

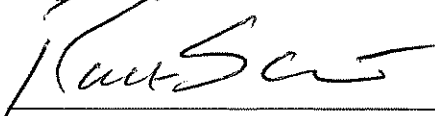
BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of :
Lima Energy Company for a :
Certificate of Environmental Compatibility : Case No. 00-513-EL-BGN
And Public Need for an Electric Power : Case No. 04-1011-EL-BGA
Generating Facility in Lima, Ohio :

MEMORANDUM IN RESPONSE TO NRDC AND SIERRA CLUBS LETTER IN
OPPOSITION TO MOTION TO EXTEND THE LIMA ENERGY COMPANY'S
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Now comes Lima Energy Company ("LEC") and, by its attorney, respectfully reaffirms its motion to the Ohio Power Siting Board for an Order extending the Certificate of Environmental Compatibility and Public Need issued in this matter for a period of thirty (30) months. Nothing in the letter memorandum from the Natural Resources Defense Council and Sierra Club filed with the Board on February 17, 2012 is relevant to this request nor does it change the underlying basis for LEC's request and nothing in the letter from NRDC and Sierra Club warrants termination of the Certificate. A Memorandum in Support is attached.

Respectfully submitted,



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Attorney for Applicant Lima Energy Company

BEFORE
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Lima Energy Company (also "LEC" or "Applicant") respectfully reaffirms its request that the Board for an Order to extend for a period of thirty (30) months, until September 2014, the Certificate of Environmental Compatibility and Public Need ("Certificate") issued on May 20, 2002 for the Lima Energy Center project. Nothing in the letter memorandum with attachments from the Natural Resources Defense Council and Sierra Club is relevant to this request nor does it change the underlying basis for LEC's request – namely that construction has started on the facility and the delay in completion has been occasioned by economic conditions that were completely outside of LEC's ability to control. The project, as proposed and Certificated, requires LEC to obtain the necessary permits from Ohio EPA and terminating the Certificate will have no bearing on the permitting requirements faced by LEC or the ultimate decision to issue an air permit by Ohio EPA.

National Resources Defense Council and Sierra Club (collectively "NRDC") filed a letter and supporting documents in opposition to the extension of LEC's Certificate on February 17, 2012. The NRDC petition included as attachments several documents related to the LEC project, most of which concerning the status of the air permit issued by Ohio EPA under the oversight of USEPA Region V. The entirety of the NRDC letter discusses NRDC's view of the air permitting

requirements for the project and its contention that LEC must obtain certain air permits before proceeding with construction. Although LEC acknowledges the attachments, NRDC will have ample opportunity to engage in the air permit process and, if they determine it is necessary, challenge the final air permit. Due to the fact that the Certificate is conditioned on LEC obtaining the necessary permits from Ohio EPA, however, the absence of a current air permit is irrelevant to the issue of whether or not the Certificate should be extended – even if it is, LEC will still need to secure the requisite air permit.

NRDC's request, if granted, will accomplish nothing more than increasing the administrative costs to both LEC and the Board if the project ultimately proceeds – there is no apparent regulatory or public policy purpose for invalidating the Certificate issued by the Board because of the lack of an air permit. Requiring LEC to reapply for a Certificate merely because it does not presently have an air permit is nonsensical and will require both LEC and the Board to reconsider issues that have already been reviewed. NRDC's letter is also somewhat disingenuous in that LEC has already committed, in writing, to the Sierra Club, that LEC would seek to obtain an air permit for the facility that would take into consideration the most current and up to date standards for the facility – a commitment that required LEC to seek either a modification of the then applicable air permit or reapply for a new air permit (See Exhibit A). LEC acknowledges that it needs an air permit for the facility and it is required to obtain one under the current Certificate issued by the Board. There is no legitimate reason to require LEC to reapply for a Certificate from the Board merely because its prior air permit has expired. LEC, if granted the requested extension of the Certificate, anticipates seeking a new air permit that will take into account changes to air permitting requirements due to changes in the regulatory requirements for the proposed facility and potential changes to the facility.

Additionally, all of the specific issues raised by NRDC related to the air permit authority of Ohio EPA are adequately addressed in the current Certificate through the condition that requires LEC to secure appropriate air permits and to maintain compliance with R.C. Chapter 3704. The entire purpose of conditioning a Certificate on obtaining the necessary air permits from Ohio EPA is to avoid duplication of permitting and allow Ohio EPA, which has greater technical capabilities with respect to air permitting, to issue the necessary air permits for the proposed facility. NRDC offers no other justification for its request to deny the extension of the Certificate. LEC believes the requested extension provides ample time for LEC to secure a new air permit through Ohio EPA, as needed and applicable, and it does nothing to compromise the ability of NRDC to participate in the air permitting process. Contrary to NRDC's implied view, extending the Certificate does not enable the project to proceed to construction without a new air permit from OEPA. To the contrary, not only is LEC required by existing law to seek the necessary air permits, the Certificate itself is conditioned on compliance with this law. LEC needs an air permit and denying the requested extension of the Certificate has no bearing on this obligation.

For these reasons, Applicant respectfully requests that the Ohio Power Siting Board reject the NRDC request and extend the Certificate of Environmental Compatibility and Public Need for a period of thirty (30) months until September 1, 2014, subject to the following findings and conditions:

1. Applicant will continue to comply with conditions of its existing certificate, for the period of the extension.

2. Applicant will also provide to Staff informal semi-annual updates on the project's development during the extension period so as to facilitate the Board's regulatory oversight during the extension.

Respectfully submitted,



Robert J. Schmidt, Jr. (0062261)
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Attorney for Applicant Lima Energy Company

Exhibit A



LIMA ENERGY IGCC

March 12, 2008

Bruce Nilles
Director - National Coal Program
Sierra Club
122 W. Washington Avenue, Suite 830
Madison, WI 53703

Via: E-Mail

Re: **Lima Energy IGCC & SNG Project
Collaboration Agreement**

Dear Bruce,

Thank you for hosting a productive meeting in Lima to discuss the Lima Energy Project. We are pleased to be working with you to develop a Collaboration Agreement regarding our shared interest in delivering top environmental results from the facility.

The prime objectives of the project are to deliver ultra clean low cost energy products and set a new standard of corporate social responsibility. We welcome your collaboration in helping us achieve these objectives. We are particularly excited about our plans to capture CO₂ with assistance from world leading experts on CO₂ Management from Canada.

During the meeting we focused on three items that would form the basis of the Collaboration Agreement. We have further reviewed the items as listed below and believe that they would be good, positive additions to the project, further reinforcing our commitment to top environmental results.

Collaboration Agreement:

1. Meet newly proposed California Standard for CO₂ of 1100 lbs / MWH
2. Further reduce SO_x to 0.016 lb/mmBtu & NO_x to 0.034 lb/mmBtu & PM₁₀ to 0.022 lb/mmBtu, to mention the highlights of a recently issued permit.
3. Operate 100% on Petcoke (coal use only to fill petcoke supply shortages, if any)

The agreed path forward is to sign the Collaboration Agreement and implement these items in the normal course of a permit modification process.

We would be pleased to make the first draft of the Collaboration Agreement for your review. Let us know how you would prefer to proceed. We look forward to hearing from you and meeting again soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight N. Lockwood".

Dwight N. Lockwood, PE, QEP
Lima Energy Project Director
And
Group Vice President
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Motion for a Board Order Extending the Duration of the Lima Energy Company Certificate of Environmental Compatibility and Public Need" was served upon the following persons by electronic service and by mailing a copy, postage prepaid, on March 1, 2012, addressed to:

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Robert J. Schmidt

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 00-0513-EL-BGN, 04-1011-EL-BGA

Summary: Response of Applicant to NRDC/Sierra Club Letter Opposing Extension electronically filed by Mr. Robert J Schmidt on behalf of Lima Energy Company