

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of **NTE OHIO, LLC** for a Certificate of Environmental Compatibility and Public Need for an Electric Generating Facility in Middletown, Ohio, Butler County)
) Case No. 14-534-EL-BGN
)

MOTION FOR WAIVERS

Applicant, NTE Ohio, LLC (“NTE” or “Applicant”), pursuant to Ohio Administrative Code (“OAC”) Rule 4906-01-03 and Rule 4906-7-12(C), respectfully moves the Ohio Power Siting Board (“Board”) to grant the following waivers on an expedited basis:

- (1) From providing an extensive site selection study to the extent that Applicant is not able to describe all the specific information listed in the site selection criteria as set forth in OAC Rule 4906-13-03(A) and (B); and
- (2) From certain requirements relating to a cross-sectional view and test borings set forth in OAC Rule 4906-13-04(A)(4), and instead permit Applicant to provide the information no later than for (4) weeks prior to the issuance of the Staff Report.

Further support for these waiver requests is set forth in the Memorandum in Support below.

MEMORANDUM IN SUPPORT

I. BACKGROUND

NTE Ohio, LLC, (“Applicant” or “NTE”) proposes to construct a 540 megawatt (“MW”) natural gas fired generation plant to be located on approximately 50 acres in a non-industrial property, which NTE has under exclusive option from A.K. Steel, within an industrial setting in Middletown, Ohio, Butler County.

NTE is seeking waivers from certain requirements of R.C. 4906.06 and OAC Chapter 4906-13 governing electric power generating stations. The project will consist of one gas fired, high efficiency combustion turbine with one heat recovery steam generator and one steam turbine. It will have a cooling tower and state of the art pollution controls. The plant will be served by natural gas from one or multiple pipelines. The generating station will interconnect to an existing 345 kV transmission line on site. The facility will be supplied water from the City of Middletown, but other potential water supply options are being explored. The City of Middletown will also provide the project with wastewater discharge services.

II. EXPEDITED RULING – OAC Rule 4906-7-12(C)

An expedited ruling on this Motion is required in order for Applicant to complete an application in conformance with the applicable requirements in OAC Chapter 4906-13. Applicant plans to file its application in approximately four weeks. Meeting this filing date is necessary to allow Applicant to begin construction by the second quarter of 2015. A long period of time is required after a certificate is issued for the project construction activities. The completed facility is projected to commence commercial operation by no later than the second quarter of 2018.

As set forth in this waiver request, and as will be evident in the application itself, Applicant has conducted the requisite analyses and studies and optioned the site so that Applicant can meet its schedule. For these reasons, Applicant asks that the review of its waiver requests be undertaken on an expedited basis and urges the Board or Administrative Law Judge to decide this Motion on that basis.

III. WAIVER REQUESTS

A. OAC Rule 4906-13-03(A) and (B): Waiver of an Extensive Site Selection Study

Each specific criterion set forth in OAC Rule 4906-17-04 may not apply even though the site is an appropriate one for a wind energy project.

OAC Rule 4906-13-03 contemplates extensive detail in a site selection study. Applicant will be providing a description of the project boundary; the rationale for selecting the site; a map of the project area; a list and description of qualitative siting criteria, constraints and a constraint map. Applicant is aware that there is no approved form for a site selection study used in Chapter 4906-13 of the Board's rules. NTE engaged in a site selection process that, while it may not have been in exactly the same manner as contemplated by the rule, did consider most, if not all of the items listed in the rule in order to assure that the proposed site met its criteria. Thus, NTE believes it is appropriate for the Board to grant a waiver from filing an extensive site selection study. Especially in light of the recent Ohio Supreme Court decision in *In re Application of Middletown Coke Company* (2010), 127 Ohio St. 3d 348; 939 N.E.2d 1210, Applicant will provide sufficient information to support a finding that the site represents the minimum adverse environmental impact pursuant to R.C. 4906.10 (A)(3).

This waiver request is not novel: waivers from an identical rule, OAC Rule 4906-17-04, have been granted recently in a number of cases. *See, Buckeye Wind LLC*, Case No. 08-666-EL-BGN (Entry dated July 31, 2009) (hereinafter "*Buckeye Wind*"); *Hardin Wind Energy LLC*, Case No. 09-479-EL-BGN (Entry dated July 17, 2009) (hereinafter "*Hardin Wind*"); *JW Great Lakes Wind, LLC*, Case No. 09-277-EL-BGN (Entry dated September 18, 2009) (hereinafter "*JW Great Lakes*"); *Heartland Wind, LLC*, Case No. 09-1066-EL-BGN (Entry dated December 11, 2009) (hereinafter "*Blue Creek*"); *Paulding Wind Farm LLC*, Case No. 09-980 (Entry dated February

23,2010) (hereinafter *Paulding*) and Case No. 10-369-EL-BGN (Entry dated June 21, 2010) (hereinafter “*Paulding Wind II*”); Black Fork Wind Energy LLC, Case No. 09-546-EL-BGN (Entry dated October 1, 2009) (hereinafter *Blackfork*) and Case No. 10-2865-EL-BGN (Entry dated May 3, 2011) (hereinafter “*Blackfork II*”); Glacier Ridge Wind Farm, LLC, Case No. 11-902-EL-BGN (Entry dated April 6, 2011) (hereinafter “*Glacier Ridge*”); Ashtabula Wind, Case No. 11-2400-E:-BGN (Entry dated June 22, 2011) (hereinafter “*Ashtabula*”); Leipsic Wind, Case No. 11-3676-EL-BGN (Entry dated July 25, 2011) (hereinafter “*Leipsic*”); Honey Creek, Case No. 11-4886-EL-BGN (Entry dated November 1, 2011) (hereinafter “*Honey Creek*”); Oregon Clean Energy, LLC, Case No. 12-2959-EL-BGN (Entry dated December 5, 2012) (hereinafter “*OCE*”); Northwest Ohio Wind Energy, Case No. 13-197-EL-BGN (Entry dated April 10, 2013) (hereinafter “*Northwest*”); and Carroll County Energy, LLC, Case No. 13-1752-EL-BGN (Entry dated January 16, 2014). Assuming that NTE files the site selection information as proposed above, Applicant requests a waiver to the extent that each specific factor in OAC Rule 4906-13-03 (A) and (B) is not met.

B. OAC 4906-13-03(A)(4): Waiver to Allow Applicant to Defer Submitting Information Relating to a Cross-Sectional Views and Test Borings Until Approximately Four (4) Weeks Prior to the Issuance of the Staff Report.

NTE requests a waiver from the requirement that it provide “a cross-sectional view and the location of test borings” pursuant to Rule 4906-13-03(A)(4). Applicant proposes to merely defer this requirement until no later than four (4) weeks prior to the issuance of the Staff Report, and later supplement its filing by providing a cross-sectional view and the location of test borings. Deferring the submission of this information at the time the application is filed will enable NTE to appropriately balance weather, logistics, and engineering requirements to provide a meaningful characterization of subsurface conditions.

This type of waiver with the proposed deferral was granted in the *OCE* case and the *Buckeye Wind*, *JW Great Lakes*, *Blue Creek*, *Paulding Wind*, *Paulding Wind II*, *Black Fork*, *Glacier Ridge*, *Ashtabula*, *Leipsic*, *Honey Creek*, *Champaign*, and *Northwest* wind cases where the rule, OAC Rule 4906-17-05(A)(4) is identical.

WHEREFORE, Applicant respectfully requests that the Board waive the requirements set forth above and grant such other and further relief to which it may be entitled.

Respectfully submitted on behalf of
NTE Ohio, LLC



Sally W. Bloomfield (0022038)
Dylan Borchers (0090690)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2368; 227-4914
Facsimile: (614) 227-2390
E-Mail: sbloomfield@bricker.com
dborchers@bricker.com

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Summary: Motion of NTE Ohio, LLC for Waivers electronically filed by Teresa Orahod on behalf of Sally Bloomfield