

BEFORE

THE OHIO POWER SITING BOARD

In the Matter of the Application of Carroll )  
County Energy, LLC for a Certificate of )  
Environmental Compatibility and Public ) Case No. 13-1752-EL-BGN  
Need to Construct an Electric Generation )  
Facility. )

OPINION, ORDER, AND CERTIFICATE

The Board, coming now to consider the above-entitled matter, having appointed its administrative law judge (ALJ) to conduct the hearings, having reviewed all of the evidence presented, and being otherwise fully advised, hereby issues its Opinion, Order, and Certificate in this case, as required by R.C. 4906.10.

APPEARANCES:

Vorys, Sater, Seymour and Pease LLP, by M. Howard Petricoff, Michael J. Settineri and Miranda R. Leppla, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of Carroll County Energy, LLC.

Ice Miller LLP, by Christopher L. Miller, and Gregory J. Dunn, 250 West Street, Suite 700, Columbus, Ohio 43215, on behalf of Washington Township.

Mike DeWine, Ohio Attorney General, by Devin Parram, Katherine Johnson, and Ryan O'Rourke, Assistant Attorney Generals, Public Utilities Section, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215, on behalf of Staff.

OPINION:

I. SUMMARY OF THE PROCEEDING

All proceedings before the Board are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906.

On August 7, 2013, Carroll County Energy, LLC (CCE or Applicant) filed a preapplication notification letter. Subsequently, CCE filed its proof of publication of the notice of the public information meeting in *The Repository* and *The Free Press Standard*, on August 14, 2013, and August 15, 2013, respectively. The public information meeting was held on August 22, 2013, in Carrollton, Ohio.

On November 14, 2013, CCE filed a motion for waiver of four provisions of Ohio Adm.Code 4906-13-03 and 4906-13-04. On December 17, 2013, Staff filed a letter stating

that Staff did not object to CCE's request for waivers. By Entry issued January 6, 2014, CCE's motion for waivers was granted.

On November 15, 2013, as supplemented on February 5, 2014, CCE filed its application for a certificate of environmental compatibility and public need to construct an electric generation facility in Washington Township, Carroll County, Ohio. Pursuant to Ohio Adm.Code 4906-5-05, within 60 days after receipt of an application for a major utility facility, the Chairman of the Board shall notify an applicant of the acceptance or rejection of the application as complete. By letter filed on December 20, 2013, the Board notified CCE that its application was sufficiently complete to permit Staff to commence its review and investigation of the application. Further, the letter directed the Applicant to serve appropriate government officials and public agencies with copies of the application. On December 26, 2013, CCE filed a certificate of service of its accepted and complete application, in accordance with the requirements of Ohio Adm.Code 4906-5-07. On that same day, CCE also submitted the application fee to the Board, pursuant to Ohio Adm.Code 4906-5-11.

By Entry dated January 6, 2014, a local public hearing was scheduled for March 6, 2014, at 6:00 p.m., at Carrollton High School, Fine Arts Room, 252 Third Street NE, Carrollton, Ohio 44615 and the evidentiary hearing was scheduled to commence on March 13, 2014, at 10:00 a.m., 11th floor, Hearing Room C, at the offices of the Board, 180 East Broad Street, Columbus, Ohio. Further, the January 6, 2014 Entry directed the Applicant to publish notice of the application and hearings, as required by Ohio Adm.Code 4906-5-08 and directed that petitions to intervene be filed within 30 days following publication of the first notice required by Ohio Adm.Code 4906-5-08 but by no later than February 18, 2014. On February 18, 2014, Washington Township filed a motion to intervene. By Entry issued March 6, 2014, Washington Township's request for intervention was granted.

CCE filed its proofs of publication of the hearings, pursuant to Ohio Adm.Code 4906-5-09, on February 13, 2014, and March 6, 2014. Notice of the hearings was published on January 9, 2014, and February 20, 2014 in *The Repository*, a newspaper of general circulation in Stark County, and in *The Free Press Standard*, a newspaper of general circulation in Carroll County. On February 19, 2014, Staff filed its report of investigation of the application (Staff Report).

At the local public hearing, 13 witnesses offered testimony in support of the proposed project. Filed in the docket on March 3, 2014, are comments from one local resident opposing the proposed project. On March 10, 2014, a Joint Stipulation and Recommendation (Stipulation) was filed by the parties. The evidentiary hearing was conducted on March 13, 2014. At the evidentiary hearing, CCE presented the testimony of Jonathan Winslow and Staff offered the testimony of Donald Rostofer in support of the Stipulation.

## II. PROPOSED FACILITY

CCE describes the proposed generation facility as consisting of two combined-cycle, natural gas fired turbines with two heat recovery steam generators and a steam turbine. The proposed project, which will also include a switchyard and other ancillary equipment, will have a nominal net output of 742 megawatts (MW) and will be located on approximately 77 acres in Washington Township, Carroll County, Ohio. The proposed site is currently agricultural land. The Applicant proposes to commence construction in February 2015 and begin commercial operation as early as May 1, 2017. (CCE Ex. 2 at 1-3, 9; Staff Ex. 1 at 5-8.)

The proposed generation facility would interconnect with existing American Electric Power (AEP) 345 kilovolt (kV) transmission lines located approximately 0.4 miles west of the facility site and interconnect with an existing Tennessee Gas Pipeline located approximately 0.4 miles north of the project site. The electric transmission line and the gas pipeline interconnections for the proposed generation facility are not a part of the pending application. The electric and gas interconnections will be the subject of separate filings with the Board. (CCE Ex. 2 at 20-21.)

## III. CERTIFICATION CRITERIA

Pursuant to R.C. 4906.10(A), 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:

- (1) The basis of the need for the facility if the facility is an electric transmission line or natural gas transmission line.
- (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 case of an electric transmission line or generating facility, 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 such facilities will serve the interests of electric system economy and reliability.

- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111 and all rules and standards adopted under those chapters and under R.C. 1501.33, 1501.34, and 4561.32.
- (6) The facility will serve the public interest, convenience, and necessity.
- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929, that is located within the site and alternative site of the proposed major facility.
- (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.

#### IV. SUMMARY OF THE EVIDENCE

##### A. Hearings

##### 1. Local Public Hearing

The local public hearing was held, as scheduled, on March 6, 2014, in Carrollton, Ohio. At the local public hearing, 13 individuals offered testimony in support of the proposed project, including representatives of the local skilled and construction trades, the Carroll County Chamber of Commerce, a Carroll County Commissioner, the superintendent of the Carrollton school district, and residents living near the proposed project site. Public witnesses endorsed the proposed project for the jobs it will bring to the community, particularly jobs for the skilled and construction trades, and the 25 to 30 permanent jobs to operate the generation facility which will improve the employment rate for the county. Witnesses also supported the generation facility for the economic benefits it will provide to the district's school system, to support local vendors and suppliers, and to attract new business to the area. (Public Hearing Tr. at 9-43.)

##### 2. Evidentiary Hearing

The evidentiary hearing was held on March 13, 2014. Admitted into the record at the evidentiary hearing, were: the application filed on November 15, 2013 (CCE Ex. 2); CCE's list of commitments filed March 3, 2014 (CCE Ex. 3); the proofs of publication for the public information meeting and hearings (CCE Ex. 4); the mailing list of adjacent property owners and tenants (CCE Ex. 5); the testimony of CCE witnesses Jonathon Winslow (CCE Ex. 1), Michael D. Theriault (CCE Ex. 6), and Lynn Gresock (CCE Ex. 7); CCE's responses to Staff's first set of data requests, as supplemented (CCE Ex. 8); the Staff

Report (Staff Ex. 1); and the Stipulation filed by CCE, Washington Township, and Staff on March 10, 2014 (Joint Ex. 1). In support of the Stipulation, CCE presented the testimony of Mr. Winslow and Staff offered the testimony of Donald Rostofer.

B. Staff Report

1. Basis of Need - R.C. 4906.10(A)(1)

R.C. 4906.10(A)(1) specifies that it applies only if the proposed facility is an electric transmission line or a gas or natural gas transmission line. In this case, the proposed project is an electric generation facility. Accordingly, Staff recommends the Board find that R.C. 4906.10(A)(1) is not applicable to this electric generating facility. (Staff Ex. 1 at 12.)

2. Nature of Probable Environmental Impact - R.C. 4906.10(A)(2)

R.C. 4906.10(A)(2) requires that the Board determine the nature of the probable environmental impact of the proposed facility. As a part of the investigation, Staff reviewed the nature of the probable environmental impact of the proposed project.

According to the Staff Report, the project area, located entirely within Carroll County, is sparsely populated and is not projected to change dramatically. In 2012, the estimated population of Carroll County was 28,587. The population of Carroll County is projected to decrease approximately 0.2 percent between 2010 and 2020. For that reason, Staff surmises that the proposed facility is unlikely to limit future population growth or have a measurable impact on the demographics of the region. (Staff Ex. 1 at 13.)

CCE proposes to construct the proposed generation facility on a 77-acre parcel of land. The generation facility, ancillary equipment, and switchyard would occupy 17 acres, while approximately four acres would be utilized for construction laydown, staging, parking, and access. The project area does not contain any existing structures. Agriculture and woodlots are the only land uses. (Staff Ex. 1 at 13.)

Staff notes that land uses within one mile of the proposed facility are dominated by agriculture and woodlots and comprise approximately 86 percent of the total surrounding land use. Commercial land uses consist of a few small developments to the north, and comprise approximately nine percent of the surrounding area. The remaining five percent of surrounding land uses are scattered residential, utility, lakes, institutional, and recreational. Carroll Hills School is located approximately 0.5 miles to the north and is not expected to be impacted by the proposed generation project. (Staff Ex. 1 at 13.)

According to the Staff Report, five residences located on Mobile Road NE are located within 1,000 feet of the proposed facility, with the nearest residence located

approximately 350 feet to the south. No residential structures are located within the footprint of the project area. Nearby residents are likely to experience temporary noise and traffic impacts associated with construction activities. (Staff Ex. 1 at 13.)

Carroll County has no formal land use plans or zoning districts and no formally adopted plans exist for future use of the project area. However, the County Commission, Carroll County Community Improvement Corporation (CIC), and various other groups within the county anticipate and plan for strategic growth within certain areas of the community. The proposed facility is located adjacent to an area that includes nonresidential uses and is currently undergoing development by the CIC as a commercial and industrial park. (Staff Ex. 1 at 13.)

With the exception of some residential impacts during construction, the proposed facility is compatible with, and would not permanently impact, surrounding land uses. Staff recommends that CCE limit the hours of construction which would increase noise levels, and have a complaint resolution plan in place to address potential construction related conflicts with nearby residences. (Staff Ex. 1 at 14.)

Staff notes that CCE has committed to avoiding, where possible, or minimize to the maximum extent practicable, any damage to field tile drainage systems and soils resulting from construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems will be promptly repaired to at least original conditions at the Applicant's expense. If applicable, excavated topsoil will be segregated and restored in accordance with the Applicant's lease agreement with the landowner. Severely compacted soils will be plowed or otherwise decompacted, if necessary, to restore them to original conditions unless otherwise agreed to by the landowner. (CCE Ex. 3 at 2; Staff Ex. 1 at 14.)

The Applicant conducted a cultural resource management investigation, which included a literature review of historical records, a Phase I archaeological survey, and a Historic Architecture Survey for the proposed facility. The literature and site file review revealed 10 previously documented archaeological sites, 17 cemeteries, and one recreational park located within a five-mile radius of the proposed facility. No known cultural resources should be impacted by the construction and operation of the proposed facility. (Staff Ex. 1 at 14.)

CCE also performed archaeological fieldwork of approximately 51 acres of the project area. Three cultural objects were identified; one prehistoric artifact and the remains of two structures. Based on the findings, CCE's cultural resource consultant recommended that no further archaeological investigation was necessary. However, should the limits of grading and construction expand to include the structural remains of Structure 2, then the archaeological consultant recommended that further archaeological investigations be performed to determine if the site is eligible for listing on the National

Register of Historic Places (NRHP). Staff concurs with the cultural resource consultant's recommendations. (Staff Ex. 1 at 14.)

The Applicant performed an architectural survey of the area within a five-mile radius of the facility site. The survey found that there were four properties listed on the NRHP, 94 properties listed on the Ohio Historic Inventory (including the four NRHP properties), and 15 newly identified historic properties. The proposed generation facility is not likely to adversely affect these structures, due primarily to distance, topography, and extent of existing vegetation in the area. (Staff Ex. 1 at 14-15.)

Carroll County Veterans Park is located approximately 0.5 miles west of the laydown/staging area for this proposed facility. Amenities at this 60-acre park include a pool complex, ball fields, and a clubhouse. This park is privately owned, and has an ingress/egress point off of Brenner Road NE, while the proposed facility would have access from Kensington Road NE (State Route 9). Another park, a golf course, and the Carroll County Fairgrounds are located between one to three miles from the proposed facility. Impacts to these recreational areas are expected to be minimal. (Staff Ex. 1 at 15.)

Staff states that the construction of the proposed facility would require removal of some mature trees that currently provide screening between property owners. Additionally, the introduction of industrial-grade lighting in the rural setting would introduce aesthetic impacts. The Applicant intends to utilize neutral colored coating and ribbed metal sidings for aesthetic appeal. Several other factors would also aid in the overall minimization and mitigation of aesthetic impacts. First, the proposed facility would be sited in a remote area with low population density. Second, major portions of the proposed facility would be significantly screened due to the Applicant's intent to preserve existing vegetation and tree stands. Finally, potential impacts to nearby residences would be alleviated and addressed by CCE's adherence to landscaping and lighting plans. Visual impact varies depending on the distance between the viewer and the facility, the amount of screening, atmospheric conditions, and the presence of other artificial elements such as utility poles and communication towers. Aesthetic impacts also vary greatly for each viewer and depend on the value of the existing landscape to the viewer and personal attitudes toward the introduction of manmade objects. The introduction of this proposed facility would change the appearance of the current rural setting. The proposed facility and ancillary equipment would be visible from roads and nearby residences. However, significant aesthetic impacts have been avoided by the selection of an area without busy roads and intersections, or other sensitive land uses. Finally, the Applicant intends to allow unused buffering land to return to agricultural production. (Staff Ex. 1 at 15.)

According to the Staff Report, the proposed project would have minimal impacts to surface waters, with approximately 450 square feet of impacts to two wetlands within the

footprint of the proposed facility. Impacts to streams would be completely avoided. Construction and operation activities would not require stream crossings or in-water work. Ponds and lakes would not be impacted by the proposed project during construction or operation. Additional measures to reduce water quality impacts were indicated in CCE's Storm Water Pollution Prevention Plan (SWPPP), as part of the Ohio Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) permit, to help control potential sedimentation, siltation, and runoff. (Staff Ex. 1 at 15-16.)

The Applicant requested information from Ohio Department of Natural Resources (ODNR) and United States (U.S.) Fish and Wildlife Service (USFWS) regarding state and federally listed threatened and endangered plant and animal species. CCE also conducted field assessments of the project area and reviewed published ecological information. Staff submits that, based on CCE's investigation, bald eagle are within the known range of the project area; however, no records reveal a bald eagle within 0.5 miles of the proposed facility. Loggerhead shrike and the Indiana bat are endangered and both have suitable habitat within the known range of the proposed facility site. To reduce the likely impact to the habitat of loggerhead shrike, construction must be avoided during the species nesting period of April 1 to August 1. CCE has agreed to adhere to seasonal tree cutting dates of October 1 through March 31 to reduce potential negative impacts to the Indiana bat. The Staff Report recognizes that black bear and bobcat are within the known range of the project area. Due to the mobility of black bears and bobcats, construction and operation of the proposed project is not likely to impact these species. CCE is continuing to work with USFWS regarding possible impacts to the Indiana bat. The Applicant will contact Staff, ODNR, and USFWS within 24 hours if state or federally threatened or endangered species are encountered during construction activities and construction activities that could adversely impact the identified plants or animals will be halted until a coordinated mutually agreeable course of action can be determined. (Staff Ex. 1 at 16-17.)

The Applicant states that it will have a Staff-approved environmental specialist on-site during construction activities that may affect sensitive areas, as mutually agreed upon between the Applicant and Staff, and as shown on the Applicant's final-approved construction plan. Sensitive areas include, but are not limited to, areas of vegetation clearing, designated wetlands and streams, and locations of threatened or endangered species or their identified habitat. The environmental specialist would be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction. (Staff Ex. 1 at 17.)

The proposed facility would be located primarily within existing agricultural fields and approximately 20.5 acres of forest would be impacted. Of the 20.5 acres of impacted forest, approximately seven acres would be permanently cleared as part of the footprint of



the proposed facility, and the remaining 13.5 acres would be temporarily impacted during construction. (Staff Ex. 1 at 17.)

Staff notes that the Applicant has committed to having a streamside vegetation restoration plan that minimizes impacts associated with the clearing of riparian vegetation. At least 30 days prior to the commencement of clearing activities, CCE will submit the plan to Staff for review and confirmation that it complies with this commitment. (Staff Ex. 1 at 17.)

For construction and future right-of-way maintenance, CCE will limit, to the greatest extent possible, the use of herbicides in proximity to surface waters, including wetlands, along the right-of-way. Individual treatment of tall-growing woody plant species is preferred, while general, widespread use of herbicides during initial clearing or future right-of-way maintenance would only be used where no other options exist. Prior to commencement of construction, the Applicant will submit a plan to Staff for review and confirmation that it complies with this commitment, describing the planned herbicide use for all areas in or near any surface waters during initial project construction and/or future right-of-way maintenance. (Staff Ex. 1 at 17.)

The proposed facility would employ 25 to 30 workers during operations and would not place major demands on local infrastructure. During construction, the principal impact on public services would be short-term increases in traffic on routes leading to the proposed facility due to deliveries of equipment and materials during construction. Workers arriving and departing during construction would also increase traffic. Some traffic management during the construction phase may be necessary in the immediate vicinity of the project area to ensure safe and efficient maintenance of existing traffic patterns and usages. Once the proposed facility is operational, related traffic would be minimal and would not be expected to significantly impact local roadways. Potential emergency service requirements would be coordinated with local officials and local emergency response personnel would be trained on the facility's emergency response system. CCE would restrict public access to the facility with appropriately placed warning signs and other necessary measures. (Staff Ex. 1 at 18.)

CCE's Transportation Management Plan would consider delivery of material and major components assuming final transportation to the proposed facility by road or rail from major highways, rail nodes, and ports in the vicinity. The proposed facility access plans would be finalized following Power Train Equipment Supplier and Engineering Procurement and Construction Contractor selection and final calculations of the load and dimensional requirements for equipment transportation. Equipment deliveries to the proposed facility would primarily be by truck and would be planned to minimize impact to local traffic patterns. (Staff Ex. 1 at 18.)

Rail access to the proposed facility is via the Wheeling & Lake Erie Railway. The nearby rail transfer capability at the port would allow incoming shipments to be loaded onto rail cars at the port. All systems involved in any rail or roadway transportation to the proposed facility, including rail and rail car capacity, crane access and lifting capacity, impact to rail traffic patterns, roadway capacities and clearances, and impact to affected road traffic patterns, would be analyzed in a detailed Transportation Management Plan prior to any transportation. The roadways adjacent to the proposed facility are connected to the U.S. Interstate Highway and Ohio State Highway systems. Any truck loaded in excess of 80,000 pounds gross weight traveling on the U.S. Interstate Highway and Ohio State Highway systems would require an Ohio Special Hauling Permit. Alternative access to the proposed facility is available by the use of village streets, township and county roads, and the state highway system. Use of the alternative route would require local permits with the county in order to haul along the village streets. Staff recommends CCE develop a final Transportation Management Plan which would include a Road Use Agreement and CCE's commitment to repair damage to government-maintained roads and bridges caused by construction of the proposed facility. (Staff Ex. 1 at 18-19.)

Staff notes that CCE has made a commitment not to dispose of gravel or any other construction material during or following construction of the facility by spreading such material on agricultural land. Further, CCE agrees that all construction debris and all contaminated soil would be promptly removed and properly disposed of in accordance with Ohio EPA regulations. (Staff Ex. 1 at 19.)

The proposed facility would be constructed, operated, and maintained in accordance with applicable safety regulations, including Occupational Safety and Health Administration requirements, and industry standards. The facility personnel would be extensively trained to operate the equipment in a safe and reliable manner. The Applicant would secure pertinent federal and state environmental permits, and construct and operate the facility in accordance with all applicable environmental and safety regulations. An emergency shower/eyewash designed to meet American National Standards Institute Z358.1-2009 standards would be located in proximity to the ammonia storage tank, but outside the containment area. Proper training in emergency shower/eyewash procedures would be provided to Staff and emergency respirators would be available at the proposed facility for use by trained personnel. The Applicant will incorporate appropriate safety measures and design to prevent and contain any accidental spill of on-site chemicals. (Staff Ex. 1 at 19.)

Staff notes that, in order to operate the natural gas interconnection and associated equipment safely and reliably, and to minimize the possibility of failure in the gas supply system, the equipment should be built, operated, and maintained to meet the requirements in Title 49 CFR parts 191 and 192, the Federal Minimum Pipeline Safety Standards; part 199 and part 40, the Drug and Alcohol Regulations; the R.C. 4905.90 through 4905.96,

Natural Gas Pipeline Safety Standards; and Ohio Adm.Code Chapter 4901:1-16, Gas Pipeline Safety. The Applicant has committed to using inert gases or compressed air for all cleaning of pipes during construction, consistent with the National Fire Protection Association (NFPA) 56 (PS) "Standard for Fire and Explosion Prevention During Cleaning and Purging of Flammable Gas Pipeline Systems." (Staff Ex. 1 at 19.)

A complete fire protection/detection system would be provided for the proposed facility. The system would include fixed water fire suppression systems, fire hose stations, hydrants, portable fire extinguishers, detection and control systems. The system would include an electric motor driven fire water pump and a backup diesel engine driven fire water pump (an approximately 50-gallon double containment oil storage tank would be integrated into the unit). The diesel driven fire water pump would use ultra-low sulfur diesel. It would be designed and installed in accordance with NFPA standards and the insurer's recommendations. All fire protection equipment and systems would be Underwriters' Laboratory approved and comply with requirements of the local fire protection authority and CCE's insurance carrier. (Staff Ex. 1 at 19-20.)

The Applicant will develop, in consultation with the fire department(s) and emergency personnel, an emergency and safety plan to be used during construction. CCE's emergency and safety plan will be submitted to Staff at least 30 days prior to the preconstruction conference, for review and confirmation that it complies with this commitment. (Staff Ex. 1 at 20.)

The electric and magnetic fields resulting from the generation equipment are expected to be confined to the site. The magnetic fields created by the generation equipment are attenuated very rapidly as the distance from the equipment increases. (Staff Ex. 1 at 20.)

Carroll County lies within the unglaciated, dissected Allegheny Plateau section of the Appalachian Plateau Province. The county is characterized by relatively high relief and rugged topography that features narrow ridges, steep slopes, and a high degree of stream dissection. The underlying bedrock is mainly sandstone, shale, and limestone, all of which were deposited during the Pennsylvanian period. (Staff Ex. 1 at 20.)

Much of Carroll County has been extensively surface and underground mined including the area north and south of the proposed facility. Remnants of abandoned underground coal mining operations exist to the north and south of the project area. The closest mine is less than 0.5 miles south of the project site. There are no maps or mining records to define the extent of these coal mining operations. Due to the absence of mining records and mine maps defining the extent of the underground coal mining operations, Staff recommends that the Applicant be required to verify the depths of the coal seam. If it is determined that mine voids are present and the subsurface rock would not support the

proposed facility, then Staff would recommend that CCE be required to develop a subsidence mitigation plan. (Staff Ex. 1 at 20-21.)

The subsidence mitigation plan would provide geotechnical and engineering design recommendations that would be included in the final design of the proposed facility, including, but not limited to, grouting the mined-out cavities. Additionally, the mitigation plan would consider the potential risk for induced subsidence and other mining effects on neighboring properties due to the construction of the proposed facility. According to the Staff Report, there is no recorded seismic activity in Carroll County. (Staff Ex. 1 at 21).

According to the soil survey of Carroll County, the Westmoreland series consists of soils that are deep, dominantly gently sloping to steep, well-drained and moderately well-drained soils formed in residuum and colluvium derived from sandstone, siltstone, and shale on uplands and ridgetops. The Berks series consists of moderately steep, moderately deep, well-drained soil commonly found on hillsides. Due to the severe slopes where both soils types are found, the Berks and Westmoreland soils are poorly suited for building site development. Less severe slopes of less than 15 percent, like those in the project area, do not present this hazard. Erosion is also a primary concern during construction; however, it can be controlled through appropriate best management practices such as limiting the amount of vegetation removed during construction, mulching, establishing a temporary plant cover on construction sites, and proper installation of sediment and erosion control devices. (Staff Ex. 1 at 21.)

CCE has conducted shallow soil test borings (less than 25 feet in depth) at the project site. Soil samples were obtained for further laboratory analysis and identification purposes. According to the soil survey of Carroll County, the Westmoreland and Berks soil types are present in the county. Due to the severe slopes where both soils types are found, the soils are poorly suited for building site development. The soil survey reinforces Staff's recommendation that CCE be required to verify the depths of the coal seam at the project site and to develop a subsidence mitigation plan if mining voids are present. (Staff Ex. 1 at 21.)

If blasting is necessary, prior to the use of explosives, CCE or the explosive contractor would obtain all required local, state, and federal licenses/permits. The Applicant would submit a copy of the license or permit to Staff within seven days of obtaining it from the local authority. Staff recommends that the blasting contractor utilize two blasting seismographs that measure ground vibration and air blast for each blast. One seismograph would be placed at the nearest dwelling and the other placed at the discretion of the blasting contractor. At least 30 days prior to the initiation of blasting operations, CCE would notify, in writing, all residents or owners of dwellings or other structures within 1,000 feet of the blasting site and offer and to conduct a pre-blast survey of each dwelling or structure. (Staff Ex. 1 at 21-22.)

Many of the construction activities would generate significant noise levels, including the operation of various trucks and heavy equipment. However, the adverse impact of construction noise would be temporary and intermittent, it would occur away from most residential structures, and most construction activities normally would be limited to daytime working hours. (Staff Ex. 1 at 22.)

Staff notes that CCE conducted a background ambient noise level study in the vicinity of the proposed facility. Based on measurements taken at three locations over a two-week monitoring period, the study revealed continuous sound level during daytime hours ranging from 42 decibel A-weighted (dBA) to 52 dBA and during night time hours ranging from 36 dBA to 45 dBA. Using a software program to estimate noise levels from the operation of the proposed facility, CCE predicted noise level impacts to residences in the project study area. Based on modeling results, CCE has established a noise level design goal of 45 dBA at noise sensitive receptors. Utilizing equipment fitted with the manufacturer's standard noise controls, the model reveals that the design goal of 45 dBA is exceeded at four noises sensitive receptors. By incorporating additional noise mitigation measures beyond the manufacturer's noise controls and/or increasing the thickness of steel plates used in sidewall construction, the proposed facility meets the design goal at all noise sensitive receptors. Staff recommends that CCE use the noise mitigation measures included in the mitigated model and include procedures in its complaint resolution process for resolving noise complaints. (Staff Ex. 1 at 22.)

Staff notes that CCE evaluated historic data on wind speeds and directions collected by the National Weather Service station at the Pittsburgh International Airport in Coraopolis, Pennsylvania for the years 2008 through 2012. The Ohio EPA selected this weather station as the most representative of the proposed facility. The Applicant does not anticipate adverse consequences from high wind conditions. Staff recommends that CCE implement typically used measures to mitigate against high winds for cooling stacks and buildings in accordance with local building codes and best engineering practices. (Staff Ex. 1 at 22.)

Based on its investigation, Staff recommends the Board find that the nature of the probable environmental impact has been determined for the proposed generation facility and, therefore, complies with the requirements set forth in R.C. 4906.10(A)(2). However, Staff further recommends that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 23.)

### 3. Minimum Adverse Environmental Impact - R.C. 4906.10(A)(3)

CCE considered sites within Carroll County based on minimizing the potential impacts of the proposed facility with the goal of the reliable generation of electricity.

Based on certain site selection criteria, including, primarily, the proximity to natural gas pipelines, electrical interconnections, and major transportation corridors, the Applicant evaluated sites in Carroll County. CCE also considered the aesthetic impacts on surrounding land uses, existing geotechnical conditions, water supply and wastewater discharge, a suitable buffering space and the avoidance of public recreational areas, and sensitive ecological and cultural resources, as well as community support for the proposed project. The Applicant requested, and was granted, a waiver from the requirement to submit an alternative site and alternative site information. (Staff Ex. 1 at 24.)

Staff states that the proposed electric generation facility has been designed and sited to minimize potential impacts while meeting the need for the proposed facility. The facility site and surrounding area is predominantly agricultural with very sparse residential and, therefore, the land use and residential impacts would be minimal. The development of a generation facility in the region is consistent with regional plans for the conservation of farmland and economic diversity. The proposed facility would have an overall positive impact on the local economy due to the increase in construction spending, wages, the purchase of goods and services, annual lease payments to the local landowners, and local tax revenue. (Staff Ex. 1 at 24.)

Staff notes that, consistent with CCE site selection criteria, the site is located within proximity of existing 345 kV electric transmission lines and two natural gas transmission lines. The electric transmission lines have sufficient capacity to supply the power generated at the proposed facility to multiple distribution systems. (Staff Ex. 1 at 24.)

Potential noise impacts associated with operation of the proposed facility were modeled by the Applicant. With noise mitigation measures in place, the mitigated model results show that the noise level design goal of 45 dBA at noise sensitive receptors would be met. (Staff Ex. 1 at 25.)

Based on Staff's review, construction of the CCE generation facility would cause temporary and permanent impacts to woodlots and wetlands. Streams, ponds, and lakes would be avoided during construction and operation of the generation facility. Staff notes that CCE has committed to seasonal tree cutting dates of October 1 to March 31 for suitable Indiana bat habitat and the development of a streamside vegetation restoration plan. (CCE Ex. 3 at 3; Staff Ex. 1 at 25.)

During construction of the facility, local, state, and county roads would experience a temporary increase in truck traffic due to deliveries of equipment and materials. A final routing plan would be developed through discussions with the appropriate regulatory agency and performed in conjunction with the special hauling permit process for ODOT. (Staff Ex. 1 at 25.)

CCE conducted shallow test borings, less than 25 feet in depth, at the project site. Based on Staff's review of this information, it is unclear to Staff if the underlying rock formations would support the weight of the proposed facility. To ensure that the underlying rock formations would support the proposed facility, Staff recommends CCE be required to verify the depths of the #7A coal seam. If it is determined that mining voids are present at the construction site and the subsurface rock does not support the facility, Staff contends CCE must develop a subsidence mitigation plan. (Staff Ex. 1 at 25.)

Based on its investigation, Staff concludes that the project, as proposed, would result in both temporary and permanent impacts to the project area and surrounding areas. However, Staff reasons that, due to the limited potential impacts to land use, cultural resources, streams, wetlands, and noise sensitive receptors, in conjunction with the Applicant's commitments and Staff's recommended conditions to mitigate these impacts, the project represents the minimal adverse environmental impact. Accordingly, Staff recommends the Board find that the proposed facility represents the minimum adverse environmental impact and, complies with the requirements specified in R.C. 4906.10(A)(3), provided that any certificate issued by the Board for the proposed facility includes the conditions specified in the Staff Report. (CCE Ex. 3; Staff Ex. 1 at 25.)

#### 4. Electric Grid - R.C. 4906.10(A)(4)

According to the Staff Report, the proposed CCE facility was evaluated by PJM Interconnection LLC (PJM), the regional transmission operator, and was also reviewed for compliance with the North American Electric Reliability Corporation reliability standards to the system. The proposed generation facility would be located in the AEP control area and interconnect to the local and regional grid via the Tidd-Canton Central 345-kV transmission line and was also evaluated for compliance with AEP transmission planning criteria. (Staff Ex. 1 at 26-28.)

Staff evaluated PJM's Feasibility Study and System Impact Study (SIS) for compliance with reliability criteria for PJM summer peak load conditions forecast for the summer of 2016. The SIS revealed no local or network transmission facilities would be overloaded under normal or contingency conditions. AEP's local system was studied during 2016 summer conditions for impacts at full energy output of the proposed facility and the capacity portion (672 MW) and no problems were reported at either operational output level. Thus, interconnection of the proposed CCE generation facility would not require system upgrades to mitigate reliability criteria violations, and would not cause short circuit or stability problems. (Staff Ex. 1 at 26-29.)

Staff concludes that the proposed facility is expected to provide reliable generation to the bulk electric transmission system, is consistent with plans for expansion of the regional power system, and would serve the interests of electric system economy and

reliability. According to Staff, the facility would serve the public interest, convenience, and necessity by providing additional electrical generation to the regional transmission grid. Therefore, Staff reasons the proposed generation facility complies with the requirements specified in R.C. 4906.10(A)(4), provided that any certificate issued by the Board for the proposed facility include the conditions specified in the Staff Report. (Staff Ex. 1 at 29-30.)

5. Air, Water, and Solid Waste - R.C. 4906.10(A)(5)

According to the Staff Report, Carroll County has reached full attainment for all six National Ambient Air Quality Standards criteria air pollutants: ozone, sulfur dioxide, particulate matter, nitrogen dioxide, carbon monoxide, and lead. Staff notes that the operational impacts of the proposed generation facility on air quality would be minimized through the use of efficient new gas turbine technology, and by incorporating dry-low nitrogen burners, oxidation catalysts, and selective catalytic reduction systems to control nitrogen dioxide, carbon dioxide, and volatile organic compound emissions. Sulfur dioxide, sulfuric acid, and particulate matter would be controlled by the use of low sulfur natural gas. Greenhouse gas emissions would be controlled through energy efficiency. (Staff Ex. 1 at 31.)

CCE submitted its application for a permit-to-install to the Ohio EPA and the final permit-to-install was issued to the Applicant in November 2013. The permit-to-install serves as CCE's air construction permit and initial operating permit and includes the air pollutant limits, best available control technology and compliance methods for the proposed generation facility. Staff notes that the Applicant must apply for a Title V air operating permit within 12 months after initial startup and must submit a Title IV Acid Rain Program permit application for emissions of sulfur dioxide and nitrogen oxide at least 24 months prior to commencement of operation. Emissions from the generation facility would be tracked via a continuous emissions monitoring system, which is designed to detect a deterioration of the selective catalytic reduction system. According to the Staff Report, the proposed generation facility emissions would comply with Ohio EPA permit requirements under all operating conditions. (Staff Ex. 1 at 31.)

According to the Staff Report, construction impacts on air quality consist mostly of relatively minor emissions from the construction equipment and from fugitive dust emissions. Construction vehicles would emit insignificant amounts of volatile organic compounds, sulfur dioxide, carbon monoxide, nitrogen oxides, and particulate matter, which are not expected to cause any significant adverse impacts to air quality. Staff notes that fugitive dust rules, adopted pursuant to the requirements of R.C. Chapter 3704, are applicable to the proposed facility and CCE has committed to complying with fugitive dust rules by water spray or other dust suppressant measures whenever necessary. (Staff Ex. 1 at 31; CCE Ex. 2 at 4.)



Staff submits that construction of the proposed facility would not require the use of significant amounts of water. However, operation of the proposed facility would require significant amounts of water. The proposed facility's raw water needs would range from approximately 300,000 gallons per day (GPD) during average operating conditions to 400,000 GPD during peak operating conditions. CCE will enter into a contract with one of two suppliers in the region for its operational water supply. Based on the need for the Applicant to obtain water from a supplier, requirements under R.C. 1503.33 and 1501.34 are not applicable to this project. (Staff Ex. 1 at 32; CCE Ex. 1 at 3, 6-7.)

The industrial and sanitary wastewater from the proposed facility would be discharged to an existing publicly-owned treatment works (POTW), consistent with pretreatment requirements and in compliance with the POTW's existing NPDES authorization. During operation of the proposed facility, CCE plans to use water pollution control equipment. This equipment includes an in-line meter to measure acidity or alkalinity, a neutralization tank for demineralized regenerate waste to comply with POTW pretreatment standards, an oil/water separator for equipment drains, spill containment areas for bulk chemical storage tanks and unloading areas, in-line flow equalization, and stormwater collection ponds for stormwater management. (Staff Ex. 1 at 32.)

The Applicant states that the wastewater discharge would vary by season, with a peak daily discharge during the summer season of approximately 280,000 GPD and an average daily discharge of approximately 212,000 GPD. When the proposed facility is not operating, wastewater discharge would be primarily limited to sanitary uses. CCE would submit a Notice of Intent for coverage under Ohio EPA's NPDES general permit, including a SWPPP. CCE's SWPPP would be developed for the project pursuant to Ohio EPA regulations and to conform to ODNR's Rainwater and Land Development Manual. Prior to operation of the facility, the Applicant would obtain a general NPDES permit for stormwater discharges associated with operation, if necessary. (Staff Ex. 1 at 32.)

CCE commits to provide to Staff for review and acceptance, at least seven days before the preconstruction conference, a copy of all NPDES permits including its approved SWPPP, approved Spill Prevention, Containment, and Countermeasure (SPCC) Plan procedures, and its erosion and sediment control plan. Any soil issues would be addressed through proper design and adherence to the Ohio EPA best management practices related to erosion and sedimentation control. (Staff Ex. 1 at 32; CCE Ex. 3 at 3.)

CCE commits to remove all temporary gravel and other construction staging area and access road materials after completion of construction activities, as weather permits, unless otherwise directed by the landowner. Impacted areas would be restored to preconstruction conditions in compliance with the NPDES permit(s) obtained for the project and the approved SWPPP created for this project. The Applicant does not

anticipate the need for an Army Corps of Engineers Nationwide Permit to construct this project. Stormwater flows from the developed site would be controlled through the use of on-site stormwater collection ponds to allow clean stormwater to further settle and to retain peak flows, prior to release. (Staff Ex. 1 at 32-33; CCE Ex. 3 at 3-4.)

CCE indicates that solid waste generated during construction and preoperational cleaning, would be recycled and reused where feasible. Staff notes that solid waste that can be neither recycled nor reused would be stored in on-site containers for disposal and trucked off site by licensed contractors in accordance with applicable regulatory requirements. Selective catalytic reduction catalysts would be removed and returned to a catalyst vendor for regeneration, salvage, or disposal. According to the Staff Report, CCE would develop programs to ensure that potentially hazardous wastes are separated from other waste, including segregation of storage areas and proper labeling of containers. According to Staff, CCE would have a SPCC Plan in place and would follow manufacturers' recommendations for any spill cleanup. Based on its investigation, Staff states that the Applicant's solid waste disposal plans comply with solid waste disposal requirements in R.C. Chapter 3734. (Staff Ex. 1 at 33.)

Staff contacted Ohio Department of Transportation -Office of Aviation (ODOT-OA), during review of this application, in order to coordinate review of potential impacts the facility might have on local airports. According to Staff, Carroll County-Tolson Airport, a county-owned and publicly used airport, is the closest airport and it is slightly less than three miles southeast of the project site. CCE has received a determination of no hazard to navigation for the proposed project from the Federal Aviation Administration (FAA) and no concerns had been identified by the ODOT-OA, as of the filing of the Staff Report. However, additional coordination with the FAA and ODOT is necessary to clarify the marking and lighting requirements for the stacks on the generation facility. Further, Staff notes that CCE has committed to meet all recommended and prescribed FAA and ODOT-OA requirements to construct a facility that may affect navigable airspace and to ensure that all applicable construction equipment is lit in accordance with FAA requirements. (CCE Ex. 3 at 4; Staff Ex. 1 at 33-34.)

Staff recommends the Board find that the proposed CCE generation facility complies with the requirements in R.C. 4906.10(A)(5) and that any certificate issued by the Board include the conditions set forth in the Staff Report. (Staff Ex. 1 at 31-34.)

6. Public Interest, Convenience, and Necessity - R.C. 4906.10(A)(6)

R.C. 4906.10(A)(6) requires that the Board determine that the facility will serve the public interest, convenience, and necessity. Staff notes the opportunities for the public to be informed and comment on the proposed project, and points out that CCE has been engaged in the community since 2011 and commenced formal meetings with county officials and local economic development personnel in July 2012. CCE held a public

information meeting on August 22, 2013, where CCE representatives were available to answer questions and maps of the proposed project were presented. CCE plans to utilize an on-site construction manager who will also serve as a contact person for the community during construction and to allow tours of the facility once it is operational. As previously noted, a local public hearing was held in Carrollton, Ohio on March 6, 2014, where the Board was available to accept written and oral testimony from any person and the evidentiary hearing was held on March 13, 2014, at the Board's offices in Columbus, Ohio. (Staff Ex. 1 at 35.)

In its report, Staff contends that, based on the socioeconomic analysis software used by the Applicant, the construction and operation of the proposed facility would have an overall positive impact on the economy in the northeast region of Ohio. The positive economic impact would be a result of construction spending, the purchasing of supplies, and the spending of construction workers and suppliers. According to the Staff Report, the direct, indirect, and induced economic benefits to the region during construction of the project would create 1,403 jobs during the 28-month construction period and generate approximately \$944 million in total economic impact in the northeast region and the state of Ohio. Over the 30-year operational period, the proposed facility would contribute \$17 million in annual economic impact, \$9.4 million in gross state product and 72 jobs. (Staff Ex. 1 at 35-36; CCE Ex. 2, App. M at 4-5, 15.)

Therefore, Staff recommends the Board find that the proposed facility would serve the public interest, convenience, and necessity, and that it complies with the requirements specified in R.C. 4906.10(A)(6), subject to the conditions set forth in the Staff Report (Staff Ex. 1 at 36).

#### 7. Agricultural Districts - R.C. 4906.10(A)(7)

In accordance with provisions of R.C. Chapter 929, land is classified as agricultural district land through an application and approval process that is administered through the local county auditor's office. CCE states, and Staff agrees, that no agricultural district land is located within the proposed facility site or construction laydown area. Therefore, no agricultural district would be impacted by the proposed facility. (CCE Ex. 2 at 161; Staff Ex. 1 at 37.)

In the Staff Report, Staff notes that the facility site and an adjacent parcel, which the Applicant proposes to use for construction laydown, were previously used for agricultural production. Further, 25 acres of land currently used for agricultural production, would house the proposed generation facility and no longer be available as farmland. (Staff Ex. 1 at 37.)

Staff recommends the Board find that the impact of the proposed facility on the viability of existing agricultural land in an agricultural district has been determined and,

therefore, complies with the requirements in R.C. 4906.10(A)(7). Further, Staff recommends that any certificate issued by the Board include the conditions set forth in the Staff Report. (Staff Ex. 1 at 37.)

8. Water Conservation Practice - R.C. 4906.10(A)(8)

Staff notes that the air cooling system proposed by CCE uses up to 93 percent less water than conventional wet cooling systems. CCE also incorporates the recirculation of process water to maximize water conservation. Staff notes that CCE has not finalized arrangements with a water supplier; however, Staff recognizes that CCE plans to secure its water supply from a regulated water supplier who must comply with the requirements of R.C. 1503.33 and 1501.34. Accordingly, the Staff recommends the Board find that the proposed generation facility meets the requirements specified in R.C. 4906.10(A)(8), provided any certificate issued for the proposed project includes the recommended conditions listed in the Staff Report. (Staff Ex. 1 at 38.)

9. Staff Recommended Conditions

In the Staff Report, Staff recommends that any certificate issued by the Board approving the construction, operation, and maintenance of the proposed generation facility include 15 conditions, including requirements to address socioeconomic impacts, public service, facilities and safety conditions, and to secure federal and state permits. (Staff Ex. 1 at 39-41.)

V. STIPULATION

As previously noted, on March 10, 2014, CCE, Washington Township, and Staff (Signatory Parties) filed a Stipulation resolving all the issues presented in this case (Joint Ex. 1). At the evidentiary hearing, CCE witness Winslow and Staff witness Rostofer presented testimony in support of the Stipulation (Evidentiary Hearing Tr. at 8-13, 15-17). As part of the Stipulation, the Signatory Parties agree and recommend that the Board should issue a certificate to CCE, subject to certain conditions. The following is a summary and is not intended to replace or supersede the language of the Stipulation:

- (1) The facility shall be installed at the Applicant's site as presented in the application, and as modified and/or clarified by the Applicant's supplemental filings and further clarified by the Stipulation.
- (2) The Applicant shall utilize the equipment and construction practices as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and as modified by the Stipulation.

- (3) The Applicant shall implement the mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests and as modified by the Stipulation.
- (4) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the prime contractors shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review. The Applicant may conduct separate preconstruction meetings for each stage of construction.
- (5) At least 30 days before the preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project layout, including the facility, temporary and permanent access roads, any crane routes, construction staging areas, and any other associated facilities and access points, so that Staff can determine that the final project layout is in compliance with the terms of the certificate. The final project layout shall be provided in hard copy and as geographically referenced electronic data. The final layout shall include references at the locations where the Applicant and/or its contractors must adhere to a specific condition in order to comply with the certificate.
- (6) With the exception of removal of trees that exhibit suitable Indiana bat habitat, the Applicant shall not commence any construction of the facility until it has a Interconnection Service Agreement or Interim Interconnection Service Agreement with PJM, signed or filed unsigned with the Federal Energy Regulatory Commission, which includes construction, operation, and maintenance of system upgrades necessary to reliably and safely integrate the proposed generating facility into the regional transmission system. The Applicant shall provide a letter stating that the Agreement has been signed or a copy of the signed Interconnection Service Agreement to Staff.

- (7) Prior to commencement of any construction related to final landscape and outdoor lighting, the Applicant shall prepare a landscape and lighting plan that addresses the aesthetic and lighting impacts of the facility. The Applicant shall consult with adjacent property owners in the development of this plan and provide the plan to Staff for review and confirmation that it complies with this condition.
- (8) Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. The Applicant's process for coordination shall be detailed as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation that it complies with this condition.
- (9) General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving, hoe ram, and blasting operations, if required, shall be limited to the hours between 10:00 a.m. to 5:00 p.m., Monday through Friday. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-5-08(C)(3) of upcoming construction activities, including potential for nighttime construction activities.
- (10) Prior to commencement of construction, the Applicant shall conduct test borings to a maximum of 150 feet to confirm, to the extent possible, the depth of the Upper Mahoning (#7A) coal seam. Test borings will include rock quality description data to confirm that subsurface conditions would support the proposed facility. If it is determined that mine voids are present and the subsurface rock does not support the proposed facility, then the Applicant shall be required to develop a subsidence mitigation plan. The subsidence mitigation plan shall provide geotechnical and engineering design recommendations that shall be included in the

final design of the proposed facility, including, but not limited to, grouting the mined out cavities. Additionally, the mitigation plan shall consider the potential risk for induced subsidence and other mining effects on neighboring properties due to the construction of the proposed facility.

- (11) Should site-specific conditions warrant blasting, the Applicant shall submit a blasting plan, at least 30 days prior to blasting, to Staff for review and confirmation that it complies with this condition. The Applicant shall submit the following information as part of its blasting plan:
  - (a) The name, address, and telephone number of the drilling and blasting company.
  - (b) A detailed blasting plan for dry and/or wet holes for a typical shot. The blasting plan shall address blasting times, blasting signs, warnings, access control, control of adverse effects, and blast records.
  - (c) A plan for liability protection and complaint resolution.
- (12) The Applicant shall repair damage to government-maintained (public) roads and bridges caused by construction activity. Any damaged public roads and bridges shall be repaired promptly to their preconstruction state by the Applicant under the guidance of the appropriate regulatory agency. Any temporary improvements shall be removed, unless the appropriate regulatory agency requests that they remain. If required by the appropriate regulatory agency, the Applicant shall provide financial assurance to that agency that it will restore the public roads it used to their preconstruction condition. If county or township roads are utilized for the construction of this project, the Applicant shall also enter into a road use agreement with the appropriate local authority prior to construction and subject to Staff review and confirmation that it complies with this condition. The road use agreement shall contain provisions for the following:
  - (a) A preconstruction survey of the conditions of the roads.

- (b) A post-construction survey of the condition of the roads.
  - (c) An objective standard of repair that obligates the Applicant to restore the roads to the same or better condition as they were prior to construction.
  - (d) A timetable for posting of the construction road and bridge bond prior to the use or transport of heavy equipment on public roads or bridges.
- (13) Mitigation measures shall be incorporated into the facility so that the estimated nighttime facility noise contribution as modeled does not result in a noise level greater than 45 dBA at the exterior of any currently existing sensitive receptor. This condition shall not apply to any sensitive receptor for which individual mitigation measures have been implemented including, but not limited to, project cooperation agreements or noise easements. After commencement of commercial operation, the Applicant shall review all facility-related noise complaints through its complaint resolution process. If, upon investigation of a complaint, it is found that noise due to facility operations results in a facility noise level greater than 45 dBA at the exterior of the affected existing sensitive receptor(s), except those with project cooperation agreements or noise easements, additional mitigation measures shall be implemented for the affected receptor(s).
- (14) The Applicant shall provide a copy of any floodplain permit required for construction of this project, or a copy of correspondence with the floodplain administrator showing that no permit is required, to Staff within seven days of issuance or receipt by the Applicant.
- (15) Thirty days prior to commencement of construction, the Applicant must notify, in writing, any owner of an airport located within 20 miles of the project boundary, whether public or private, whose operations, operating thresholds/minimums, landing/approach procedures and/or vectors are expected to be altered by the siting, operation, or maintenance of the facility.
- (16) Any supplier of water to the facility, as selected by the Applicant, shall comply with R.C. 1501.33 and 1501.34, unless exempt.



- (17) For informational purposes only, the Applicant will notify the Washington Township Board of Trustees or its designee as to: any preconstruction conference with Staff referenced in Condition 4; the location and availability of the final engineering layout drawings referenced in Condition 5; any blasting operations necessary during construction of the facility; and a copy of the traffic plan referenced in Condition 8 and the blasting plan referenced in Condition 11.

(Joint Ex. 1 at 4-8.)

## VI. CONCLUSION

Ohio Adm.Code 4906-7-09 authorizes parties to Board proceedings to enter into stipulations concerning issues of fact. Although not binding on the Board, pursuant to Ohio Adm.Code 4906-7-09(C), the terms of such an agreement are accorded substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Board proceedings. See, e.g., *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013); *In re Rolling Hills Generating, LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 13, 2013); *In re Hardin Wind LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014). The ultimate issue for the Board's consideration is whether the stipulation, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

In the Stipulation, CCE, Washington Township, and Staff agree that the Stipulation results from discussion between the parties who acknowledge that this agreement is amply supported by the record and, thus, is entitled to careful consideration by the Board (Joint Ex. 1 at 4). CCE witness Winslow contends that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Mr. Winslow explains that the parties engaged in open negotiation discussions, where each of the parties was represented by counsel. The witness acknowledges that, through negotiations, the parties

modified some of the conditions contained in the Staff Report and added a condition at the request of Washington Township. Staff witness Rostofer was also of the opinion that the Stipulation was the product of serious bargaining among capable and knowledgeable parties. (Evidentiary Hearing Tr. at 11-12, 16.)

The Board finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. The Board notes that all the parties to the proceeding are signatories of the Stipulation. We further recognize that the counsel for each of the parties has participated in several other Board proceedings and is, therefore, familiar with Board proceedings and certificate requirements. Consequently, the Board finds that, based upon the record, the first prong is satisfied.

CCE and Staff claim that the Stipulation, as a package, benefits the public interest. Mr. Winslow testified that the CCE generation project will help meet energy demand in a region where aging generation capacity is being retired. CCE witness Winslow reasoned that the proposed project will provide additional base load and peaking capacity. Further, Mr. Winslow testified that the generation project will benefit the local economy with new jobs, economic stimulus, and tax revenue. Staff witness Rostofer agreed that the CCE generation project benefits the public interest. Mr. Rostofer testified that the proposed natural gas generation facility will replace coal-fired plants being retired, reducing air emissions. Further, Mr. Rostofer noting the depressed economy in the region of the state, endorsed the financial and economic benefits the proposed facility would have on the local economy. (Evidentiary Hearing Tr. at 12, 16.)

Upon review, the Board finds that, as a package, the Stipulation benefits the public interest by resolving the issues raised in this matter without resulting in litigation. The Stipulation reflects, with some modification, consideration of Staff's recommendations and conditions, and also addresses Washington Township's concerns. While the Board acknowledges that the project was overwhelmingly endorsed at the public hearing, we also note one area resident raised concerns in comments filed with the Board. We believe that the Staff Report evaluates and addresses the concerns raised in regards to the project site and its proximity to near by residences, noise, water and wastewater, and site access and the Stipulation contains conditions that address such concerns. We find that, based on the evidence of record, the proposed project will generate clean electric energy, increase tax revenue for schools and local government, create construction and manufacturing jobs, and assist economic development efforts in Carroll County and the surrounding communities.

CCE witness Winslow states that the Stipulation does not violate any important regulatory principle or practice (Evidentiary Tr. at 12). Staff similarly claims that the Stipulation does not violate any important regulatory principle or practice (Evidentiary Tr. at 17). The Board finds that the Stipulation does not violate any important regulatory

principle or practice. Moreover, the conditions contained within the Stipulation adequately address all statutory requirements for such projects.

Based upon the record in this proceeding, the Board finds that all of the criteria established in R.C. Chapter 4906 are satisfied for the construction, operation, and maintenance of the generation facility, as described in CCE's application filed on November 15, 2013, as supplemented on February 5, 2014, subject to the conditions set forth in the Stipulation and this Order. Accordingly, based upon all of the above, the Board approves and adopts the Stipulation and hereby issues a certificate to CCE in accordance with R.C. Chapter 4906.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) CCE is a person under R.C. 4906.01(A) and is licensed to do business in the state of Ohio.
- (2) The proposed electric generation facility is a major utility facility, as defined in R.C. 4906.01(B).
- (3) On August 7, 2013, the Applicant filed its preapplication notice of a public information meeting. On October 29, 2013, CCE filed proofs of publication of the notice of the public information meeting, in *The Repository* and *The Free Press Standard*, on August 14, 2013, and August 15, 2013, respectively. The public information meeting was held on August 22, 2013.
- (4) On November 14, 2013, CCE filed a motion for waivers of certain provisions of Ohio Adm.Code 4906-13-03 and 4906-13-04. By Entry issued January 6, 2014, the motion for waivers was granted.
- (5) On November 15, 2013, as supplemented on February 5, 2014, CCE filed its application for a certificate to construct an electric generation facility in Washington Township, Carroll County, Ohio.
- (6) By letter dated December 20, 2013, the Board notified CCE that its application had been found to be sufficiently complete, pursuant to Ohio Adm.Code 4906-1, et seq.
- (7) CCE served copies of the application upon local government officials and libraries and filed its certificate of service of the

accepted and complete application, in accordance with Ohio Adm.Code 4906-5-06 and 4906-5-07 on December 26, 2013.

- (8) By Entry issued January 6, 2014, a local public hearing was scheduled for March 6, 2014, in Carrollton, Ohio and the evidentiary hearing was scheduled to commence on March 13, 2014, at the offices of the Board, in Columbus, Ohio.
- (9) On February 19, 2014, Staff filed its Staff Report.
- (10) On February 18, 2014, Washington Township filed a motion for intervention, and its request for intervention was granted by Entry issued March 6, 2014.
- (11) On February 13, 2014, in accordance with Ohio Adm.Code 4906-5-08(C), CCE filed its first proof of publication of the notice of the application and the hearings in *The Repository* and in *The Free Press* on January 9, 2014. On March 6, 2014, CCE filed its second proof of publication in *The Repository* and in *The Free Press* on February 20, 2014.
- (12) A local public hearing was held on March 6, 2014, at 6:00 p.m., at Carrollton High School, Fine Arts Room, 252 Third Street NE, Carrollton, Ohio. At the local public hearing, 13 individuals offered testimony on the proposed generation project, all in favor of the facility.
- (13) On March 10, 2014, CCE, Washington Township, and Staff, filed a Stipulation.
- (14) The evidentiary hearing was held on March 13, 2014, at the offices of the Board, in Columbus, Ohio. Two witnesses, one for CCE and one for Staff, offered testimony in support of the Stipulation.
- (15) Adequate data on the proposed generation facility has been provided to make the applicable determinations required by R.C. 4906.10(A).
- (16) The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.
- (17) The proposed project is an electric generation facility and does not include an electric transmission line or gas pipeline.

Accordingly, the record establishes that the basis of need, under R.C. 4906.01(A)(1) is not applicable to this project.

- (18) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the generation facility under R.C. 4906.10(A)(2).
- (19) The record establishes that the site for the proposed generation facility, subject to the conditions set forth in the Stipulation, 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 under R.C. 4906.10(A)(3).
- (20) The record establishes that, subject to the conditions set forth in the Stipulation, the generation facility is sited to be consistent with regional plans for expansion of the electric power grid and will serve the interests of electric system economy and reliability, under R.C. 4906.10(A)(4).
- (21) The record establishes, as required by R.C. 4906.10(A)(5), that the generation facility will comply with R.C. Chapters 3704, 3734, and 6111 and R.C. 1501.33 and 1501.34, and all rules and standards adopted under these chapters and under R.C. 4561.32.
- (22) The record establishes that the generation facility, as described in the Application, as supplemented, and subject to the conditions set forth in the Stipulation, will serve the public interest, convenience, and necessity, as required under R.C. 4906.10(A)(6).
- (23) The record establishes that the generation facility as described in the Application, as supplemented, and subject to the conditions in the Stipulation, will not impact the viability as agricultural land of any land in an existing agricultural district, under R.C. 4906.10(A)(7).
- (24) The record establishes that the proposed generation facility incorporates water conservation practices consistent with the requirements of R.C. 4906.10(A)(8).
- (25) The Stipulation satisfies the criteria established by the Board for review and consideration of stipulations.

- (26) Based on the record, the Board should approve the application, as supplemented, and issue a certificate, pursuant to R.C. Chapter 4906 for the construction, operation, and maintenance of the generation facility at the preferred site, subject to the conditions set forth in the Stipulation and this Order.

ORDER:

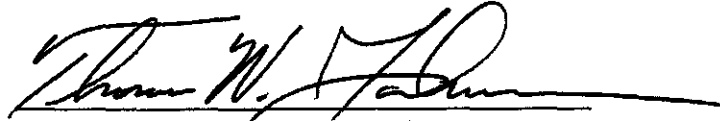
It is, therefore,

ORDERED, That the Stipulation be approved and adopted. It is, further,

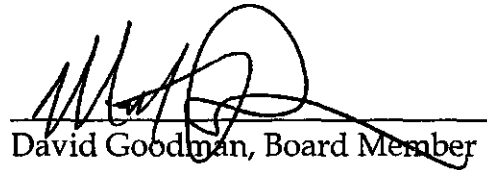
ORDERED, That a certificate be issued to CCE for the construction, operation, and maintenance of the generation facility at the proposed site subject to the conditions set forth in the Stipulation and this Order. It is, further,

ORDERED, That a copy of this Opinion, Order, and Certificate, be served upon all interested persons of record.

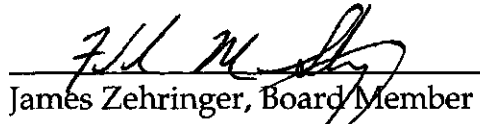
## THE OHIO POWER SITING BOARD



Thomas W. Johnson, Chairman  
Public Utilities Commission of Ohio



David Goodman, Board Member  
and Director of the Ohio  
Development Services Agency



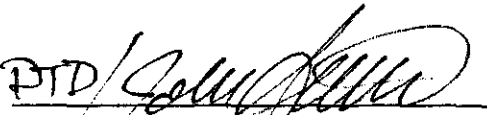
James Zehringer, Board Member  
and Director of the Ohio  
Department of Natural Resources



Lance Himes, Board Member  
and Interim Director of the  
Ohio Department of Health



Craig Butler, Board Member  
and Director of the Ohio  
Environmental Protection Agency



David Daniels, Board Member  
and Director of the Ohio  
Department of Agriculture



Jeffrey T. Lechak, Board Member  
and Public Member

GNS/vrm

Entered in the Journal

**APR 28 2014**



Barcy F. McNeal  
Secretary