

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of)
NTE Ohio, LLC for a Certificate of)
Environmental Compatibility and Public) Case No. 14-534-EL-BGN
Need to Construct an Electric Generation)
Facility in Middletown, Ohio.)

ENTRY

The administrative law judge finds:

- (1) On April 1, 2014, NTE Ohio, LLC (NTE) filed a preapplication notification letter for an application that it intended to file regarding the construction of a proposed 540 megawatt natural gas-fired generation facility located in Middletown, Ohio, Butler County. The proposed facility will consist of one gas-fired, high efficiency combustion turbine, with one heat recovery steam generator, one steam turbine, and a cooling tower.
- (2) Also on April 1, 2014, NTE filed a motion for waiver of Ohio Adm.Code 4906-13-03(A) and (B), which require that an applicant conduct a site selection study, evaluating all practicable sites for the proposed facility and provide a summary table comparing the sites evaluated. NTE submits that it 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. NTE also states that it 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 addition, NTE notes that the Board has granted several similar waivers.
- (3) NTE also requests a waiver of Ohio Adm.Code 4906-13-04(A)(4), which requires an applicant provide a map showing, among other things, cross sectional views and the

location of proposed test borings.¹ NTE requests that it be permitted to defer this requirement until no later than four 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. According to NTE, deferring the submission of this information until 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. NTE also notes that the Board has granted waivers of Ohio Adm.Code 4906-17-05(A)(4), which has an identical requirement regarding cross-sectional views and test borings.

- (4) On April 8, 2014, Staff filed a letter indicating that, with certain provisions, it does not object to NTE's waiver requests. Staff also reserves the right to require information from NTE in areas covered by the requested waiver if Staff determines it to be necessary during the course of the investigation. In addition, Staff reserves the right to investigate and contest all other issues presented in the application.
- (5) Ohio Adm.Code 4906-1-03 provides that, where good cause exists, the administrative law judge (ALJ) may permit departure from Ohio Adm.Code Chapters 4906-1 to 4906-15. Upon review, the ALJ concludes that NTE's motion for waivers of Ohio Adm.Code 4906-13-03(A) and (B) and 4906-13-04(A)(4) is reasonable and should be granted.
- (6) The ALJ wishes to clarify that, although he is willing to grant the requested waivers, this does not preclude Staff from requesting the waived information and NTE must provide to Staff all waived information requested during the completeness review or through discovery in this proceeding.

¹ In its motion, NTE initially requests a waiver of Ohio Adm.Code 4906-13-04(A)(4), addressing test borings and cross-sectional views; but, subsequently, cites to Ohio Adm.Code 4906-13-03(A)(4), which does not exist. Therefore, the latter cite will be treated as an inadvertent error.

It is, therefore,

ORDERED, That, in accordance with the above findings, NTE's motion for waivers of Ohio Adm.Code 4906-13-03(A) and (B) and 4906-13-04(A)(4) be granted. It is, further,

ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Scott Farkas

By: Scott E. Farkas
Administrative Law Judge

JRJ/sc

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Case No(s). 14-0534-EL-BGN

Summary: Administrative Law Judge Entry granting NTE's motion for waivers of Ohio Adm. Code 4906-13-03(A) and (B) and 4906-13-04(A)(4). - electronically filed by Sandra Coffey on behalf of Scott Farkas, Attorney Examiner, Public Utilities Commission of Ohio