

In the Matter of the Application of **NTE Ohio, LLC** for)
a Certificate of Environmental Compatibility and Public) Case No. 14-0534-EL-BGN
Need for the Middletown Energy Center)

culmination of these discussions, and the Parties acknowledge that this agreement is amply supported by the record and thus entitled to careful consideration by the Board. Accordingly, the Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the Facility.

II. STIPULATION AND RECOMMENDATION

A. Recommended Conditions

The proposed project includes the construction and operation of a natural gas fired combined-cycle power plant with a capacity of 525 MW. The proposed location of the Facility is a 46-acre parcel of land in Middletown, Butler County, Ohio. The Facility would consist of one 300 MW combustion turbine generator. The facility would also include one three-pressure heat recovery system generator with auxiliary duct burners and one reheat condensing steam turbine generator with an output of 225 MW. Construction is scheduled to begin in 2015.

The Parties recommend that the Board issue the Certificate of Environmental Compatibility and Public Need request by Applicant subject to the following conditions:

- (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 recommendations in this *Staff Report of Investigation*.
- (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 recommendations in this *Staff Report of Investigation*.
- (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 recommendations in this *Staff Report of Investigation*.
- (4) The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate.

- (5) The Applicant shall conduct a preconstruction conference prior to the start of any construction activities. Staff, the Applicant, and representatives of the prime contractor and all subcontractors for the project 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 various stages of construction.
- (6) The Applicant shall use inert gases or compressed air for all cleaning of pipes during construction, consistent with the NFPA 56 (PS) "Standard for Fire and Explosion Prevention During Cleaning and Purging of Flammable Gas Pipeline Systems."
- (7) The Applicant shall coordinate with fire, safety, and emergency personnel during all stages of the project. At least 30 days before the preconstruction conference, the Applicant shall submit an emergency response plan to be used during construction for Staff's review to ensure compliance with this condition. This plan should be developed in consultation with the fire department(s) having jurisdiction over the area.
- (8) 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 Rule 4906-5-08(C)(3), OAC, of upcoming construction activities including potential for nighttime construction activities.
- (9) Prior to construction, the Applicant shall finalize Staff and State Historic Preservation Office ("SHPO") coordination of the review of potential effects, if any, on historical architecture and the Phase II cultural resources archeological work at Site 33BU1071. If the resulting coordination discloses a find of cultural or archaeological significance, or a site that could be eligible for inclusion on the National Register of Historic Places, then the Applicant shall submit an amendment, modification, or mitigation plan to Staff to ensure compliance with this condition. Any such mitigation effort, if needed, shall be developed in coordination with SHPO and submitted to Staff for review.
- (10) A Geotechnical Engineer shall be retained to provide soil engineering services to support the site preparation, excavation, and foundation phases of the proposed project.

- (11) The recommendations of TTL Associates must be followed in design and construction of the proposed facility. If project criteria or locations change, a Geotechnical engineer should be permitted to determine whether the recommendations must be modified.
- (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. The Applicant shall also have its Traffic Study with recommendations addressing traffic, road repair, and transportation management to be approved by the City of Middletown. The final Traffic Study shall be submitted to Staff, the City of Monroe and Butler County.
- (13) The Applicant shall not conduct any in-water work in perennial streams from April 15 to June 30 to reduce impacts to indigenous aquatic species and their habitat.
- (14) If in-water work is planned in any Group 1 streams or unlisted streams with a watershed of 10² miles or larger above the point of impact shall be assessed using the Reconnaissance Survey for Unionid Mussels (Appendix B) to determine if mussels are present. This is further explained within the Ohio Mussel Survey Protocol. The Applicant shall provide information to indicate that no mussel impacts will occur. If this is not possible, a professional malacologist shall conduct a mussel survey in the project area. If mussels that cannot be avoided are found in the project area, as a last resort, the professional malacologist shall collect and relocate the mussels to suitable and similar habitat upstream of the project site. Mussel surveys and any subsequent mussel relocation should be done in accordance with the Ohio Mussel Survey Protocol.
- (15) Construction in upland sandpiper preferred nesting habitat types shall be avoided during the species' nesting period of April 15 to July 31.
- (16) The Applicant shall have a qualified 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 shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction.
- (17) The Applicant shall contact Staff, ODNR, and USFWS within 24 hours if state or federal species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be halted until an appropriate course of action has been agreed upon by the Applicant, Staff, and ODNR in coordination with USFWS. Nothing in this

condition shall preclude agencies having jurisdiction over the facility with respect to wildlife from exercising their legal authority over the facility consistent with law.

- (18) 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.
- (19) 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 design, 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 design 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 design shall include all requirements of the certificate and references at the locations where the Applicant and/or its contractors must adhere to a specific requirement in order to comply with the certificate.
- (20) Prior to the commencement of construction activities that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
- (21) If any changes are made to the project layout after the submission of final engineering drawings, all changes shall be provided to Staff in hard copy and as geographically referenced electronic data. All changes outside the environmental survey areas and any changes within environmentally-sensitive areas shall be subject to Staff review and acceptance, to ensure compliance with all requirements of the certificate, prior to construction in those areas.
- (22) Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If the Applicant demonstrates that good cause prevents it submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically-referenced electronic data.
- (23) The Applicant shall restrict public access to the facility with appropriately placed warning signs or other necessary measures.

B. Exhibits

Subject to the terms and conditions of this Stipulation, the Applicant and OPSB Staff agree, stipulate, and recommend that the following exhibits submitted to this docket be marked and admitted into the record of this proceeding, and that cross-examination is waived thereon:

1. Company Exhibit 1, the Application, as filed on June 4, 2014 and certified as complete on July 25, 2014;
2. Company Exhibit 2, a copy of the Proof of Service of the Application on local public officials and libraries along with the list of property owners and adjacent property owners, as filed on July 25, 2014;
3. Company Exhibit 3, Proof of Publication filed on August 12, 2014 in accordance with O.A.C. Rule 4906-5-09(A) for the publication of the description of the application and the hearing dates, published on August 12, 2014 in the *Journal-News*;
4. Company Exhibit 4, Proof of Publication filed on October 20, 2014 in accordance to O.A.C. Rule 4906-5-09(B) for the second publication of the description of the application and the hearing dates, published on October 15, 2014 in the *Journal-News*;
5. Joint Exhibit 1, this “Joint Stipulation and Recommendation” signed on behalf of the OPSB Staff and Applicant; and
6. OPSB Staff Exhibit 1, “Staff Report of Investigation,” issued on October 1, 2014.

C. Other Terms and Conditions

- (1) This Stipulation is expressly conditioned upon its acceptance by the Board without material modification. In the event the Board rejects or materially modifies all or part of this Stipulation or imposes additional conditions or requirements upon the parties, each party shall have the right, within thirty (30) days of the Board’s order, to file an application for rehearing with the Board. Upon the Board upholding the material modification of the Stipulation in its entry on rehearing, any Party may terminate or withdraw from the Stipulation by filing a second application for rehearing with the Board within thirty (30) days of the Board’s entry on rehearing. The second application shall be limited in scope to a party giving notice of exercising its right to terminate and withdraw from the Stipulation to the Board, and requesting an evidentiary hearing with all appertaining rights of process, as if the Stipulation had never been executed. Prior to any Party seeking rehearing or terminating and withdrawing from the Stipulation pursuant to this provision, the Parties agree to convene immediately to

work in good faith to achieve an outcome that substantially satisfies the intent of the Board or proposes a reasonable equivalent thereto to be submitted to the Board for its consideration. Upon a second application for rehearing being filed giving notice of termination or withdrawal by any Party, pursuant to the above provisions, the Stipulation shall immediately become null and void.

- (2) The Parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that it will not use this Stipulation as factual or legal precedent on any issue. The Parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the Parties entering into this Stipulation.

III. FINDINGS

The Parties agree that the record in this case, provided the Board approves the conditions in this Stipulation, contains sufficient probative evidence for the Board to find and determine, as findings of fact and conclusions of law, that:

1. The Facility qualifies as a "major utility facility" defined in Section 4906.01(B)(1)(c) of the Ohio Revised Code ("R.C.").
2. On April 1, 2014, the Applicant filed a pre-application notification letter and requested a waiver from the requirements set forth in O.A.C. Rules 4906-01-03 and 4906-7-12(C), pertaining to the site selection study and a cross-sectional view and test borings.
3. The Administrative Law Judge, by Entry dated April 24, 2014, granted the Applicant's request for waivers.
4. The Applicant formally submitted its Application for a Certificate of Environmental Compatibility and Public Need on June 4, 2014.
5. On July 25, 2014, the Applicant filed a copy of the Proof of Service of the Amended Application on local public officials and libraries along with the list of property owners and adjacent property owners.
6. On August 12, 2014 and October 20, 2014, respectively, Applicant filed Proofs of Publication in accordance with O.A.C. Rule 4906-5-09(A) and (B) for the

publication of the description of the Application and the hearing dates that were published on August 12, 2014 and October 15, 2014 in the *Journal News*.

7. The Staff Report was filed on October 9, 2014.
8. A local public hearing, pursuant to R.C. Section 4906.08(C), was held on October 28, 2014 at the City of Middletown City Council Chambers.
9. An adjudicatory hearing was held on November 6, 2014 in Columbus, Ohio.
10. The provisions under R.C. Section 4906.10(A)(1) are not applicable to this project because it is not an electric transmission line or gas pipeline.
11. Adequate data on the project has been provided to determine the nature of the probable environmental impact as required by R.C. Section 4906.10(A)(2).
12. Adequate data on the project has been provided to determine that the Facility described in the Amended Application represents the minimum adverse environmental impact, considering the available technology and nature and economics of the various alternatives, and other pertinent considerations as required by R.C. Section 4906.10 (A)(3).
13. Adequate data on the project has been provided to determine that the 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 the facility will serve the interests of electric system economy and reliability, as required by R.C. Section 4906.10(A)(4).
14. Adequate data on the project has been provided to determine that the Facility will either comply with, or is not subject to, the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all regulations thereunder, as required by R.C. Section 4906.10(A)(5).
15. Adequate data on the project has been provided to determine that the Facility will serve the public interest, convenience, and necessity, as required by R.C. Section 4906.10(A)(6).
16. Adequate data on the project has been provided to determine what the Facility's impact will be on the viability as agricultural land of any land in an existing agricultural district established under Chapter 929 of the R.C. that is located within the site of the proposed Facility, as required by R.C. Section 4906.10(A)(7).
17. Adequate data on the project has been provided to determine that the facility incorporates maximum feasible water conservation practices as determined by the

Board, considering available technology and the nature and economics of the various alternatives, as required by R.C. 4906.10(A)(8).

18. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.


B. Conclusions of Law


- (1) NTE Ohio, LLC is a “person” under R.C. Section 4906.01(A).
- (2) The proposed Facility is a major utility facility as defined in Section 4906.01(B)(1) R.C.
- (3) NTE’s Application complies with the requirements of O.A.C. Chapter 4906-15.
- (5) The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the Facility under R.C. Section 4906.10(A)(2).
- (6) The record establishes that the Facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under R.C. Section 4906.10(A)(3).
- (7) The record establishes, as required by R.C. Section 4906.10(A)(4), that the 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 the facility will serve the interests of electric system economy and reliability.
- (8) The record establishes, as required by R.C. Section 4906.10(A)(5), that to the extent that any of them are applicable, construction of the proposed Facility will comply with the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all rules and standards adopted under the relevant Chapters of the R.C.
- (9) The record establishes that the Facility will serve the public interest, convenience, and necessity under R.C. Section 4906.10(A)(6).
- (10) The Facility’s impact on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. Section 4906.10(A)(7).
- (11) The Facility, R.C. Section 4906.10(A)(8), incorporates maximum feasible water conservation practices, as determined by the Board, considering available technology and the nature and economics of the various alternatives.


- (12) Based on the record, the parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation and maintenance of the Facility.

The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this Joint Stipulation and Recommendation.

Respectfully submitted on behalf of,

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Summary: Text Joint Stipulation and Recommendation of NTE Ohio, LLC and the Staff of the Ohio Power Siting Board electronically filed by Teresa Orahod on behalf of Sally Bloomfield