

Natural Resources Defense Council * Sierra Club

March 15, 2012

BY ELECTRONIC FILING

The Ohio Power Siting Board
180 East Broad Street
Columbus, Ohio 43215

Re: Second Letter Regarding Lima Energy Company's and the City of Lima's Memoranda in Response to NRDC and Sierra Club's Comments on the Motion to Extend the Duration of Lima Energy Company's Certificate of Environmental Compatibility and Public Need, Case Nos. 00-513-EL-BGN & 04-1011-EL-BGA

Dear Ohio Power Siting Board,

Please accept this additional correspondence submitted on behalf of the Sierra Club and the Natural Resources Defense Council (collectively, "Citizen Groups") regarding Lima Energy Company's ("LEC") and the City of Lima's ("Lima") memoranda in response to Citizen Groups' comments, dated February 17, 2012, on LEC's motion to extend their Certificate of Environmental Compatibility and Public Need ("Certificate"). Both LEC's and Lima's memoranda rely on unsupported factual statements that should not alter the Ohio Power Siting Board's ("OPSB" or "the Board") analysis. Indeed, even if all of these unsupported statements were accurate, the OPSB should still deny the pending motion to extend the nearly 10-year-old Certificate.

Lima vaguely references the "time and resources" that go into a project such as the Lima Energy Project, as well as the "substantial change of conditions that has occurred in the economy, energy and financial markets since the instant project was certified by the Board." (Lima Memo at 1). Although true in a general sense, neither of these statements is supported by any evidence as to how any such changes have specifically affected the LEC project. Moreover, the undeniable fact that there has been a "substantial change of conditions" since the Certificate was first issued only serves to underscore Citizen Groups' argument that circumstances have changed so much that OPSB must conduct a new analysis of both environmental compatibility and public need before extending the long-outdated Certificate. This would not be a pointless exercise, as both Lima and LEC seem to suggest (Lima Memo at 2; LEC Memo at 3), but rather a satisfaction of the very purpose underlying the certificate process, which is to ensure that a proposed project serves the public need and complies with applicable environmental rules and regulations. (O.R.C. 4906.10).¹

¹ Lima's discussion of the announced retirement of several First Energy and American Electric Power plants is not relevant to OPSB's analysis of this issue, and Lima's statement that the proposed LEC facility would "timely off-set the substantial void created by the retirement[s] . . . in 2012" is completely unsupported. (Lima Memo at 3). LEC's parent company, USA Synthetic Fuel Corporation, has admitted that it lacks a valid air permit, which is a necessary prerequisite for any further construction of the proposed facility to begin, let alone be completed. (Citizen Groups' Memo, Ex H). There is no evidence that LEC has commenced the application process for a new permit.

LEC's suggestion that Citizen Groups' letter was "somewhat disingenuous" because LEC has already provided assurances that it will apply for a new air permit is also unfounded (LEC Memo at 3). The single exhibit referenced in support of this comment does not reflect an unequivocal commitment to obtain a new air permit that will require LEC to incorporate the most up-to-date control technology into its proposal (LEC Memo at 3 & Ex. A). More importantly, Citizen Groups' previous letter never questioned whether LEC should, or would, apply for a new Permit to Install ("PTI"). To the contrary, our February 17th comments explicitly referenced an admission by LEC's parent company that the current PTI had expired. (Citizen Groups' Memo at 2 n.14). Properly understood, Citizen Groups' argument here is that OPSB should not extend a 10-year old Certificate when all parties agree that the PTI has long since expired. While Citizen Groups welcome LEC's reiterated commitment to apply for a new PTI -- something it is legally required to do anyway, if it wishes to move forward with its proposal -- this should not alter OPSB's analysis of the issue at hand.

Finally, LEC's and Lima's allegation that Citizen Groups' argument regarding the import of the expired PTI is "irrelevant" to the pending request to extend the Certificate is simply wrong (LEC Memo at 2, 4; Lima Memo at 4). The Board's authorizing regulations expressly mandate that "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 [including] . . . (A)(5) that the facility will comply with Chapters 3704, 3734 and 611 of the Revised Code and all rules and standards adopted under those chapters and under sections 1501.33, 1501.34 and 4561.32" (O.R.C. 4906.10(A)(5)). Consequently, OPSB must take into account both the fact that the Lima plant's PTI has been expired for quite some time and the fact that any analysis of the Lima plant's compliance with environmental regulations is rather outdated.

The authorizing regulations also direct OPSB to determine the following, before it can issue a certificate:

- The nature of the probable environmental impact;
- That 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; and
- That the facility will serve the public interest, convenient, and necessity.

O.R.C. 4096.10(2), (3) and (6)).² These factors similarly must be re-analyzed given the long passage of time since the Certificate was issued. Far from irrelevant, this analysis is central to OPSB's authority and responsibility as the administrative agency tasked with issuing certificates of environmental compatibility and public need.

² See also O.A.C. 4906-13-06(B) (requiring applicant to submit, among other things, information concerning the ambient air quality of the proposed site, a description of the air pollution control equipment for the proposed facility, and a description of the applicable new source performance standards, applicable national ambient air quality standards and applicable prevention of significant deterioration increments).

Thank you for including these comments in your consideration of this matter. Although Lima attempts to characterize LEC's motion as merely requesting a "brief thirty month extension" (Lima Memo at 2), this would further extend a Certificate whose application was submitted nearly 12 years ago, which was granted 10 years ago and whose most recent action was a modification 8 years ago. We respectfully suggest that if OPSB's role in the certificate process is to have any meaning, the Board must deny the motion to extend here as all of the information underlying the original Certificate is now woefully outdated. At a minimum, Citizen Groups renew their request for the opportunity to present these and other arguments in more detail at a hearing on LEC's motion to extend the duration of the Certificate, if OPSB determines that further consideration of LEC's motion is appropriate.

Sincerely,

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CERTIFICATE OF SERVICE

I herby certify that a copy of the foregoing "Second Letter Regarding Lima Energy Company's and the City of Lima's Memoranda in Response to NRDC and Sierra Club's Comments on the Motion to Extend the Duration of Lima Energy Company's Certificate of Environmental Compatibility and Public Need, Case Nos. 00-513-EL-BGN & 04-1011-EL-BGA" was served upon the following persons by mailing a copy, postage prepaid, on March 15, 2012, addressed to:

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Summary: Correspondence regarding the memoranda in response of Lima Energy Company and the City of Lima to NRDC and Sierra Club's February 17, 2012, Public Comments on the Motion to Extend the Duration of Lima Energy Company's Certificate of Environmental Compatibility and Public Need electronically filed by Mr. Christopher J Allwein on behalf of The Sierra Club and Natural Resources Defense Council