilize the mitigative measures described in the application, unless modified by conditions to the certificate or applicable federal and state permits.
- (4) Troy shall properly install erosion and sedimentation control measures at the project site. All such erosion control measures shall be inspected after each rainfall event and promptly repaired and maintained until permanent vegetative cover has been established on disturbed soils.

- (5) During construction of the facility, Troy shall seed all disturbed soil within seven days of final grading with a seed mixture acceptable to the appropriate county cooperative extension service. Denuded areas, including spoils piles, shall be seeded and stabilized within seven days if they will be undisturbed for more than 45 days. Reseeding shall be done within several days of emergence of seedlings as necessary until vegetation in all areas has been established.
- (6) Troy shall not dispose of subsoil, excavated rock, and any bedding material during or following construction of the facility by spreading the material on agricultural land.
- (7) Troy shall dispose of all construction debris in an approved landfill.
- (8) Prior to construction, Troy shall obtain all applicable permits and authorizations as required by federal and state entities for any activities where such permit or authorization is required, including NPDES General Permit for Storm Water Management and a permit to install air contaminant sources(s), to be obtained through the Ohio EPA. A copy of each permit or authorization, including terms and conditions, shall be provided to the Board staff within seven days of receipt. Prior to construction, the Construction Storm Water Management Plan shall be submitted to the Board staff for review and acceptance.
- (9) Troy shall cause plans to be submitted for staff review and approval, through the appropriate filings, for the gas supply line and electric transmission line prior to commencing construction of the generating facilities.
- (10) Troy shall submit plans for the water line across the Lemoyne Industrial Park to the preferred site at least seven days before construction for staff review and acceptance.
- (11) If Troy does not obtain process and potable water from the Wood County Regional Water and Sewer District, Troy shall submit an alternative plan, for obtaining process and potable water, to the staff for review and acceptance.
- (12) Troy shall take all necessary precautions to make certain that neither the drainage ditch immediately north of the preferred site, nor the associated wetlands or the forested

wetland near the northwest corner of the preferred site, will be impacted by project construction or subsequent operation of the facility. Troy will immediately notify the staff of any violations.

- (13) Troy shall obtain all applicable permits or plan approvals for installing septic systems, wastewater storage systems, or wastewater disposal systems, including those required locally and/or by the Ohio EPA.
- (14) Troy, or its designated plant operator, will seek and contract for interconnection service and contract for transmission service through the Open Access Same-Time Information System (OASIS) as specified in Federal Energy Regulatory Commission Orders 888, 889 and any subsequent OASIS-related orders, or through any successor OASIS system. If, in the reasonable exercise by the control area operator, generation by the proposed facility might adversely impact the reliability of the transmission system, the control area operator may discontinue interconnection service if the designated operator is unable to make the required reductions in accordance with applicable tariff provisions and interconnection agreement until the condition has been corrected.
- (15) Troy, having submitted a report to the Ohio Historic Preservation Office indicating that one property on Garling Road is National Register eligible, will cause to be developed a preservation plan in consultation with the state Historic Preservation Office for the eligible property. The preservation plan will thereafter be submitted to the Board for review and acceptance.
- (16) Troy shall provide to the staff the following information as it becomes known:
  - (a) The date on which construction will begin;
  - (b) The date on which construction is completed;  
and
  - (c) The date on which the facility begins commercial operation.

- (17) At least thirty days before construction begins, Troy shall submit to the staff, for review and approval, one set of engineering drawings of the certified facility so that the staff can review and accept the final project design is in compliance with the terms of the certificate.
- (18) The certificate shall become invalid if Troy has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.

(Jt. Ex. 1, at 2-4).

#### V. Conclusion and Certificate

Although not binding upon the Board, stipulations are given careful scrutiny and consideration, particularly where no party is objecting to the stipulation. Upon consideration of the evidence in the record, the Board notes that some of the concerns raised at the public hearing in opposition to the proposed facility are addressed by the stipulating parties through their recommended conditions. One commenter raised a concern with water runoffs. Several of the recommended conditions (numbers 3, 4, 5, 8, 12, and 13) require Troy to take measures to avoid water damaging the area during the construction and thereafter. Additionally, two of the opposing commenters raised concerns over the fuel oil at the facility and the other opposing commenter also thought that construction and operation of the facility could affect public safety. The project manager has specifically indicated that several protection systems will be installed at the facility and the company personnel will be trained (Tr. II, 14). Thus, in that sense, Troy's plan is to install mechanisms to avoid catastrophes or accidents from occurring in the first place. Moreover, we are requiring that mitigative measures be taken (e.g., condition 3). Additionally, Troy is required to construct a dike around the fuel oil storage tanks to avoid dangerous spills. However, if in the event a situation were to arise, the record indicates that the company personnel will have training to deal with the situation. Mr. McKinley stated that Troy plans to make the local fire departments aware of the installed safety systems and anticipates having to provide them with specialized training (Tr. II, 14-15, 17). While Mr. McKinley made that general statement of what the company anticipates, we wish to make clear that our approval of this certificate is specifically conditioned upon Troy actually providing such training to the local fire departments.

We are not convinced that the anticipated change in traffic levels as a result of the construction and operation of this project warrants denial of the application, despite one commenter's statements. The anticipated increase in traffic will be short-term during the construction phase and, thereafter, the facility will have little affect upon local traffic conditions. Two of the commenters questioned that the facility will have a negligible effect upon noise levels in the area. Troy and our staff both

concluded that, with the insulated enclosure surrounding the turbines, the operation of the facility should only slightly increase local noise levels. We do not believe that this change in noise levels warrants denial of the application. Upon consideration of the record, we are also not convinced that the other comments raised in opposition to this project warrant denial of the application.

Upon consideration of all of the above, we believe that the proposal is worthy of a certificate and the stipulation should be adopted. Based upon the record in this proceeding, the Board finds that the joint stipulation is reasonable, and that all the criteria established in Section 4906.10(A), Revised Code, are satisfied for the construction of the peaking facility at the preferred site, subject to the conditions set forth above in this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Troy is organized under the laws of the state of Delaware and is a "person" under Section 4906.01(A), Revised Code.
- (2) On September 22, 1999, Troy filed a request for waivers of several filing requirements. Those waiver requests were granted in part and denied in part on October 8, 1999.
- (3) On October 28, 1999, Troy filed a certificate application for the proposed project with the Board.
- (4) On December 27, 1999, the application was certified as complete and subsequently given an effective filing date of January 21, 2000.
- (5) Troy caused public notice of the certificate application to be published in The Sentinel-Tribune, in substantial compliance with Rule 4906-5-08, O.A.C.
- (6) Proofs of the service and publication were filed with the Board on December 30, 1999, February 7, and March 9, 2000.
- (7) Troy's proposed project is a "major utility facility", as defined in Section 4906.01(B)(2), Revised Code.
- (8) The staff's investigation report was filed on March 8, 2000.
- (9) The non-adjudicatory public hearing was held on March 23, 2000, in Luckey, Ohio.
- (10) The adjudicatory hearing was held on March 24, 2000.



- (11) Troy's proposed project is to construct and operate a 600-megawatt electric peaking facility, in order to generate additional capacity within the ECAR region.
- (12) Adequate data as to the proposed facility at the preferred site has been provided to make the determinations required by Sections 4906.10(A)(1) through (8), Revised Code.
- (13) Troy's application for a certificate (as supplemented) fully complies with the requirements of Chapter 4906-13, O.A.C., except to the extent of the waivers granted previously.
- (14) The joint stipulation entered into by the parties to this proceeding is reasonable and should be adopted in its entirety.
- (15) The basis of the need for the proposed facility at the preferred site has been determined as stated in the application.
- (16) The nature of the probable environmental impact of the proposed facility at the preferred site has been determined.
- (17) The proposed facility at the preferred site, as indicated in the certified application and as conditioned herein, represents the minimum adverse environmental impact, considering the state of available technology, the nature and economics of the various alternatives, and other pertinent considerations.
- (18) The proposed facility at the preferred site, under the conditions set forth herein (particularly, given that Troy intends to take transmission service based upon availability as posted under the OASIS system or any successor system), is consistent with plans for expansion of the regional power grid and will serve the interests of the electric system economy and reliability.
- (19) The proposed facility at the preferred site, under the conditions set forth herein, will comply with Chapters 3704, 3734, and 6111, Revised Code, all rules and standards adopted thereunder, and under Sections 1501.33, 1501.34, and 4561.32, Revised Code.

- (20) The proposed facility at the preferred site, under the conditions set forth herein, will serve the public interest, convenience, and necessity.
- (21) The impact of the construction, operation, and maintenance associated with the proposed facility at the preferred site, under the conditions set forth herein, on the viability of any existing agricultural district established under Chapter 929, Revised Code, has been determined.
- (22) The proposed facility at the preferred site incorporates maximum feasible water conservation practices, considering available technology and the nature and the economics of various alternatives.
- (23) Based upon the record in this case, a certificate of environmental compatibility and public need should be issued to Troy for the construction and operation of the 600-megawatt electric peaking facility at the preferred site, subject to the conditions set forth in Sections IV and V of this Opinion.

ORDER:

It is, therefore,

ORDERED, That the Joint Stipulation and Recommendation is hereby approved in its entirety. It is, further,

ORDERED, That a Certificate of Environmental Compatibility and Public Need is hereby issued for the construction, operation, and maintenance of 600-megawatt peaking facility at the preferred site. It is, further,

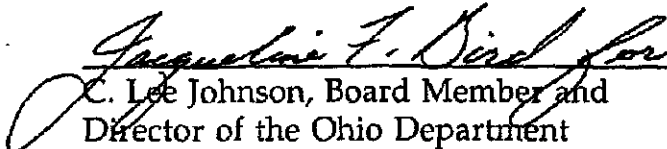
ORDERED, That the certificate shall contain the conditions set forth in Sections IV and V of the Opinion. It is, further,

ORDERED, That a copy of this Opinion, Order, and Certificate be served upon each interested person and party of record.

## THE OHIO POWER SITING BOARD



Alan R. Schriber, Chairman of the  
Public Utilities Commission of Ohio



C. Lee Johnson, Board Member and  
Director of the Ohio Department  
of Development

Samuel W. Speck, Board Member  
and Director of the Ohio Department  
of Natural Resources

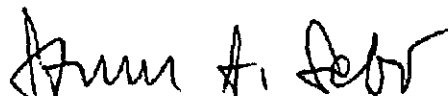
Nick Baird M.D., Board Member  
and Director of the Ohio Department  
of Health



Christopher Jones, Board Member and  
Director of the Ohio  
Environmental Protection Agency



Fred L. Dailey, Board Member and  
Director of the Ohio Department  
of Agriculture



Stephen A. Sebo, Board  
Member and Public Member

4/17/2000

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Gary E. Vigorito  
Secretary

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